

UNDERSTANDING THE MISUNDERSTOOD: MAPPING THE SCOPE OF A DEITY'S RIGHTS IN INDIA

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Abstract

One of the most fascinating legal developments in India has been the law surrounding 'deities'. Unfortunately, the nature and scope of a deity's rights is often misunderstood. In attempting to clarify the scope of a deity's rights, this article traces the deity as a 'juristic person'. Whilst analysing whether a deity has 'fundamental' and 'constitutional' rights in India, the separate opinions in the Sabarimala judgment are critiqued. Moving forward, an attempt is made to provide an original approach for courts to "balance" competing interests in a case involving a deity's fundamental rights. Further, the landmark Ram Janmabhoomi judgment is analysed to fill in the gaps regarding recognition of a legal personality, deity's significance in the modern legal system and status of a land with religious significance. Finally, an overview of the ongoing Krishna Janmabhoomi dispute at Mathura is provided in light of the deity's jurisprudence.

Keywords: Deity, Hindu idol, Fundamental Right, Constitutional Right, Balancing, Sabarimala, Ram Janmabhoomi, Krishna Janmabhoomi

1. Introduction

In India, religion and religious beliefs have played a major role in shaping the society. Looking back into the past as far as the Mohenjo-daro and Harappan Civilisations (remnants of which lie in modern Pakistan today) to the modern India we see today, India has traditionally promoted religious diversity and various cultures. Deities have been accorded great significance in the Hindu religion, as well as Indic cultures and civilisations. A deity is treated by Hindu devotees as an incarnation of God or Godlike beings of cultural importance. Hindu deities have long been recognized as juristic entities vested with proprietary rights by courts throughout the pre-

Independence Colonial rule in India by Great Britain and the modern India.¹ The nature of a deity as a juristic person has been continuously evolving over time. Its rights, duties and liabilities have been subject to great discussion in various judicial precedents.² A much less explored aspect has been the possibility of exercise of fundamental/constitutional rights by the deities. It is indeed intriguing that in such a deeply-religious society as India, there has been barely any legal jurisprudence or academic discussion on the question of deities having fundamental rights. It is only very recently that this question has surfaced, courtesy the controversy around the *Sabarimala* case.³ This opportunity should be used by the academic community and the legal fraternity to open up a robust exchange of ideas over the scope of deities being vested with and exercising fundamental rights under the Indian Constitution.

The first segment of this article takes a closer look on understanding the Hindu deity, its legal personality and the scope of its rights by examining the judicial precedents and scholarship surrounding it. Simultaneously, it provides a discussion on importance of sacred geography and a deity's link to the natural landscape surrounding it. The second segment proceeds to understanding the development in *Sabarimala* case and makes an originalist critique of two separate judgments (by Nariman J. and Chandrachud J.) in the *Sabarimala Reference*⁴ case to argue that a deity has fundamental rights and constitutional rights available within the Indian Constitution. Having forwarded strong arguments in favour of establishing that a deity has fundamental rights, the third segment of the article proceeds to provide a legal framework for courts to adjudicate cases involving questions concerning a deity's fundamental rights and competing interests by state, as well as competing fundamental right interests of other persons. The fourth segment then proceeds to discuss the landmark unanimous judgment by a Constitution Bench of the Indian Supreme Court in the *Ram Janmabhoomi*⁵ case which has filled various legal gaps on recognition of a legal personality in an object or thing, distinction between any two legal personalities, a deity or Hindu idol's significance in the modern legal system and the legal status of a land with religious significance (such as Ram Janmasthan or Krishna Janmasthan). The final segment of the article analyses the ongoing *Krishna*

¹ B.K. Mukherjea, *The Hindu Law Of Religious And Charitable Trust* (1952) (*hereinafter* Mukherjea).

² *See infra*, Part 2.1.

³ *See infra*, Part 3.

⁴ *Indian Young Lawyer Association and Others v. State of Kerala and Ors.*, (2019) 11 SCC 1 (*hereinafter* Sabarimala Reference).

⁵ *See M. Siddiq (Dead) Through Legal Representatives v. Mahant Suresh and Others*, (2020) 1 SCC 1, ^ 110 (*hereinafter* Ram Janmabhoomi).

Janmabhoomi case⁶, providing an overview of the dispute and briefly analysing certain contentions or claims of the plaintiffs from the lens of existing jurisprudence on deities and legal personality in India.

2. Understanding the “deity” and its juristic personality

The concept of a juristic person has been drawn from Roman Law and Common Law.⁷ Under the Common Law, the term person has been considered to be inclusive of both a natural person, human being, corporation and an artificial person.⁸ A Constitution Bench of the Supreme Court of India in the landmark *Ram Janmabhoomi*⁹ judgment has noted that legal systems across the world have extended the concept of “legal personality” beyond natural persons or human beings. Legal personality also includes companies, corporates, ship and municipal corporations, all of which have a purpose behind recognition as a juridical entity.¹⁰ The only distinction between a “juristic person” and a “natural person” is that the former does not have its own personality, i.e. its personality is “fictitious”.¹¹ A juristic person has capability to bear interests, rights and duties.¹² A juristic person is a legal person to the extent the law recognizes the rights and duties ascribed to them (whether by statute or by judicial interpretation).¹³ As per a seminal article by *Bahadur*¹⁴, constitutional privileges and rights (other than those granted only to citizens) are equally available to all “juristic persons”. Certain juristic persons, such as a company¹⁵ are bound by rigid statutory laws defining their nature, rights, duties, legal obligations etc. Other juristic persons are recognized by courts through judicial precedents in order to meet a *necessary* purpose (which has been discussed in great length by the *Ram Janmabhoomi* judgment¹⁶ and shall be analysed in Part 5 of this article). The “duties” ascribed to a juristic person can be extended by statutory enactments, such as the interesting

⁶ See *infra*, Part 6.

⁷ Krishna Bahadur, *Personality Of Public Corporation And Lifting The Corporate Veil*, 14 Journal of The Indian Law Institute 207 (1972) (*hereinafter* Bahadur).

⁸ *Pharmaceutical Society v. London and Provincial Supply Association Ltd.*, [L.R.] 5 App. Cas. 857. (Lord Blackburn).

⁹ *Ram Janmabhoomi*, *supra* note 5.

¹⁰ *Id.*

¹¹ J.W. Salmond, *Jurisprudence*, Steven and Haynes, London (1913).

¹² *Id.*

¹³ See *Ram Janmabhoomi*, *supra* note 5, ^ 111.

¹⁴ See Bahadur, *supra* note 7, 216.

¹⁵ See, e.g. Companies Act, 2013. (‘In India, a company (whether private or public) is regulated through this Central Legislation. Prior to 2013, the legal regime regulating companies was the Companies Act, 1956’.)

¹⁶ *Ram Janmabhoomi*, *supra* note 5.

instance of the Draft Personal Data Protection Bill 2019 of India¹⁷ which intends to extend its application to any “juristic entity”, by treating it as a “data fiduciary” and “data processor”.

It has been recognized that an idol of a Hindu Temple is a juridical person or juristic entity¹⁸ and is often commonly referred to as a “deity”.¹⁹ The title to properties and endowments can vest in deities such as a Hindu idol, who has to act through a human agency (such as the Shebait).²⁰ A Hindu idol not only has the power of suing and being sued, but can be treated as an “individual” who can be assessed for tax liability.²¹ Importantly, the Indian Constitution does not expressly use the phrase “juristic person”, “Hindu idol” or the term “deity”.²² While the Constitution uses the broader phrase “person” throughout various articles, it does not expressly define the meaning of the term. As provided in Article 367 of the Constitution, it may be relevant to draw attention to The General Clauses Act 1897 (*hereinafter* GC Act) for more context.²³ The GC Act explicitly provides that the term “persons” shall “include any company or association or body of individuals whether incorporated or not.”²⁴, which is an *inclusive* definition. Consequently, its use in the Indian Constitution should be treated as an inclusive definition. This understanding shall be later applied in Part 3, where we will use this originalist interpretation to critique the *Sabarimala* judgment.

2.1 Tracing the Indian Jurisprudence on Deities as ‘Juristic Persons’

It is an established point of law that deities may be regarded as juristic persons for specific purposes. The legal history of judicial precedents reveals a slow yet nuanced evolution of the jurisprudence on deities as juristic persons. There has been a catena of case laws since the mid nineteenth century on the issue, which have been traced extensively below. This segment shall trace the evolution of law which recognized deities as juristic persons in pre-Independence period and the modern India.

¹⁷ See Personal Data Protection Bill, 2019, § 2. As introduced in LOK SABHA on 5th December, 2019 (Bill No. 373 of 2019).

¹⁸ See *Sri Ganpathi Dev Temple Trust v. Balakrishna Bhat (Through LRs) and Ors.*, (2019) 9 SCC 495, ^ 12. (*hereinafter* Balakrishna Bhat); *Pramatha Nath Mullick v. Pradyumna Kumar Mullick*, 552 IA 245 (Lord Shaw) (*hereinafter* Mullick).

¹⁹ Mukherjea, *supra* note 1.

²⁰ See Mukherjea, *supra* note 1, 249; Balakrishna Bhat, *supra* note 18, ^ 12.

²¹ See *Yogendra Nath Naskar v. CIT, Calcutta*, (1969) 1 SCC 555, ^ 6 (*hereinafter* Naskar).

²² The Constitution of India, 1950.

²³ The Constitution of India, 1950. Refer Article 367.

²⁴ GC Act, § 3(42).

One of the earliest instances of the issue being discussed by the Indian courts was in 1869, when an appeal came up before the Privy Council in *Maharanee Shibessouree Debia v. Mothooranath Acharjo*.²⁵ A civil suit was brought against the shebait of a 'talook' (which was dedicated to the service of a deity) for establishment of the title to certain 'jummas', as well as recovery and possession of certain lands which were a part of the 'talook', claiming that the rights in them had been transferred to him.²⁶ The court first examined the nature of the rights of the shebait with respect to the 'talook', and noted that since the 'talook' was devoted for the religious services of the deity (i.e. the Hindu idol), all the rents arising from the lands and the lands themselves were legally speaking, the property of the deity.²⁷ It was further observed that the shebait could not claim to be the lawful owner of the property and she could only be regarded as the manager of the religious endowment.²⁸ The court elaborated on the scope of legal powers of the shebait with respect to the deity's property, stating that, "[...] In the exercise of that office, she could not alienate the property, though she might create proper derivative tenures and estates conformable to usage." [emphasis added]²⁹ The court emphasized on the nature of the shebait title and observed that since the shebait could not create derivative titles, even fixing invariable rents arising out of the deity's property for a long period of time shall be regarded as a "breach of duty" by the shebait.³⁰

In *Prosunno Kumari Debya v. Golab Chand Baboo*³¹, an important question before the British Privy Council was "whether the profits of dewuttur lands can be attached and appropriated during the incumbency of succeeding shebait by virtue of judgments obtained against a former shebait in respect of debts properly and necessarily incurred by him for the service and benefit of the idol".³² This query simultaneously also raised the question as to "whether a shebait in possession and management of dewuttur properties can alienate or charge them, and if so, to what extent, and under what circumstances".³³ Before addressing the question, the court observed that it was settled law that the nature of the property assigned for the "maintenance of religious worship and of charities connected with it" is inalienable.³⁴ The court then while delivering the judgment held that notwithstanding this general rule, the shebait in its capacity as the manager of the estate should

²⁵ *Maharanee Shibessouree Debia v. Mothooranath Acharjo*, (1869-70) 13 Moo IA, p. 270.

²⁶ *See id.*, p. 272.

²⁷ *See id.*, p. 273.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See id.*, p. 275.

³¹ *Prosunno Kumari Debya & Anr. v. Golab Chand Baboo*, (1874-75) 2 IA 145.

³² *See id.*, p. 150.

³³ *See id.*, p. 146.

³⁴ *See id.*, p. 150.

be regarded as competent to borrow money and incur debts in order to meet the proper expenses for the maintenance of the deity and its religious worship, repair work and the upkeep of the temple and any other possessions of the idol, to defend the deity against any kind of ‘hostile litigious attacks’, and any other connected objects.³⁵ The court cautioned that this power of incurring debts would have to be required to be proportionate to the ‘existing necessity’ to incur them.³⁶ Sir Montague E. Smith while delivering the judgment for the court stated that since the property in question could be regarded as that of the idol “only in an ideal sense”, there was a need for the appointment of a shebait for its management and possession.³⁷ Hence, it was essential for the proper dispensation of the duties of shebait that the person appointed should be vested with the appropriate powers to carry out the necessary functions associated with the ‘service of the idol’, so as to ensure ‘the benefit and preservation of its property’.³⁸ The appointment of a shebait with required powers was necessary for the preservation of the ‘estate of the idol’ and to protect it from wastage or destruction due to paucity of funds or any other reason, and to also ensure the continuation of proper worship.³⁹ It was finally held that the judgments regarding debts incurred by a shebait would be binding on the succeeding shebait in their capacity as the representatives of the deity’s property.⁴⁰

An interesting case *Manohar Ganesh Tambekar v. Lakshmiram Govindram & Ors.*⁴¹ (famously known as the ‘Dakor Temple’ case) which came up for adjudication before the Bombay High Court sheds some light on the nature of a deity as a juridical person. The appeal arose from a suit filed by the hereditary manager of the Dakor temple institution along with the priests at Dakor who were in charge of the pilgrims visiting the temple shrine and performing the worship of the deity, Shri Ranchhod Raiji, for the pilgrims.⁴² They had filed the suit as relators interested in the maintenance of the religious institution against the *shevaks* of the deity, who were acting as trustees of the temple.⁴³ The *shevaks* had inherited the office from their ancestors, and were supposed to be constantly available to attend to the idol, performing all the daily services and collecting the offerings that were

³⁵ See *id.*, p. 151.

³⁶ *Id.*

³⁷ See *id.*, p. 152.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Manohar Ganesh Tambekar & Ors. v. Lakshmiram Govindram & Ors.*, ILR (1888) 12 Bom, p. 247 (*hereinafter* Tambekar).

⁴² *Id.*

⁴³ See *id.*, p. 248.

dedicated to the shrine.⁴⁴ Over time, the defendants had started to behave as proprietors and holders of a small estate along with a large accumulation of valuable offerings 'laid at the feet of the idol' by its devotees.⁴⁵ Ironically, as noted by West J. in his judgment, the *shevaks* had petitioned the Bombay Government in 1861 for the 'remission of income-tax', arguing that the revenue generated from the offerings placed at the temple were under the ownership of the idol and were primarily its property.⁴⁶ It was the *shevaks'* contention before the government that such property of the idol could not be subjected to taxation.⁴⁷ The offerings made at the temple being primarily the property of the idol, it was used mainly to ensure the fulfilment of all the 'necessities of ceremonial worship' of the idol, and only the 'surplus' that remained was divided amongst the *shevaks*.⁴⁸ It was conceded on behalf of the *shevaks* in 1878 that whenever debts were incurred in the name of the idol, such debts would have to be first 'satisfied' before the *shevaks* could stake any claim in the offerings.⁴⁹ It was only sometime later that the *shevaks* began to 'set up an absolute proprietary right' over the offerings made in the temple driven by ulterior motives and going against the established custom of the temple.⁵⁰ The question raised before the court was whether the *shevaks* could treat this revenue and property "absolutely as their own without any trust or annexed duty", and if they were to be considered as the legal representatives of the idol (as a legal personality), did they fulfil their duty towards the deity by 'merely revelling on the growing revenues', or were "bound to widen the range of the deity's beneficence in proportion to the expansion of his mundane means."⁵¹ The court, while recognizing the existence of the concept of artificial juridical persons under Hindu law, ordered the recovery of property and money that might have been misappropriated by the *shevaks*, as they couldn't be treated as the owners of the property, but only as persons employed at the service (as the term *sevak* or *shevak* itself suggests) of the deity.⁵² This case also gives us a glimpse of how the deity is perceived by its devotees⁵³, which surely must and does have legal repercussions. The evidence produced in the case in this regard is worth noting. The court, discussing the 'evidence recorded' as submitted by several devotees of Shri Ranchhod Raiji who were also donors of offerings before the temple, observed that although the donors did not necessarily meddle with the affairs of the temple or kept a

⁴⁴ See *id.*, p. 247.

⁴⁵ See *id.*, p. 260.

⁴⁶ See *id.*, p. 263.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See *id.*, p. 260.

⁵² See *id.*, p. 266-7.

⁵³ See *id.*, p. 261-2.

track of what was made of their offerings, but still they were at least generally interested in ensuring the regular and proper worship of the deity.⁵⁴ It was stated that, “He is interested, too, in the honour and respect of the deity he reverts. He does not intend to pander to unrestricted licentiousness or mere ignorant sensuality which must bring his deity and its worships into contempt. He desires a regular and continuous or at least a periodical round of sacred ceremonies, which might fail if the offerings of past years were all squandered, while those of any given year fell short.” [emphasis added]⁵⁵ This gives us an idea of how the deity is being treated as very much a natural person, with the dignity of the devotee being knotted up to that of the deity. We may also note that the court doesn’t draw a clear distinction between the idol/deity and the Dakor temple/institution for treating it as a juridical person.

In *Vidyapurna Tirtha Swami v. Vidyavidhi Tirtha Swami*⁵⁶, a two-judge bench of the Madras High Court adjudicated upon the validity of an appointment made for the position of the head of Bhandarkare Mutt. In drawing a distinction between the positions of a trustee of a temple and the head of a Mutt, the court described the custodian or *dharmakarta* of a temple as only a trustee who was supposed to utilize the funds dedicated to the temple to carry out the chief object of the trust, i.e., the performance of daily worship and ceremonies for the deity.⁵⁷ Here again, while discussing the evolution of the idea of deities as juristic persons, the court did look into its religious antecedents. First the court made a reference to the countries not subscribing to anthropomorphic notions of God, and explained (by quoting authorities) how even they regarded God as both a supernatural as well as a natural person, who could live and hold property.⁵⁸ It was therefore not to be regarded as a strange coincidence the fact that in India, the belief in the ‘personified descriptions’ of the Hindu deities and their powers and attributes is much stronger, considering that the sacred books are abound with such descriptions.⁵⁹ Quoting from *Doorqa Pershad v. Sheo Proshad*⁶⁰, “According to Hindu notions, when an idol has been so to speak consecrated by the appropriate ceremony being performed and mantra pronounced the deity of which the idol is the visible symbol resides it.” Analysing the cases already discussed above, the judgment upheld the regarding of a consecrated

⁵⁴ See *id.*, p. 261.

⁵⁵ See *id.*, p. 261-2.

⁵⁶ *Vidyapurna Tirtha Swami v. Vidyavidhi Tirtha Swami*, ILR (1904) 27 Mad, p. 435 (hereinafter *Vidyapurna*).

⁵⁷ *Id.*

⁵⁸ See *id.*, p. 440.

⁵⁹ *Id.*

⁶⁰ *Doorqa Pershad v. Sheo Proshad*, 7 C.L.R., 278.

idol as a juridical person.⁶¹ However, this judgment drew criticism later on⁶² for the comparison that it drew with concepts imported from abroad. In *Vidya Varuthi Thirtha Swamigal v. Balusami Ayyar*⁶³ case, the Privy Council in its judgment held that:

“From the year 1774, the Legislature, British and Indian, has affirmed time after time the absolute enjoyment of their laws and customs so far as they are not in conflict with the statutory laws, by Hindus and Mohammedans. It would, in their Lordships’ opinion, be a serious inroad into their rights, if the rules of the Hindu and Mohammedan laws were to be construed with the light of legal conceptions borrowed from abroad, unless perhaps where they are absolutely, so to speak, in *pari materia*. The vice of this method of construction by analogy is well illustrated in the case of *Vidyapurna Tirtha Swami v. Vidyanidhi Tirtha Swami*, where a Mohant’s position was attempted to be explained by comparing it with that of a bishop and of a beneficed clergyman in England under the ecclesiastical law.” [emphasis added]⁶⁴

A landmark judgment on the question of deities’ rights as juristic entities was delivered in *Mullick*⁶⁵, wherein it was held that the household deity or the idol could not be regarded as ‘a mere chattel’⁶⁶, and in order to respect the deity's will (or the idol’s will) with respect to its location where it should be placed for worship, the suit was remitted by the court so that the idol could appear through a ‘disinterested next friend’ appointed by the court.⁶⁷ The court deliberated on the nature of the idol and the services it could claim.⁶⁸ It was recognised in accordance with ‘long established authority’ that a Hindu idol is regarded as per Hindu customs and in law as a ‘juristic entity’, with the legal power of suing and being sued.⁶⁹ Notably, the court found it ‘unnecessary to quote the authorities; for this doctrine thus simply stated, is firmly established’.⁷⁰ The court did not find any weight in the idea of treating Hindu family idols as property of the family in the crude sense of

⁶¹ See *Vidyapurna*, *supra* note 56, p. 441.

⁶² The judgment was criticized in at least two subsequent judgments of the Madras High Court. See, e.g., *Kailasam Pillai v. Nataraja Thambiran*, I.L.R. (1910) 33 Mad 265, AIR 1918 Mad 1016; *Vidya Varuthi Tirtha Swamigal v. Balusami Ayyar*, AIR 1922 PC 123: (1922) 15 LW 78 (PC) (*hereinafter* *Vidya Varuthi*).

⁶³ See *Vidya Varuthi*, *supra* note 62.

⁶⁴ See *id.*, 83-84.

⁶⁵ See *Mullick*, *supra* note 18, pp. 245-6.

⁶⁶ See *id.*, p. 246.

⁶⁷ *Id.*

⁶⁸ See *id.*, p. 250.

⁶⁹ *Id.*

⁷⁰ *Id.*

the term, neither did it believe that causing the destruction or degradation or injury to such idols was within the powers of their custodians.⁷¹ Importantly, the court observed that “such ideas appear to be in violation of the sanctity attached to the idol, whose legal entity and rights as such the law of India has long recognized”.⁷² As a testimony of the ‘concrete realities’⁷³ of the idea of Hindu deities as juristic entities, the court reproduced a paragraph from the judgment delivered in *Rambrahma Chatterjee v. Kedar Nath Banerjee*⁷⁴, which must be quoted here in full:

“We need not describe here in detail the normal type of continued worship of a consecrated image - the sweeping of the temple, the process of smearing, the removal of the previous day’s offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessities and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest.” [emphasis added]⁷⁵

The above description is illustrative of the position of the deity as a very much lively, natural person in the *dharmic* worldview, having the highest honour and sanctity, with all the possible rights that would be attributed to any normal person.

Although the judgments delivered by various Indian courts since the mid-nineteenth century are indicative of a tendency of the courts to interfere and adjudicate upon religious matters such as proper worship and maintenance of deities, which may essentially be seen as issues of the ‘private’ sphere, by framing of rules and appointment of third parties to implement the same, yet there also seems to be an attempt to give sufficient importance to the faith of the worshippers in deciding the nature of the deities. For instance, while laying down the test of religious worship so as to declare a place as a temple under the Madras Religious Endowments Act, it was held that it did not matter much whether the worship was being carried out in consonance with the procedures as laid down by a particular school of the Agama shastras, rather what was of more essence was the fact whether the devotees or

⁷¹ See *id.*, p. 257.

⁷² *Id.*

⁷³ See *id.*, p. 250.

⁷⁴ *Rambrahma Chatterjee v. Kedar Nath Banerjee*, (1922) 36 C.L.J. 478, 483.

⁷⁵ *Id.*

worshippers themselves believed in the 'religious efficacy' of the method of worship. To state it simply, what mattered was whether they believed in "its religious efficacy in the sense of their making themselves the object of the bounty of some superhuman power even though the objects of worship are certain heroes who are said to have been killed in a war waged in by gone times." [emphasis added]⁷⁶ It was the faith of the worshippers that would matter most of all. The belief of the worshippers in their object of worship was the most essential deciding factor while determining the nature of the deity, as the deity was constituted by how it was perceived by its devotees collectively. Such a discourse made possible an interdependent evolution of the 'juristic' idea of the deity, where the deity itself as well as its devotees determined the constitution and content of its juristic identity.

The constitution of a Hindu idol has been discussed at length by the Madras High Court while examining the definition of a temple as 'a place of public religious worship'.⁷⁷ The court held that a temple could be regarded as a place of public religious worship only once the idol had been installed therein and consecrated by the performance of the *pranaprathistha* or 'vivification ceremony'.⁷⁸ Before that, the idol could not be regarded as an object of worship.⁷⁹ The deity could be regarded as beginning to reside in the idol only after the completion of the consecration ceremony.⁸⁰ Once the physical image of the idol was prepared by the artist, it was supposed to be 'brought in procession from the artist's place to the hall of ablation' after which its consecration would be commenced.⁸¹ The court noted that this custom was applicable to '*prathishta sthalams*' or temples where a deity was/is installed by the observation of a given set of rules and customs.⁸² This may be distinguished from '*swayambhu sthalams*', 'temples in which the idol of the deity is *swyam vyehtha* or self-revealed', and so it doesn't need to be consecrated and established by the people.⁸³ The court stated that the idol did not become 'a fit object of religious worship' until it was properly installed through consecration.⁸⁴ The reason behind this was clearly because the deity is believed to reside in the idol only once the *prana prathishta* of the image/idol has been conducted, post which the idol is regarded as both a physical and living manifestation of the deity. Such

⁷⁶ *The Board of Commissioners for the Hindu Religious Endowments, Madras v. Pidugu Narasimham & Ors.*, (1938) 48 LW 791.

⁷⁷ See *T.R.K. Ramaswami Servai & Anr. v. The Board of Commissioners for the Hindu Religious Endowments, Madras*, AIR 1951 Mad 473, ^ 6.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

elaborate customs and procedures point to the deeply rooted idea of Hindu deities as living beings. It is only logical then for them to be regarded as such with corresponding rights and duties. However, one may be cautioned against an over-emphasis on the elaborate customs to establish the fact of existence of a deity and its temple. As already noted above, in situations of lack of concrete evidence in this respect, the overwhelming faith of the devotees may be regarded as the ultimate determining factor with regard to the existence of the deity. In *Shri Thakur Gokul Nathji Maharaj v. Nathji Bhogi Lal*⁸⁵, it was held that in a situation where a ‘self-revealed’ deity (as manifested in its idol) had been worshipped by a huge sect of people for a few centuries and where the deity was said to own large properties, “[...] it is impossible after this length of time to prove by any direct, affirmative evidence whether there was or there was no consecration, and a presumption can be raised that it was a juristic person recognised as such by the followers.” [emphasis added]⁸⁶

The jurisprudence on the nature of the idols seems to have varying interpretations of the constitution of the idol, and consequently its property rights that it may exercise. In deciding on whether a particular temple was a public or a private one, a four-judge bench of the Hon’ble Supreme Court answered the question about the intended beneficiaries when a temple is constructed and an idol is installed therein.⁸⁷ The court stated that although the Hindu law considered an idol as a juristic person ‘capable of holding property’, it did not necessarily follow that it must be regarded as the ‘beneficial owner of the endowment’.⁸⁸ Citing various precedents, the court held that it was only ‘in an ideal sense’ that the idol may be regarded as the owner of the endowments.⁸⁹ Neither could the idol itself make use of its endowed properties, nor could it enjoy, dispose or protect them, thus having no beneficial interest in the endowment.⁹⁰ Referring to a few religious texts’ commentaries, the court came to the conclusion that:

“Gods have no beneficial enjoyments of the properties, and they can be described as their owners only in a figurative sense (*Gaunartha*), and the true purpose of a gift of properties to the idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship. In *Bhupati Nath Smrititirtha v. Ram Lal Maitra* it was held on a consideration of these and other texts that a gift to an idol was not to

⁸⁵ *Shri Thakur Gokul Nathji Maharaj & Anr. v. Nathji Bhogi Lal*, ILR (1953) 1 All 964.

⁸⁶ Id.

⁸⁷ See *Deoki Nandan v. Murlidhar & Ors.*, AIR 1957 SC 133, ^ 6.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

be judged by the rules applicable to a transfer to a 'sentient being', and that dedication of properties to an idol consisted in the abandonment by the owner of his dominion over them for the purpose of their being appropriated for the purposes which he intends." [emphasis added]⁹¹

Thus, it was to be understood that the 'true beneficiaries' of such religious endowments were the worshippers of the Hindu idol and not the idol itself.⁹² This judgment essentially challenged the more anthropomorphic conceptions of Hindu deities as juristic entities. By an application of a 'rational' framework to the conception of the deity, not only did the judgment reduce the Hindu faith in an idol as a living manifestation of the deity to being so only in a mere figurative sense without an actual belief, but also it deprived the deity of its property rights and its control over the disposition of its property for its own use. This is in contradiction to many previous judgments which have clearly stated that the property dedicated to the deity shall not be divested from it and shall be used solely for the upkeep and maintenance of the deity and its regular worship and ceremonies. Also, the judgment here created a vague category of the purpose for which a property is dedicated to the deity by linking it to the subjective intentions of the donor. In order to ensure that this judgment may not fly in the face of all the previous judgments, one has to harmoniously read it with the previous precedents. This would mean that the use of a religious endowment would be decided upon in accordance with the intentions of the worshippers and for their benefit, which would obviously be catered to only when the deity and its place of worship is itself maintained. The upkeep of the deity and its regular worship and performance of all the necessary rituals or ceremonies would have to be prioritized, after which attention may be given to the comfort/benefit of the worshippers as well. This leads yet again to the creation of an inter-dependence between the welfare of the deity and its worshippers, and the constitution of the nature of the deity flows both from its own self and from that of how its devotees perceive it. Given that the belief of Hindus is well anchored in a living physical manifestation of their deity, the worshippers of a deity would obviously regard the deity as living and present amongst themselves, owning all the property laid at its services, using it for its own upkeep and that of its devotees, and governing the dictates of its sacred spaces. Whether the idol be considered a deity only in an ideal sense (in which case the focus shifts to its worshippers for deciding the customs regarding the deity and its property, and consequentially the devotees would obviously carry out the will of the deity), or it be considered a real living entity that is the deity itself (as has been believed since time

⁹¹ Id.

⁹² See *id.*, ^ 7.

immemorial by the Hindu pantheon), the deity will ultimately have to be perceived as a living entity having and commandeering its own rights and duties.

A landmark judgment was delivered by the Hon'ble Supreme Court of India in *Shiromani Gurdwara*⁹³ case, wherein the Court held Guru Granth Sahib (the holy book and the last Guru of the Sikhs) to be a juristic person⁹⁴. The court stated that over the passage of time, with new socio-political and scientific developments, the formation of the concept of a juristic person became a necessity.⁹⁵ 'Any entity, living, inanimate, object or thing could be regarded as a juristic person, as its usefulness 'may impel the court to recognize it', considering that 'this recognition is for subserving the needs and faith of the society.'⁹⁶ It was further stated, "A juristic person, like any other natural person is in law also conferred with rights and obligations and is dealt with in accordance with law."⁹⁷ The court expressly acknowledged the need for flexibility in the law in order to adjust according to the needs of the society.⁹⁸ Stating that 'faith and belief' were entities that could not be placed at the altar of 'judicial scrutiny' and 'judged' through such a lens, the court acknowledged that the idea of a juristic person was not one to be caged 'in any defined circle', and that 'with the changing thoughts, changing needs of the society, fresh juristic personalities were created from time to time'.⁹⁹ The court also emphasized on the diversity in faiths and their ways of worship, indicating that the idea of a juristic person needed to be tweaked to fit their varying needs accordingly.¹⁰⁰ The court also criticised the 'equating' and comparison of different faiths and religions, and such attempts at drawing parallels.¹⁰¹ The court said that there was no need for Guru Granth Sahib to be compared to an idol of a temple in order to declare it a juristic person.¹⁰² The sacred text could be regarded as a juristic person simply if it could 'stand the test' by itself.¹⁰³ As may be inferred from the judgment, the test would be the 'reverential value'¹⁰⁴ given to it, just as idols are revered in a temple. While contemplating this, one must bear in mind that a 'too restrictive' meaning may not be given to the concept of juristic

⁹³ *Shiromani Gurdwara Prabandhak Committee, Amritsar v. Som Nath Dass & Ors.*, (2000) 4 SCC 146 (*hereinafter* Shiromani Gurdwara).

⁹⁴ *See id.*, ^ 42.

⁹⁵ *See id.*, ^ 19.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *See id.*, ^ 28.

⁹⁹ *Id.*

¹⁰⁰ *See id.*, ^ 30.

¹⁰¹ *See id.*, ^ 29.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *See id.*, ^ 34.

person, else 'that would erase the very jurisprudence which gave birth to it'.¹⁰⁵ Quoting Guru Gobind Singh and describing the faith that was reposed by him and the entire Sikh followers in Guru Granth Sahib, the court noted this faith to be the key force behind the worship of the sacred text 'like a living Guru'.¹⁰⁶ The court stated, "It is with this faith and conviction, when it is installed in any gurdwara it becomes a sacred place of worship."¹⁰⁷ The most notable points that emerged from this judgment are that the idea of juristic person and the rights that it should be endowed with, must be decided with due regard to the specific context that the particular religion/faith and its belief provides. The concept needs to be contextualized and moulded according to the requirements of the religion, and may be decided as per the faith of the community in question.

In an intervening application¹⁰⁸ filed by the *People for Dharma* organization in the *Sabarimala Reference*¹⁰⁹ case before the Hon'ble Supreme Court, there was an emphasis on the 'status' of a temple 'as the abode of the Deity'.¹¹⁰ It was argued that this status of the temple made it obligatory for the devotees to follow the 'will of the Deity' as 'expressed in the form of tradition', and the devotees could not exercise their own 'free will' without having any 'regard for the traditions of the Temple and the beliefs underlying such traditions', as the 'rights of the Deity as the master (and the owner) of his abode' was a well-recognized point of law.¹¹¹ The very conception of the deity as a juristic person, capable of suing and being sued, and being taxed, fused with the devotees' perception of the deity (as well as the deity's own mode of existence) made it only logical to argue that the deity did have fundamental rights under Articles 25(1), 26 and 21 of the Indian Constitution.¹¹² In this specific case, it meant that the deity living as the owner of its abode enjoyed the right to privacy to maintain its celibate form. The deity's will, expressed through the long-established customs and traditions of the temple, would have to be followed as the deity had all the rights under Article 25(1) to follow its own 'Dharma' or faith. One may be cautioned against drawing a parallel between the rights of corporate bodies and a deity for the simple reason of both being juristic entities. It has been persuasively argued that:

¹⁰⁵ Id.

¹⁰⁶ See *id.*, ^ 33.

¹⁰⁷ Id.

¹⁰⁸ I.A. No. 30 of 2016 in *Indian Young Lawyer Association and Others v. State of Kerala and Ors.*, Writ Petition (Civil) No. 373 of 2006 (*hereinafter* People for Dharma).

¹⁰⁹ Sabarimala Reference, *supra* note 4.

¹¹⁰ People for Dharma, *supra* note 108.

¹¹¹ Id.

¹¹² Id.

“[...] to mechanically equate the Deity’s character with that of a body corporate is to miss the very point that a religious belief which accords the Deity the status of a living person, is different from vestation of a juristic character in a body corporate for transactional convenience. In other words, by questioning the Deity’s character as a living person, which is the bedrock of Hindu mode of worship... the fundamental precepts of Hindu beliefs which have the force of law in so far as religious practices are concerned have been called into question.” [emphasis added]¹¹³

2.2 India’s ‘sacred geography’ and deities’ link with their natural landscape

India is a land of sacred spaces, envisioned as a large sacred landscape by our ancestors. Harvard scholar Diana L. Eck¹¹⁴, after a rigorous research work on the ground spanning decades, articulated this idea as such:

“I began to realize that the entire land of India is a great network of pilgrimage places - referential, inter-referential, ancient and modern, complex and ever-changing. As a whole, it constitutes what would have to be called a “sacred geography”, as vast and complex as the whole of the subcontinent. In this wider network of pilgrimage, nothing, not even the great city of Banāras, stands alone, but rather everything is part of a living, storied, and intricately connected landscape.” [emphasis added]¹¹⁵

Eck further added that, “[...] It became increasingly clear to me that anywhere one goes in India, one finds a living landscape in which mountains, rivers, forests, and villages are elaborately linked to the stories of the gods and heroes. The land bears the traces of the gods and footprints of the heroes. Every place has its story, and conversely, every story in the vast storehouse of myth and legend has its place. This landscape not only connects places to the lore of gods, heroes, and saints, but it connects places to one another through local, regional, and transregional practices of pilgrimage. Even more, these tracks of connection stretch from this world toward the horizon of the infinite, linking this world with the world beyond. [...] Most importantly, this “imagined landscape” has been constituted not by priests and their literature, though there is plenty of literature to be sure,

¹¹³ Written submissions by Adv. J. Sai Deepak in review petition no. 3449 of 2018, review petition no. 3469 of 2018, diary no. 38135 of 2018 in *Indian Young Lawyer Association and Others v. State of Kerala and Ors.*, Writ Petition (Civil) No. 373 of 2006. Refer to pages 13-14.

¹¹⁴ Diana L. Eck, *India: A Sacred Geography*, Three Rivers Press (2012).

¹¹⁵ *Id.*, p. 2.

but by countless millions of pilgrims who have generated a powerful sense of land, location, and belonging through journeys to their hearts' destinations.” [emphasis added]¹¹⁶

As is common knowledge, “India has sacred sites spread across the length and breadth of the country to which religious pilgrimage is undertaken by the Hindus. These sacred sites, often called as either Tirtha or Kshetra, can be sacred shrines, mountains, rivers, ghats or cremation grounds, and thus, making India a land of Tirthas. Some examples of such Tirthas are the rivers like Ganga and Yamuna, the Char-Dhamas, the Jyotir-Lingas, Shakti-Peethas, and of course, the places associated with the manifestation of Avatars like Rama and Krishna.”¹¹⁷

This idea of a sacred space or Kshetra is deeply embedded in the age-old traditions of the Hindu communities. It is this perspective that transforms the nature around into reverential symbols. The land itself then is elevated to the position of a divinity and turns into a sacred entity worth worshipping. It flows from this well-etched notion that Ram Janmbhoomi and Krishna Janmasthan are regarded as the holiest of sacred spaces and are worshipped by millions of Hindus across India for being the birthplaces of their Ishvars. Such strong faith of devotees as ‘felt communities’¹¹⁸ constitutes a compelling reason for these sacred lands to be regarded as a part of the deities as juristic persons. We feel that while a separate juristic recognition for the spaces may not be required, but the recognition of these sacred entities must not be necessarily dependent on the existence of the deity as an idol, because in many cases the natural entities are themselves regarded as a manifestation of the deity (or are the deity itself).

3. Revisiting Sabarimala: Do Deities have Fundamental or Constitutional Rights?

The landmark Sabarimala case has been a heated topic amongst the legal community for various reasons. In the *Sabarimala Reference* judgment¹¹⁹ (28.09.2018), a Five-Judge Constitution Bench headed by Dipak Misra J. by a majority decision (with Indu Malhotra J. *dissenting*) had, *inter alia*, held that the bar on entry of women belonging to certain age brackets who

¹¹⁶ *Id.*, p. 4-5.

¹¹⁷ Nithin Sridhar, *Ayodhya: The Concept of the Sacred Kshetra*, Centre For Indic studies, August 10, 2020, available at <https://cisindus.org/2020/08/04/ayodhya-the-concept-of-the-sacred-kshetra/> (Last visited on November 25, 2020).

¹¹⁸ Rajat Kanta Ray, *The Felt Community: Commonality and Mentality Before the Emergence of Indian Nationalism*, Oxford University Press (2003).

¹¹⁹ *Sabarimala Reference*, *supra* note 4.

undergo menstruation violates various fundamental rights and the principle of constitutional morality.

In the *Sabariamala Reference* case, Advocate Mr. J. Sai Deepak had forwarded the contention that deities have constitutional rights, including fundamental right under Article 25.¹²⁰ Importantly, only two of the judges (R.F. Nariman J. and D.Y. Chandrachud J.) in their separate judgments addressed this contention. Nariman J. had held that only “natural persons” can exercise the rights conferred under Part-III of the Indian Constitution. Whilst Chandrachud J. reached a similar conclusion, he stated additional findings to assert that the rights under Article 25 were available only to individuals and that due to juristic personality granted by way of legal fiction, the fundamental rights under Part-III cannot be extended to a deity. These holdings by Nariman J. and Chandrachud J. essentially meant that any deities or Hindu idols recognized under law do not have access to any fundamental rights in India.

The following year in 14.11.2019, a Constitution Bench headed by Ranjan Gogoi J. was formed for reviewing correctness of the *Sabarimala Reference* judgment. Writing for the majority, Gogoi J. held that various holdings of *Sabarimala Reference* need to be referred to a larger bench.¹²¹ Moreover, the majority observed that there existed a conflict between the holdings of the Seven-Judge Bench decision in *Shirur Mutt*¹²² and the subsequent Five-Judge Bench decision in *Durgah Committee, Ajmer v. Syed Hussain Ali*¹²³. Eventually, a Nine Judge Constitution Bench headed by S.A. Bobde J. was set-up to determine the correctness of the *Sabarimala Reference* judgment and to lay down the scope of law on various questions.¹²⁴ Presumably, the reason why a Nine Judge Bench was constituted by the Chief Justice of India as against constitution of a Seven Judge Bench was owing to the apparent conflict between the *Shirur Mutt* and *Durgah Committee* cases.

While the *Sabarimala Review* decision didn't expressly refer the two separate judgments by Nariman J. and Chandrachud J. which gave holdings on the scope of constitutional rights of juristic deities to the larger bench, the majority decision did refer several additional grounds to the larger bench

¹²⁰ See *id.*, ^ 399 (Chandrachud J.).

¹²¹ *Kantaru Rajeevaru v. Indian Young Lawyers Association* (hereinafter *Sabarimala Review*), (2020) 2 SCC 1.

¹²² *Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282 (hereinafter *Shirur Mutt*).

¹²³ *Durgah Committee, Ajmer v. Syed Hussain Ali*, AIR 1961 SC 1402.

¹²⁴ *Kantaru Rajeevaru v. Indian Young Lawyers Association*, Review Petition (C.) No. 3358 of 2018. ('This is the official citation for the Nine Judge Bench headed by Chief Justice S.A. Bobde which heard the *Sabarimala* case in the year 2020.')

(such as questions on rights of a religious denomination, scope of the phrase “section of Hindus” in Article 25, as well as the interplay between rights of persons under Article 25 of Constitution and rights of religious denominations under Article 26).¹²⁵ Issues on these questions, *inter alia*, have been framed by the Nine Judge Bench through an order on February 10, 2020.¹²⁶ Unfortunately, due to the COVID-19 pandemic, the hearings on the Sabarimala case couldn't continue and eventually Banumathi J. (*the only woman judge on the bench*) had retired on 19.07.2020.¹²⁷ Due to this development, the Nine Judge Bench shall have to be re-constituted by the Chief Justice of India and hear the matter afresh.

Importantly, neither Misra J. (*writing for both A.M. Khanwilkar J. and himself*) nor Malhotra J. refer to any question of law or jurisprudence on “juristic persons” (or on constitutional rights of “deities” or “Hindu idols”), in either the body of their judgments or their individual conclusions. On the other hand, Nariman J. and Chandrachud J. have discussed the jurisprudence surrounding juristic persons, including Hindu idols and deities. Consequently, this means that the holdings of Nariman J. and Chandrachud J. in respect to fundamental rights or constitutional rights lack a majority and are not a binding precedent in any event. Nonetheless, as this was the first time a Constitutional Court examined whether a deity has fundamental or constitutional rights, it is important for us to determine whether these individual holdings by Nariman J. and Chandrachud J. are correct or not.

This segment intends to restrict its analysis to examining the scope of constitutional rights of deities or Hindu idols by critiquing the holdings of Nariman J. and Chandrachud J. in the *Sabarimala Reference* decision.

3.1 Critiquing Justice Nariman's Holding On Article 25:

Nariman J. in his separate judgment at para 176 (*which intends to make a conspectus of all judgments discussed by him*) noted that Article 25 recognizes a fundamental right in favour of “all persons”, which he held has reference *only* to natural persons.¹²⁸ This summarized inference arises from

¹²⁵ See Sabarimala Review, *supra* note 121, ^ 5. (Gogoi J. for the majority).

¹²⁶ See *Kantaru Rajeevaru v. Indian Young Lawyers Association*, (2020) 3 SCC 52, ^ 2.2-2.3 and 2.6. (‘This is the official citation for the order passed on February 10, 2020, by the Nine Judge Bench in the Sabarimala case headed by Chief Justice S.A. Bobde’)

¹²⁷ Shruti Mahajan, *My family and I were victims of judicial delay: Justice R Banumathi bids farewell to the Supreme Court*, Bar and Bench, July 17, 2020, <https://www.barandbench.com/news/litigation/my-family-and-i-were-victims-of-judicial-delay-justice-r-banumathi-bids-farewell-to-the-supreme-court> (Last visited on November 25, 2020).

¹²⁸ See Sabarimala Reference, *supra* note 4, ^ 176.1.

a speaking footnote¹²⁹ in his judgment where he elaborates on his reading of the *Shirur Mutt* judgment¹³⁰. We will be elaborating on Nariman J.'s reasoning from the speaking footnote here. *Firstly*, relying on the majority of a Nine-Judge Bench decision in *State Trading Corporation*¹³¹, he iterates that a company is not a citizen within the meaning of Article 19 of the Constitution. *Secondly*, he relies on the *concurring* judgment of M. Hidayatullah J. where it was held that Articles 15, 16, 18 and 29(1) clearly refer to "natural persons", i.e. individuals. *Thirdly*, he mentions the *concurring* judgment by Hidayatullah J. to state that in Articles 14, 20, 27 and 31, the term "person" would apply to individuals as well as to corporations. *Fourthly*, he notes that the holding in *Shirur Mutt* judgment which states that: "*Institutions' as such cannot practice or propagate religion; it can be done only by individual persons*", must be read to mean that the term "person" in Article 25 can only apply to natural persons. Therefore, he rejected the argument that an idol can exercise a fundamental right under Article 25.

We most respectfully disagree with Nariman J.'s holding on Article 25. It is indisputable that any right which is expressly granted to a "citizen" cannot be extended to all persons as per the majority in *State Trading Corporation*. However, the use of the phrase "all persons" in Article 25(1) is expressly unrestricted by any proviso or clarification and cannot be read restrictively to not include juristic persons or Hindu idols.¹³² In *State Trading Corporation*, Sinha J.¹³³, Hidayatullah J.¹³⁴, as well as K.C. Dasgupta J. (*dissenting*)¹³⁵ and J.C. Shah J. (*dissenting*)¹³⁶ have all held or impliedly observed that by use of the term "persons" in Article 14 and Article 21, the fundamental rights under these articles are available to everyone, including corporations recognized under Indian law. In fact, Hidayatullah J. at para 29 in *State Trading Corporation* notes that any provision of the Constitution which uses the term "person" (especially noting the use of the term in Article 14 and Article 21), extends the constitutional provision to everyone. Notably, *State Trading Corporation* decision does not refer to Article 25 for even a single instance. On an originalist reading of Article 25, it is clear that the phrase "all persons" would extend its operation to everyone including corporations and other juristic persons such as a deity or Hindu idol.

¹²⁹ See *id.*, ^ 149. Refer to the speaking footnote in paragraph 149.

¹³⁰ See *Shirur Mutt*, *supra* note 122, ^ 14.

¹³¹ *State Trading Corporation of India Ltd. v. CTO*, AIR 1963 SC 1811 (*hereinafter* State Trading Corporation).

¹³² The Constitution of India, 1950. Refer to Article 25.

¹³³ See *State Trading Corporation*, *supra* note 131, ^ 5 (Sinha J.).

¹³⁴ See *Id.*, ^ 29 (Hidayatullah J.).

¹³⁵ See *id.*, ^ 70, ^ 86 (Dasgupta J.).

¹³⁶ See *id.*, ^ 87-115 (Shah J.).

Moreover, we respectfully feel that Nariman J.'s reliance on the holding in *Shirur Mutt*¹³⁷ is misplaced. In *Shirur Mutt* and in specific context of Article 25 (discussed at para 14), the question raised before the Seven-Judge Bench was whether the word "persons" means individuals only or includes corporate bodies as well. However, the court noted that this question was not at all relevant for its present purpose. This was due to the fact that a "Mathadhipati" was not a corporate body, but the head of a spiritual fraternity. By virtue of his office, the spiritual head has to perform the duties of a religious teacher. Moreover, the court noted that the spiritual head has a religious duty to practice and propagate his religious tenets and if any provision of law prevents him from propagating his doctrines, that would certainly affect the religious freedom which is guaranteed to every person under Article 25. After the sentence highlighted by Nariman J., the final sentence of the paragraph relied on notes that: "It is the propagation of belief that is protected, no matter whether the propagation takes place in a church or monastery, or in a temple or parlour meeting." This clearly means that the Mathadhipati, an 'individual' (with the scope of the phrase "all persons"), had access to fundamental rights under Article 25. On the other hand, the term "institutions" in context of the judgment referred to a "corporate body" (*for which the earlier question of evaluating whether corporate bodies have fundamental rights under Article 25 was deemed irrelevant*).

A combined reading of the above analysis clearly proves that Nariman J.'s reliance on *State Trading Corporation* suffers from inherent inconsistencies. Therefore, it was incorrect to hold that Article 25 refers only to "natural persons" and that a juristic person or a Hindu idol cannot exercise a fundamental right under Article 25.

3.2 Analysing Justice Chandrachud's Separate Opinion On Deities and Constitutional Rights: A criticism

On the limited issue of whether a deity is a bearer of constitutional rights, Chandrachud J. begins his analysis by observing that the term "persons" in certain statutes has been interpreted to include idols. He states that to claim that a "deity" is the bearer of constitutional rights is a distinct issue and does not flow as a necessary consequence from the position of the deity as a juristic person for certain purposes. He then notes that merely because a deity has been granted limited rights as a juristic person under statutory law does not mean that the deity necessarily has constitutional rights.¹³⁸ The

¹³⁷ See *Shirur Mutt*, *supra* note 122, ^ 14.

¹³⁸ See *Sabarimala Reference*, *supra* note 4, ^ 403 (Chandrachud J.).

foregoing observations by Chandrachud J. relies on para 14 of *Shirur Mutt*. Due to the same reasons as discussed in the earlier segment detailing Nariman J.'s reasoning, Chandrachud J.'s reliance on *Shirur Mutt* is inconsistent and flawed.

Moving on, Chandrachud J. also relies¹³⁹ on *Narayana Deekshitulu*¹⁴⁰ where the Division Bench was considering the constitutionality of certain provisions of a state legislation which abolished the hereditary rights of archakas and other individuals. He highlights a phrase from the *Narayana Deekshitulu* where it was noted that: "Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as Cosmos, his Maker or his Creator which, he believes, regulates the existence of insentient beings and the forces of the universe." On an originalist reading, Chandrachud J.'s reliance on *Narayana Deekshitulu* is flawed as the bench did not restrict operation of the term "persons" within Article 25 to individuals. The bench was merely adjudicating on a writ jurisdiction brought by "individuals" (which is a smaller class covered under the phrase "persons") who challenged the statute as being ultra-vires of Article 25 and Article 26 of the Constitution.

Lastly, apart from his above reliance on *Shirur Mutt* and *Narayana Deekshitulu*, Chandrachud J. notes that: "Article 25 grants the freedom of 'conscience' and free profession, practice and propagation of religion." He qualifies the term "conscience" by stating that 'conscience' as a cognitive process that elicits emotion and association based on an individual's beliefs rests only in 'individuals'. According to him, the Constitution postulates every individual as its basic unit. Consequently, he holds that the rights guaranteed under Part-III of the Constitution only recognize individual which is its basic unit. Since individual is the bearer of constitutional rights under Part-III, he held that a deity is not a "person" for the purposes of Part-III of the Constitution.¹⁴¹ We most respectfully believe that this reasoning suffers from a fundamental error as Article 25 from its title grants "disjunctive" rights such as 'freedom of conscience and free profession', 'freedom of practice' and 'freedom of propagation of religion' which is clear by use of "commas" in a disjunctive way. While the phrase "freedom of conscience and free profession" can be read conjunctively due to use of the word "and" in a conjunctive way, it cannot be combined with the aforementioned phrases that follow it. Moreover, the fact that Article 25(1) uses the phrase "all persons" demonstrates that the Drafters of the Indian Constitution wanted the widest availability of the rights under Article 25(1)

¹³⁹ See *id.*, ^ 404.

¹⁴⁰ *Shri A.S. Narayana Deekshitulu v. State of Andhra Pradesh (hereinafter Narayana Deekshitulu)*, (1996) 9 SCC 548, ^ 85.

¹⁴¹ See Sabarimala Reference, *supra* note 4, ^ 405.

to every person. Had the Drafters of the Indian Constitution wanted to narrow the scope of rights in Article 25 to individual human beings, they could have simply used a phrasing such as “all humans”, “all human beings” or “all individuals” instead of the phrase “all persons”. This shows that the drafters consciously chose to extend the rights under Article 25 to all persons.

It may be pertinent to add here that there is no discussion in Chandrachud J.’s separate judgment in the Constituent Assembly Debates which supports any inference that the Drafters intended Constitution to restrict the understanding of the term “persons” in any article, including the phrase “all persons” within Article 25. As highlighted during the analysis on *State Trading Corporation*¹⁴² and *Shirur Mutt*¹⁴³, except for any rights granted by the Constitution with specific reference to “citizens”, all fundamental rights (including fundamental rights under Article 14, Article 21 and Article 25) which use the term “persons” shall be available to deities and Hindu idols. This would apply *mutatis mutandis* to any constitutional rights available to a person under the Indian Constitution, such as the constitutional right to property under Article 300A.

3.3 Does recognition of a deity as a “juristic person” by a Legal Fiction preclude it from possessing Fundamental Rights?

In addition to the foregoing analysis, Chandrachud J. made another finding. Interestingly, in his concluding paragraph analysing whether deities are a bearer of constitutional rights, Chandrachud J. briefly mentions that: “the legal fiction which has led to the recognition of a deity as a juristic person cannot be extended to the gamut of rights under Part III of the Constitution” [emphasis added]¹⁴⁴. This finding is flawed due to two primary reasons.

Firstly, there is no restriction either in the language of the Constitution of India or the GC Act that limits the nature of rights that are available to any “person” under the Constitution. On the contrary, the GC Act provides an inclusive definition¹⁴⁵ of a “person” which even includes a company, or any association or a body of individuals whether incorporated or not. In the landmark Eleven Judge Bench decision in *R.C. Cooper v. Union of India*¹⁴⁶, the majority opinion by J.C. Shah J.¹⁴⁷ had tested the legislative changes that

¹⁴² State Trading Corporation, *supra* note 131.

¹⁴³ Shirur Mutt, *supra* note 122.

¹⁴⁴ See Sabarimala Reference, ^ 405 (Chandrachud J.).

¹⁴⁵ GC Act, *supra* note 24, § 3(42).

¹⁴⁶ *R.C. Cooper v. Union of India*, (1970) 1 SCC 248 (*hereinafter* R.C. Cooper).

¹⁴⁷ See *id.*, ^ 69 (J.C. Shah J. for the majority).

led to nationalisation of various banks (which were corporations¹⁴⁸) on the anvil of Article 14. Even the lone dissenting opinion by A.N. Ray J. nowhere contests the fact that corporations have access to a right to equality under Article 14.¹⁴⁹ On the contrary, Ray J. does mention that the Petitioners in the *R.C. Cooper* case have alleged an Article 14 violation and proceeds to test whether the contention is correct or not.¹⁵⁰ The judgment in *R.C. Cooper* affirms the fact that it is not only natural persons, but any person (including corporations) who can have access to any fundamental right expressly conferred to a “person” in Part-III. Moreover, Ray J. authoring the majority opinion in a Five Judge Constitution Bench decision in *Benett Coleman*¹⁵¹ (with Beg J. *concurring*)¹⁵² had declared that a policy created by the government which fixed an upper limit of ten pages affecting twenty-two newspaper corporations was arbitrary and violative of Article 14. Notably, in the *Benett Coleman* case, many of the petitioners were corporations vested with a juristic personality under the law.¹⁵³ This shows the fact that juristic persons such as companies were presumed to be covered under the term “person” in the Constitution of India and had access to right under Article 14 which includes the term “person”.

Secondly, the Constitution does not expressly differentiate between different categories of juristic persons who are included under the phrase “person” such as a company, a body of individuals or a deity. None of the judgments or authorities relied on by Chandrachud J. expressly mention any basis on which different juristic persons can have varying access to fundamental rights under Part-III, or how deities can be excluded from the ambit of the term “person” within various provisions under Part-III (such as Article 14, Article 21 and Article 25).

In light of the above analysis, merely because a deity is recognized as a “juristic person” under the law by way of a “legal fiction”, it would not be precluded from possessing fundamental rights or constitutional conferred to a “person” under the Indian Constitution.

3.4 Concluding Remarks on the Sabarimala case

As stated earlier, while Nariman J. and Chandrachud J. reached similar conclusions, the fact that the three other judges did not go into a discussion

¹⁴⁸ *Id.*

¹⁴⁹ *See id.*, (A.N. Ray J. *dissenting*).

¹⁵⁰ *See id.*, ^ 176 (A.N. Ray J. *dissenting*).

¹⁵¹ *See Benett Coleman and Ors. v. Union of India and Ors.*, (1972) 2 SCC 788, ^ 88-90 (A.N. Ray J. for the majority) (*hereinafter* Benett Coleman).

¹⁵² *See id.*, ^ 112 (H.M. Beg J. *concurring*).

¹⁵³ *Id.*

on fundamental rights or constitutional rights of juristic deities means that these separate judgments are not binding on courts. Nonetheless, an above analysis of Nariman J. and Chandrachud J.'s separate judgments highlight the inconsistencies and errors of the court in holding that deities or Hindu idols cannot exercise any fundamental or constitutional right under the Indian Constitution. Interestingly, Mr. C.S. Vaidyanathan, a senior advocate at the Supreme Court of India and a former Additional Solicitor General of India has expressed his views doubting the correctness of the separate holdings on deity's fundamental rights.¹⁵⁴ It is clear that deities and Hindu idols are included under the term "persons". Consequently, all constitutional rights (*excluding those specifically provided to citizens*) shall be available to all deities and Hindu idols recognized under law, which include the fundamental rights under Article 14, Article 21 and Article 25.

On an interesting note, the *Ram Janmabhoomi* judgment¹⁵⁵ does not refer to Nariman J. and Chandrachud J.'s separate judgments in *Sabarimala Reference* while making its own analysis of juristic persons. This indicates that the Constitution Bench in *Ram Janmabhoomi* (which also included Chandrachud J.) was well aware of the fundamental flaws in the holdings on fundamental or constitutional rights of deities and Hindu idols in *Sabarimala Reference*.

4. Balancing the fundamental rights of a deity with competing interests

In our critique of the separate judgments by Nariman J. and Chandrachud J. in the *Sabarimala Reference* judgment, we have established that all fundamental rights and constitutional rights which are available to any person who is a non-citizen under the Indian Constitution are equally available to a deity or Hindu idol as well. This begs the question as to what would happen if a matter of importance was brought through writ litigation before the High Courts or the Supreme Court of India challenging a certain religious practice of a deity by persons claiming violation of fundamental rights? *Alternatively*, what would happen if the shebait or a next friend were to bring a case against the state or other persons claiming violation of a

¹⁵⁴ See generally Indic Studies Society JGU, Senior Advocate C.S. Vaidyanathan: *The Scope of Rights of A Juristic Person*, YouTube, September 6, 2020, <https://youtu.be/BcuwhHE7hFQ> (Last visited on November 25, 2020) (*hereinafter* Indic Studies Society JGU). (Mr. Vaidyanathan at 43 minutes and 40 seconds, expresses his views on deity's fundamental rights. He finds no justification for the conclusion on a deity not having fundamental rights as held in the opinions of Nariman J. and Chandrachud J. He argues that the constitution itself made a departure from the limited understanding of personality as only human beings. Mr. Vaidyanathan was responding to a question by the Keynote Speaker, Mr. Anujay Shrivastava (JGLS) concerning the correctness of the separate holdings concerning rights of deities in *Sabarimala Reference* case.)

¹⁵⁵ See *Ram Janmabhoomi*, *supra* note 5, ^ 106-113.

deity's fundamental rights? The answer lies in one word- "balancing". However, the parties would have to be re-assessed in light of recognizing fundamental rights of a deity or Hindu idol. In this part, we wish to fill the jurisprudential gap present by discussing various ways in which a deity's fundamental rights can be balanced against other persons or state interference.

Before answering how this balancing has to be informed, it is necessary for us to bear certain things in mind. It is accepted by courts that a deity or Hindu idol being a perpetual minor and lacking actual personality (i.e. a human personality) cannot act on its own.¹⁵⁶ A deity or Hindu idol has to be assisted by a natural person in litigation, who has been recognized to be its shebait. In absence of the shebait or in case of any maladministration by the shebait, a "next friend" is allowed to bring a suit or litigation to protect the rights and interests of a deity.¹⁵⁷ Having established that a deity or a Hindu idol has all fundamental rights available to non-citizens¹⁵⁸, any challenge to a religious practice associated with a deity would have to be tested not only between the fundamental rights of persons or the devotees, they would also require a balancing of the fundamental rights available to a deity or Hindu idol and the challenging litigant. Moreover, there may be appropriate cases where the interests of a deity or Hindu idol may conflict or differ with that of the devotees, due to which it may be required for a court to balance the fundamental rights of a deity or Hindu idol with the fundamental rights of a devotee. Further, there may be cases where state interference into fundamental rights of a deity may be brought up. This shows us that there can be multiple "competing interests" in a case where a fundamental rights challenge is brought against or on behalf of a deity.

4.1 State interference and a deity's fundamental rights

In a case involving state interference into fundamental rights of a deity, the appropriate way to balance the two competing interests would be whether the state interference is proportionate (e.g. cases involving fundamental right to equality under Article 14 or the fundamental right to life and personal liberty under Article 21), or whether the state interference is justified on a restriction enumerated in a constitutional provision (e.g. the fundamental rights of "freedom of conscience and the right freely to profess, practise and propagate religion" under Article 25) whose threshold is established in a particular case and the subsequent interference into a deity's rights is proportionate, as well as necessary.

¹⁵⁶ See *supra*, Part 2.1.

¹⁵⁷ *Id.*

¹⁵⁸ See *supra*, Part 3.

The proportionality test propounded by a Nine-Judge Bench of the Supreme Court of India in the landmark *Puttaswamy*¹⁵⁹ decision which recognized the right to privacy of persons could be used to balance “state interference” against the fundamental rights of a deity, much like any fundamental rights of any other person. While analysing the proportionality test propounded in the *Puttaswamy* judgment (which was subsequently adopted by the landmark *Aadhaar*¹⁶⁰ decision by a Constitution Bench of the Supreme Court of India), Khamroi and Shrivastava¹⁶¹ expounded four factors essential in determining proportionality of “state interference” against a person’s fundamental rights (which was discussed in reference of “right to privacy” under “right to life and personal liberty” under Article 21, amongst other fundamental rights under Part-III of the Indian Constitution¹⁶²). We wish to reconstruct Khamroi and Shrivastava’s analysis of the “proportionality test”¹⁶³ in light of a deity’s fundamental rights:

- i. The action of the State must be empowered by a law,
- ii. The proposed action must be necessary and also pass the test of legitimate aim,
- iii. The extent of interference with a deity’s fundamental right must be, proportionate to the need for such interference, and
- iv. The law in question must also provide procedural guarantees to the deity against abuse of such interference.

We believe that the aforementioned test shall assist a judicial authority in balance the competing interests of the “state interference” and a deity’s fundamental rights by determining whether the state interference is proportionate or not.

4.2 Deity’s fundamental rights and competing interests/rights of another person

There have been instances in the Indian jurisprudence where fundamental rights of different persons have competed against one another. The

¹⁵⁹ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, 2017 (10) SCALE 1, 546 (hereinafter *Puttaswamy*).

¹⁶⁰ *See K.S. Puttaswamy v. Union of India*, 2018 (12) SCALE 1, ^ 89 (Sikri J.) (hereinafter *Aadhaar*).

¹⁶¹ Anubhav Khamroi and Anujay Shrivastava, *Analyzing the Practical Implications of a Right to Privacy: State Surveillance and Constitution*, 8 Indian Constitutional Law Review 99, 109 (2019) (hereinafter Khamroi and Shrivastava).

¹⁶² *Puttaswamy*, *supra* note 159.

¹⁶³ *See Khamroi and Shrivastava, supra* note 161. This reading of the four prongs of the emerging “proportionality test” in *Puttaswamy* judgment as the constitutional standard has been accepted elsewhere by Sebastian and Sen, *see John Sebastian & Aparijito Sen, Unravelling the Role of Autonomy and Consent in Privacy*, 9 Indian J. Const. L. 23 (2020).

Sabarimala case itself is an example where the court had to balance competing interests present in the fundamental rights of religious denominations dedicated to the deity Lord Ayyappa and the petitioners claiming violation of various fundamental rights (including right to liberty and right to dignity) of women by the centuries long practice of excluding menstruating women of certain ages from entering the Sabarimala Temple.¹⁶⁴ While analysing the ongoing *Kaushal Kishor*¹⁶⁵ case before a Constitution Bench of the Supreme Court of India, Anubhav Khamroi¹⁶⁶ noted various situations of clashes between two fundamental rights under Part-III of the Indian Constitution.

It was reported¹⁶⁷ that advocate Mr. J. Sai Deepak, one of the lawyers in the *Sabarimala Reference*¹⁶⁸ case had asserted the importance of the fundamental rights of a deity, along with fundamental rights of the religious denominations and the challenging petitioners (who represented women devotees). Sai Deepak had argued that Lord Ayyappa (the deity concerned in the Sabarimala case) had a right to remain a “naisthika bramhachari” (i.e. a right to preserve his celibacy and privacy) under Article 25 of the Indian Constitution, along with the rights under Article 21 and Article 26.¹⁶⁹ In addition, Sai Deepak claimed that the deity enjoyed a “right to privacy” under Article 21 against the presence of menstruating women (who claimed their competing right to religion in Article 25 amongst other claims) as per the deity’s historical significance and Hindu tradition.¹⁷⁰ Curiously, while the Supreme Court of India chose to not respond to Sai Deepak’s contentions in any of the four separate judgments¹⁷¹ in the *Sabarimala Reference* case, the fact that only two separate judgments (by Nariman J. and Chandrachud J., which comprise a strength of two out of five judges) held that a deity or Hindu idol does not possess fundamental rights means that the separate holdings on the issue are not binding. Consequently, it is

¹⁶⁴ Sabarimala Reference, *supra* note 4.

¹⁶⁵ *Kaushal Kishor v. State of Uttar Pradesh*, WP (CrI.) 113/2016 (Pending).

¹⁶⁶ Anubhav Khamroi, *Constitutional Silences, Balancing of Rights, and the Concept of a “Neutralising Device”*, Indian Constitutional Law and Philosophy, November 9, 2019, <https://indconlawphil.wordpress.com/2019/11/09/guest-post-constitutional-silences-balancing-of-rights-and-the-concept-of-a-neutralising-device/>, (Last visited November 25, 2020) (*hereinafter* Anubhav Khamroi).

¹⁶⁷ Shishir Tripathi, *A lawyer for Lord Ayyappa: Advocate Sai Deepak turns heads in SC arguing for Sabarimala deity's right to celibacy*, Firstpost, July 3, 2018, <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> (Last visited November 25, 2020) (*hereinafter* Sai Deepak).

¹⁶⁸ Sabarimala Reference, *supra* note 4.

¹⁶⁹ Sai Deepak, *supra* note 167.

¹⁷⁰ *Id.*

¹⁷¹ Sabarimala Reference, *supra* note 4.

still open for future courts to adjudicate matters raising questions of competing fundamental rights between a deity and other persons.

As a deity or Hindu idol is a juristic person, it only has fundamental rights available to every person under the Constitution. Being a non-citizen, it does not enjoy the rights exclusively available to a citizen under the Indian Constitution. In the *Sabarimala Reference*¹⁷² case, the court failed to explicitly recognize and acknowledge the fundamental rights available to a deity. Nevertheless, the practical implications of acknowledging fundamental rights of a deity on competing interests by the challenging litigations and religious denominations remain relevant. We can use the *Sabarimala Reference* case as an example to see how there could be competing claims of fundamental rights by other persons against fundamental rights of a deity. We would like to provide illustrations of such competing clashes of rights in the Sabarimala case:

- i. Right to Privacy (Article 21), Right to Dignity (Article 21) and Right to “freedom of conscience and the right freely to profess, practise and propagate religion” (Article 25) of a **“Deity”** vs. Right to Equality (Article 14), Right to Religion (Article 25), Right to Liberty (Article 21) and Right to Dignity (Article 21) of **“Menstruating Female Devotees”** (*Note: Herein reference to ‘menstruating female devotees’ is only to the ‘class’ of biological females who wish to enter the Temple in spite of having knowledge that as per religious practice, the deity forbids or excludes the entry of menstruating females. There is another ‘class’ of menstruating female devotees who consciously wish to not enter the temple during the period of their natural life when they undergo menstruation owing to the deity’s religious practice/exclusion.*)
- ii. Right to Freedom of Expression (Article 19), Right to Dignity (Article 21) and Right to “freedom of conscience and the right freely to profess, practise and propagate religion” (Article 25) of **“Devotees”** (*Note: Herein reference to ‘devotees’ means devotees other than menstruating biological females who wish to enter the temple during the period of menstruation in their natural lifespan.*) or **“religious denominations”** (assuming Ayyapans to be a religious denomination)¹⁷³ vs. Right to

¹⁷² Sabarimala Reference, *supra* note 4.

¹⁷³ Yashowardhan Tiwari, *Locating A Right To “Dignity” Of Religious Denominations: The Curious Case Of Sabarimala Temple*, 2 Indian Journal of Legal Theory 97-109 (2020). (‘Tiwari has attempted to locate various forms of “right to dignity” that “religious denominations” possess. He has also critiqued the Sabarimala Reference judgment by theorizing Ayyapans as a religious denomination.’)

Equality (Article 14), Right to Privacy (Article 21), Right to Dignity (Article 21) and Right to Religion (Article 25) of a “Deity”.

Thus, various competing interests clearly exist between a “deity” and “menstruating women devotees”, a “deity” and “religious denominations”, as well as a “deity” and “devotees other than menstruating women”. These competing claims will have to be balanced by the court in order to arrive at the correct conclusion emerging from the possible constitutional clashes of various fundamental rights under Part-III of the Indian Constitution. We believe that there may be similar examples where a deity’s fundamental rights may have to be balanced by judicial authorities against other competing persons.

Anubhav Khamroi¹⁷⁴ has highlighted that in order to balance or recalibrate freedoms of identical or equal importance under the Constitution, a “neutralizing device” may be deployed by courts whilst focusing on the peculiar facts of each case. Whilst, there can be no straitjacket formula which can be applied to such hard cases¹⁷⁵, Anubhav Khamroi provides three general principles that any neutralizing device adopted by the court has to be guided by:

“as a general principle, **these devices must** – (1) operate within the parameters of necessity and proportionality as set out above; (2) pass the test of reasonableness under Article 14, 19(2) and 21 (*Maneka Gandhi*); and (3) have the capacity to ‘neutralize’ the friction and discord between two Part III rights.” [emphasis added]¹⁷⁶

We believe that this proposal by Anubhav Khamroi would be very beneficial for any higher judicial authority (High Courts or the Indian Supreme Court) in order to balance any competing interests between fundamental rights of a deity and another person in a hard case.

5. Filling the gaps: A closer look at the “Ram Janmabhoomi” Dispute

The *Ram Janmabhoomi* judgment (also referred to as the “Ayodhya” or “Babri-Masjid” case) is arguably amongst the most important and most contentiously fought cases at the Supreme Court of India.¹⁷⁷ While a unanimous decision, it is the first judgment delivered at the Supreme Court of India which does not explicitly state which of the five judges authored the

¹⁷⁴ Anubhav Khamroi, *supra* note 166.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Ram Janmabhoomi*, *supra* note 5.

judgment or the ‘addenda’ at the end of the judgment (which was also authored anonymously by one of the five judges and does not have a binding value). In the *Ram Janmabhoomi* dispute, it was noted by the court that whether Bhagwan Shri Ram Virajman (*hereinafter* “Lord Ram”) and Asthan Shri Ram Janam Bhumi (land where Lord Ram’s birth took place) (*hereinafter* “ASRJM”) possess distinct legal personalities (i.e. juristic personality) was at the heart of the dispute.¹⁷⁸ Both Lord Ram and ASRJM were impleaded as the plaintiffs in the dispute. Owing to the voluminous amounts of facts and evidence presented in the case, it is not necessary to discuss the facts of the case here.¹⁷⁹ While the court did eventually make a determination on whether Lord Ram was a deity, it acknowledged that there was no contention between any of the parties on whether Lord Ram was a deity or a juristic person. However, the question on whether ASRJM was a “deity” or had a distinct legal personality was contested.

5.1 Recognizing “legal personality”: A legal test to guide judicial authorities?

Prior to starting its analysis on “recognizing rights, entitlements, duties and liabilities” of a legal subject, the court noted that earlier precedents had fortified the legal position that Hindu idols are “legal persons”.¹⁸⁰ Observing that it is a foundational principle for a legal system to recognize the subjects which it seeks to govern, the law is designed to recognize ‘distinct legal units’ or ‘legal persons’. It added that in order to be a legal person, a subject embodies rights, entitlements, liabilities and duties which may be regulated by law.¹⁸¹ Moreover, a legal person should be able to engage in legally enforceable relationships with other legal persons. It is the legal system which determines who or what is a ‘legal person’. According to the court, “historic circumstances” have been a strong factor to create or recognize a legal person. It also cautioned that this power of a legal system to recognize or deny a legal personality has been abused to wreak fundamental breaches of human rights.¹⁸²

The court relied¹⁸³ on the Division Bench decision in *Shiromani Gurdwara*¹⁸⁴ where it was observed that legal personality had projected

¹⁷⁸ See *id.*, ^ 106.

¹⁷⁹ For a further understanding of the facts (apart from legislative history and other preliminary observations by the court), readers may refer to pages 175-252 (i.e. paragraphs 1 to 102) of the *Ram Janmabhoomi* judgment.

¹⁸⁰ See *Ram Janmabhoomi*, *supra* note 5, ^ 106.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ See *id.*, ^ 109.

¹⁸⁴ See *Shiromani Gurdwara*, *supra* note 93, ^ 11-13.

differently at different times across the world. The bench in *Shiromani Gurdwara* had noted that institutions like corporations, companies, municipal corporation and even the ‘state’ itself were created by law, as well as acknowledged as “juristic persons”. It noted that presumably with the development of a society where an individual’s interaction fell short, it was “necessary” for co-operation of a larger circle of individuals and to acknowledge such a large unit of individuals as a legal unit.¹⁸⁵ We believe that the Constitution Bench in *Ram Janmabhoomi* by referring to *Shiromani Gurdwara* presumably wished to stress on “necessity” and “development of society” as major factors for increasing recognition or expansion of legal personality beyond individual humans. The Constitution Bench further stresses on the fact that “periods of darkness” had been a contributing factor to lead legal systems across the world to evolve legal personality.¹⁸⁶ The court noted that even individuals who were natural persons such as slaves (whether in Roman time or modern America) were denied the legal recognition as a natural person.¹⁸⁷ Therefore, it is clear that development of a society necessitates expansion of the principles of legal personality. This necessity gave rise to creation of “artificial legal person” or “juristic person”, where an object or thing which was not a natural person was nonetheless recognized as a legal person. At this juncture, it would be appropriate to point out that this observation supports Vaidyanathan’s criticism of the separate judgments of Nariman J. and Chandrachud J. in the *Sabarimala Reference*¹⁸⁸ judgment, i.e. the court ignores the fact that the Indian Constitution (being at the core of the Indian legal system) was designed to encompass legal personality beyond natural persons.¹⁸⁹

The Constitution Bench noted that conferral of legal personality on things other than natural persons has been commonly done in two ways. *Firstly*, where a collection of natural persons is collectively conferred a distinct legal personality, such as a corporation or cooperative society. *Secondly*, where legal personality is conferred on an ‘inanimate object’ such as a ship. It was noted that such types of conferring legal personality on things other than natural persons was a “well recognized” legal development and receives little exposition by courts nowadays.¹⁹⁰ Legal persons are not limited to human individuals and inanimate objects or collective individuals could be conferred a legal personality (i.e. recognition as an artificial legal person). The bench did acknowledge that rights and duties ordinarily conferred on natural persons are in select situations conferred on artificial

¹⁸⁵ Id.

¹⁸⁶ See *Ram Janmabhoomi*, *supra* note 5, ^ 110.

¹⁸⁷ See *id.*, ^ 108, ^ 110.

¹⁸⁸ *Sabarimala Reference*, *supra* note 4.

¹⁸⁹ See *Indic Studies Society JGU*, *supra* note 157.

¹⁹⁰ See *Ram Janmabhoomi*, *supra* note 5, ^ 110.

legal persons, by statute or judicial interpretation.¹⁹¹ Importantly, the bench acknowledged that “substantial benefits” derived by “natural persons” from artificial legal persons (such as objects or collectives) were a strong reason why legislators and courts considered conferring legal personality on artificial legal persons.

Observing that there was “no restriction” on what legal personality may be conferred theoretically, the court stated that the “purpose sought to be achieved” and “significance” of achieving the purpose on the basis of which a legal personality should be conferred (even on an abstract idea) bears importance.¹⁹² The court noted that various legal systems conferred legal personality on an object such as a ship in order to create a legal framework for interaction between natural persons and ship. This framework provided a legal benefit for courts to regulate these interactions between different legal persons and achieve outcomes at a societal level which are satisfactory and legally sound.¹⁹³ At the same juncture, the creation of an artificial legal personality on an object such as a ship required courts to make a small “conceptual leap of faith”. Greater conceptual leaps were made by the state when artificial legal personality was conferred on corporations by legislature due to necessity and it became crystallised into a foundational principle for law of corporations.¹⁹⁴ Indisputably, the court has stressed on the fact that “necessity” is a driving factor in expansion of legal personality and it may require courts or the state to make conceptual leap of faith for the greater benefit of the society.

“Benefits” (whether purely material or not) and existence of beneficiaries (being natural persons) may require courts to extend legal personality upon an object or thing.¹⁹⁵ The court cautioned that while this rationale has its merit, judicial authorities should avoid making distinctions between natural persons and artificial legal persons in every case at hand.¹⁹⁶ At the same juncture, “convenience” may be another rationale as to why conferral of legal personality on objects is done by the legal system (comprising both the legislature and courts).¹⁹⁷ It is important for us to understand that the term “convenience” is used by the court in reference to “practical adjudication of claims”.¹⁹⁸ The distinction between natural persons and artificial legal persons was removed in adjudication by judges, wherever such a distinction

¹⁹¹ See *id.*, ^ 111.

¹⁹² See *id.*, ^ 112.

¹⁹³ See *id.*, ^ 123, ^ 124.

¹⁹⁴ See *id.*, ^ 124.

¹⁹⁵ See *id.*, ^ 125.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

would have no relevance and would equip courts to deal with emerging classes of disputes while reducing effort towards adjudication process.¹⁹⁹ Notably, the court uses “legal necessity” and “convenience” jointly while mentioning the rationale on simplifying practical adjudication.²⁰⁰ Consequently, this rationale appears to be a part of many reasons that may be covered under the factor of “necessity” in conferring legal personality on objects or things.

In our opinion, the aforementioned analysis of the court can provide a legal test to decide whether a group of legal units, an object or a thing should be conferred with an artificial legal personality. In light of the *Ram Janmabhoomi* judgment, the following broad components (which are not exhaustive) may drive a judicial authority to confer artificial legal personality on a large number of existing recognized legal units (such as a group of humans), an object or a thing:

- i. Capability of embodying ‘rights’, ‘entitlements’, ‘liabilities’ and ‘duties’ (all of which may be regulated by law) [*this appears to be a mandatory requirement*].
- ii. There must be a reason *necessitating* the recognition of a legal unit, an object, or a thing (i.e., necessity as a factor), by the legal system (such as development in society, benefits, existence of beneficiaries, convenience or simplification of practical adjudication).
- iii. Focus should be paid to the “purpose sought to be achieved” and the “significance” derived by achieving such “purpose” as a consequence by the conferment of the legal personality.
- iv. The recognition of a group of already recognized legal unit, or an object, or a thing as a legal person should have a strong nexus with the *history* or the *present circumstances* in the legal system (i.e., history and prevalent circumstances).
- v. As long as a combination of the above components is achieved, apart from the first component (being a mandatory requirement), even a *conceptual leap of faith* may be made by the judicial authority to confer a legal personality.

5.2 Distinction between different legal personalities

Aside from various rationales deployed by the legal system to confer legal personality upon its subjects, the court noted that: “All legal units are **not** alike. The conferral of legal personality suberves specific requirements that

¹⁹⁹ Id.

²⁰⁰ Id.

justify its recognition.” [emphasis added]²⁰¹ Moreover, a group of rights are not automatically derived by an object or a thing which is conferred legal personality by the legal system. The particular rights and liabilities attached to an object or thing by being recognized as a legal personality have to be determined while keeping in mind the specific reasons for which such legal personality was conferred.²⁰² This means that the rights, duties and liabilities of a ‘deity’ or ‘Hindu idol’ would significantly differ from that of another artificial legal person such as a corporate or a ship.²⁰³ Simultaneously, courts should be cautious and be guided by reason while placing limits or ascribing boundaries of rights ascribed to a new legal personality.²⁰⁴ Subsequent enlargement of an object’s rights must be avoided when it defeats the goal of intelligible and practical adjudication.²⁰⁵

5.3 Significance of a “Hindu idol” or deity in the modern legal system

The Constitution Bench in *Ram Janmabhoomi* clarified that conferral of legal personality on a Hindu idol is clearly distinct from conferral of legal personality on divinity itself or the “Supreme Being” due to the latter’s qualities of omnipresence, formlessness, shapelessness and being a pure spirit which is in reality the only being existent.²⁰⁶ Relying on the English Court of Appeal’s decision in *Bumper Development Corporation*²⁰⁷ and an earlier precedent in *Naskar*²⁰⁸, the bench noted that were the Supreme Being (i.e. God or divinity itself) to be conferred a legal personality, it would be impossible to adjudicate litigation claims between different temples over their respective rights. It is also impossible to “identify” the Supreme Being due to their qualities.²⁰⁹

The bench discussed method adopted by judicial authorities for conferral of legal personality on Hindu idols and the underlying rationale necessitating the recognition. Relying on B.K. Mukherjea J.’s book²¹⁰, the bench remarked that the clear “public interest” in regulating properties dedicated for religious purposes was acknowledged by rulers of Indian society way before courts regulated the Hindu practice of religious endowments.²¹¹

²⁰¹ See *id.*, ^ 127.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ See *id.*, ^ 128.

²⁰⁷ *Bumper Development Corporation v. Commissioner of Police of the Metropolis*, (1991) 1 WLR 1362 (2) (CA) (United Kingdom).

²⁰⁸ *Naskar*, *supra* note 21.

²⁰⁹ See *Ram Janmabhoomi*, *supra* note 5, ^ 129-131.

²¹⁰ Mukherjea, *supra* note 1.

²¹¹ See *Ram Janmabhoomi*, *supra* note 5, ^ 132.

Eventually, it was recognized by the legal system (in particular, during the Colonial rule under the British) that large areas of land were owned, managed and cultivated by shebaitis or mohants. At the same juncture, it was clear that the shebaitis or mohants were not the owners of the land. Importantly, while temples were malleable, as well as apt to grow and change, the idol was an entity with some permanence. Presumably, this was a driving reason leading to evolution of the Hindu idol being conferred juristic personality to own land.²¹² This understanding provided allowed Colonial Administration in India to create a convenient legal framework to record, tax and ultimately adjudicate upon claims with respect to Hindu religious endowments and Hindu idols.²¹³

The bench discussed various court decisions delivered in United Kingdom, Colonial India and modern India which discussed rights of a Hindu idol. In light of the earlier discussion on case law jurisprudence, it is unnecessary to delve into all of these decisions. The bench noted that conferral of legal personality on Hindu idols overcame existing shortfalls in the law, as well as ensured societal satisfaction and legally sound outcomes.²¹⁴ Importantly, the bench acknowledged that a key societal interest to confer legal personality on Hindu idol was the protection of the devotees' interests. While devotees as a collective could be conferred a juristic personality to achieve the same purpose, the "widespread personification" of the idol and its convenience in judicial adjudication lead to vesting juristic personality on the idol.²¹⁵

Endowment of property by a testator (being a devotee) to the Hindu idol as a legatee would be valid owing to the "pious purpose" vesting in the legatee. The Hindu idol constitutes embodiment or expression of the "pious purpose" upon which legal personality is conferred. Recognition of the legal personality of a Hindu idol would be equivalent to recognizing and protecting the testator's desire that a deity be worshipped.²¹⁶ Here, it is clear that a Hindu idol (whether with its physical corpus or without it) is equivalent to a deity. Non-existence or destruction of an idol would not stand in the way of its conferment as a legal person. Moreover, absence of a Hindu idol or its intermittent presence would not take away the legal personality created by the endowment. To substantiate some of these instances, the bench gave an example of religious practice leading to

²¹² See Ram Janmabhoomi, *supra* note 5, ^ 133. In recording this observation, the bench relies heavily on: Gautam Patel, *Idols in Law*, 45(50) Economic and Political Weekly 49 (2010).

²¹³ See Ram Janmabhoomi, *supra* note 5, ^ 134.

²¹⁴ See *id.*, ^ 142.

²¹⁵ See *id.*, ^ 142.

²¹⁶ See *id.*, ^ 144-148.

routinely submerging idols in water. Submersion of such idols cannot automatically extinguish the pious purpose behind conferment of legal personality. The legal personality would continue to exist in all of the foregoing cases.²¹⁷

The creation of a legal personality on Hindu idols filled a legal gap by allowing a legally recognized entity to receive dedication for a pious purpose by Hindus. It also protected the interests of present and future devotees of the deity which would have been subject to risk in absence of a legal framework allowing regulation of the dedication of the Hindu idol by devotees. Apart from prayers and other forms of dedication, this permitted giving legal effect to Hindu practice of dedicating property to a deity for religious or pious purposes. This allowed continued maintenance and worship of an idol, which were both a form of pious purpose. The bench identified the presence of a clear state interest in “[...] giving effect to the will of the founder or testator who has so dedicated property, as well as ensuring that the property is at all times used for the purpose of dedication.”²¹⁸ Courts guarded the property dedicated by the devotees from maladministration by the shebait by stating that an artificial person (Hindu idol or deity) is the actual owner of the dedicated properties. At the same juncture, the recognition of a shebait as a natural person dedicated to deity allowed a legal framework to provide pursuance of claims for or against the dedicated property in courts.²¹⁹ Presumably, the potential for a shebait to engage in maladministration may have been a reason why courts have allowed “next friends” to file a claim on behalf of the deity.

In light of the aforementioned analysis, the court recognized Lord Ram as having a legal personality, i.e. Lord Ram was treated as a recognized Hindu idol or deity.²²⁰

5.4 Can the land itself be treated as a deity or a juristic person?

ASRJM was contended by plaintiffs to be an object of worship personifying the spirit of the divine and being regarded by “faith” of the devotees as a deity. In addition, it was contended that the land was *res nullius*, i.e. nobody’s thing. Consequently, the land would be inalienable and cannot be acquired by adverse possession.²²¹

²¹⁷ See *id.*, ^ 148.

²¹⁸ See *id.*, ^ 152.

²¹⁹ See *id.*, ^ 153.

²²⁰ See *id.*, ^ 158-162.

²²¹ See *id.*, ^ 163-165.

The bench commenced its analysis by making a distinction between the concepts of religious significance and a juristic personality of an object or thing. It remarked that the Hindu idol was the ideal embodiment of a pious or benevolent idea. Importantly, the bench here is impliedly distinguishing juristic personality of a deity with that of the land. The land is not equivalent to the Hindu idol or a deity.²²² Analysing the position of law which was consistently maintained in earlier precedents²²³ since the Colonial period in India, the settled principle derived was that juridical personality is conferred only on the pious purpose and not the property endowed to the juridical entity, i.e. the idol or the deity.²²⁴ The bench went on to discuss the *Madura*²²⁵ decision rendered by the Privy Council to remark that a land owned by a person cannot be a juristic person. The reason for this remark lies in the fact that no person can own a deity as a juristic person.²²⁶ The bench rejected the plaintiff's reliance on an earlier precedent in *Shiromani Gurdwara*²²⁷ by noting that different religions are assessed in accordance with their own faith and belief. The primary reason why *Shiromani Gurdwara* case held Guru Granth Sahib to have juristic personality was due to absence of idol worship in Sikhism.²²⁸ If we apply the same logic to Hinduism, the pious purpose having its ideal conception in the Hindu idol would necessitate for the idol to be recognized as a juridical person rather than the land or property devoted to a deity or idol.

The bench then went on to remark that the plaintiffs invoked a new innovative claim to urge the court in conferring of legal personality. This claim was the ground based on the “faith and belief of the devotees”.²²⁹ In order to establish faith and belief of the devotees, the plaintiffs claimed that the proof of “parikrama” (circumambulation) practice being performed by the devotees through time clearly demarcates the boundaries of the property, which is a juristic person. Rejecting this ground, the court held that a parikrama is performed in order to offer worship to the divine and with the belief that it grants spiritual benefit to the performer.²³⁰ The performance of parikrama (being a form of worship as a result of faith and belief of the devotees) cannot be used as a basis of an entitlement in law with respect to a proprietary claim over the land.²³¹

²²² See *id.*, ^ 170.

²²³ See Tambekar, *supra* note 41, ^ 9-11.

²²⁴ See Ram Janmabhoomi, *supra* note 5, ^ 172.3.

²²⁵ *Madura v. Alikhan Sahib*, (1931) 61 MLJ 285.

²²⁶ See Ram Janmabhoomi, *supra* note 5, ^ 180.

²²⁷ See *Shiromani Gurdwara*, *supra* note 93.

²²⁸ See Ram Janmabhoomi, *supra* note 5, ^ 194.

²²⁹ See *id.*, ^ 201.

²³⁰ *Id.*, ^ 203-204.

²³¹ *Id.*

The bench noted that holding ASRJM to be a juristic person would extinguish all proprietary claims to the land brought by competing parties. Providing a legal personality to the land would confer an absolute title, which renders the very concept of title meaningless. Mere faith and belief of the devotees cannot be the basis of conferring such a title, which needs to be decided based on settled principles of law. Moreover, unlike the Hindu idols or deities, the bench recorded that there was no act of dedication by anyone towards the land itself. This meant that there was no need to recognize a pious purpose behind the land as a legal person.²³²

Lastly, the bench reconciled the jurisprudence on juristic personality with the principles of immovable property. The bench remarked that there is a distinction between property vested in a foundation, a deity as a juristic person (as in Hindu law) and property itself being a juristic person.²³³ Conferral of juristic personality on ASRJM would mean that the land loses the essential characteristics of an immovable property. Competing proprietary claims are admissible under the principles of immovable property and also permit division of an immovable property.²³⁴ The consequences arising from conferring a juristic personality upon the immovable property lack any nexus to the limited purpose of conferring legal personality. Should an immovable property be classified as ordinary or juristic person, the latter would be excluded from the principles of adverse possession and limitation as it cannot be possessed.²³⁵ Judicial authorities have to safeguard such a fundamentally altering consequence to the immovable property, which would arise if land were to be elevated to juridical personality and placed outside the reach of law.²³⁶ It is impractical for the court to propound a valid safeguard were courts to be empowered to decide juridical status of immovable property on a case-to-case basis.²³⁷ Without an objective standard for recognition of legal personality on immovable property, efficacy of the judicial process would be denuded and become very subjective.²³⁸ In addition, the bench remarked that the present jurisprudence on conferring legal personality was capable of adequately protecting the interests of devotees, as well as ensuring accountable management of religious sites. The bench stated that it is best to avoid creating new legal fictions which may result into unintended consequences

²³² See *id.*, ^ 216.

²³³ See *id.*, ^ 241.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

in future.²³⁹ On a collective consideration of all factors, the bench held that ASRJM is not a juridical person.

6. The curious case of Krishna Janmabhoomi Dispute at Mathura: An Overview

Before delving into the discussion on a deity's rights in context of the *Krishna Janmabhoomi* dispute, it would be pertinent to understand the background of the case. On September 25, 2020, a civil suit was filed at a Mathura Court by Ranjana Agnihotri as a next friend of the deities impleaded as plaintiffs for removal of Masjid (Mosque) Idgah.²⁴⁰ While the original plaint was summarily dismissed in a civil suit²⁴¹, it was reported that an appeal was filed against the dismissal order and is currently pending.²⁴² The plaint stated that "Bhagwan Shrikrishna Virajman" (Lord Krishna), a deity, was the first plaintiff, as well as stated that "Asthan" (Shree Krishna Janmabhoomi or land of Lord Krishna's birth) was the second plaintiff. The other six plaintiffs were stated to be devotees of Lord Krishna.²⁴³ Interestingly, the plaintiffs mentioned that the second plaintiff, i.e. the Ashthan is itself a 'deity'. Moreover, the plaint adds that the Ashthan has "special significance" in religious scriptures as well as Hindu law and is a juridical person.²⁴⁴

The plaint states that the deities (i.e. Lord Krishna and Asthan) have a right to protect its property through their shebait or a "next friend" by availing an appropriate remedy in a court of law.²⁴⁵ In this present plaint, none of the

²³⁹ See *id.*, 244-245.

²⁴⁰ See [Breaking] *Civil Suit Filed In Mathura Court For Removal Of Masjid Idgah From 'Shrikrishna Janam Bhoomi'* [Read Copy Of Plaint], Live Law, September 26, 2020, <https://www.livelaw.in/top-stories/breaking-civil-suit-filed-in-mathura-court-for-removal-of-masjid-idgah-from-shrikrishna-janam-bhoomi-163536> (Last visited November 25, 2020) (*hereinafter* Krishna Janmabhoomi Plaint). The plaint is accessible on the Live Law website.

²⁴¹ [Breaking] *Mathura Court Dismisses Suit Seeking Removal Of Idgah Mosque From Site Claimed As Krishna Janam Bhoomi*, Live Law, September 30, 2020, <https://www.livelaw.in/top-stories/mathura-court-dismisses-suit-seeking-removal-of-idgah-mosque-from-site-claimed-as-krishna-janam-bhoomi-163751> (Last visited November 25, 2020).

²⁴² Akshita Saxena, *'Right Of Worshippers To Make Endeavor To Bring Back Lost Property Of The Deity': Appeal Filed Against Mathura Court Order In 'Shrikrishna Janam Bhoomi' Case*, Live Law, October 12, 2020, <https://www.livelaw.in/top-stories/right-of-worshippers-to-make-endeavor-to-bring-back-lost-property-of-the-deity-appeal-filed-against-mathura-court-order-in-shrikrishna-janam-bhoomi-case-164317> (Last visited November 25, 2020).

²⁴³ Krishna Janmabhoomi Plaint, *supra* note 240.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

plaintiffs is the shebait of either Lord Krishna or the Asthan, although they claim to be the “next friend” assisting the deities in absence of the respective shebait or owing to the maladministration by those considered to be shebait.²⁴⁶ The crux of the plaint is that the plaintiffs, *inter alia*, seek a direction from the court against the various defendants (including the management committee of Mosque Idgah) to remove “illegal construction” (i.e. Mosque Idgah) from the Asthan and to seek an injunction restraining the defendants and others from entering into the premises after removal of the Mosque. As per the plaint, the plaintiffs allege Mosque Idgah was illegally constructed years ago by various defendants in collusion with Shree Krishna Janmasthan Seva Sangh.²⁴⁷ This is an unprecedented relief sought by a next friend of a deity from any judicial authority in the history of India.

For the purposes of this article, it is not necessary for us to delve into the merits or demerits of the plaintiff's contentions. In our opinion, majority of the arguments forwarded by the plaintiffs require determination of the correctness of facts surrounding the ownership of the disputed land. However, there are two interesting contentions that can be discussed in light of jurisprudence surrounding deities.

Firstly, we wish to discuss the practical tenability of the plaintiff's contention that Asthan is a deity. Presumably, the intention of the plaintiffs while raising the claim must have been similar to the one argued in *Ram Janmabhoomi* case, i.e. if the land itself is declared to be a deity, then no question of possession or alienation can arise as no person can own another juristic person. In light of the *Ram Janmabhoomi* judgment's rejection of ASRJM to be a juridical person discussed earlier²⁴⁸, the plaintiff's claim in the *Krishna Janmabhoomi* dispute that Asthan is a deity cannot be accepted by the courts. Moreover, unlike the *Shiromani Gurdwara*²⁴⁹ case which relied heavily on the religious tenets of Sikhism, a Hindu idol is necessary for the Hindu devotees to fulfil the pious purpose of religious worship and contemplates the juridical personality vested in the idol. It may be appropriate to point out that the development of jurisprudence in India has not recognized the land of a deity's birthplace as a deity, due to which Asthan cannot *ipso facto* be treated as a ‘deity’ by the court. Consequently, the claim of the plaintiffs in the *Krishna Janmabhoomi* dispute that Asthan is a deity is legally unsustainable.

²⁴⁶ Id.

²⁴⁷ Id.

²⁴⁸ See *supra* Part 5.4.

²⁴⁹ See *Shiromani Gurdwara*, *supra* note 93.

Lastly, we wish to academically discuss whether the deity Lord Krishna has a constitutional right to property and if yes, what is its relevance. The plaintiffs claim that the source for the deity's constitutional right to property lies within Article 300A of the Indian Constitution. Article 300A (which was inserted by the 44th Amendment to the Indian Constitution)²⁵⁰ provides that: “No person shall be deprived of his property save by authority of law.” [emphasis added] Presumably, the plaintiffs are focussing on the fact that terminology used by the constitutional provision uses the term “person” instead of “citizen” (the latter term being used under the erstwhile Article 19(1)(f) which earlier provided a fundamental right to property to all Indian citizens) while granting a constitutional right to any person, including non-citizens being a natural person and all other non-natural persons. This is similar to the inferences made earlier in this article²⁵¹ whilst critiquing the separate holdings in the *Sabarimala Reference* case. At the same juncture, we believe that one could argue that the term “his” used in the phrase “his property” implies that this constitutional right is actually guarantee to natural persons. In *Indian Handicraft Emporium v. Union of India*²⁵², the Supreme Court had observed that right to property has been cemented to be a human right. This would assist the interpretation that the right under Article 300A belongs to only human beings or natural persons.²⁵³ In any event, the constitutional right to property is not an absolute right and is subject to “authority by law”. Moreover, unlike rights under Part-III of the Indian Constitution (i.e. the Fundamental Rights chapter), this constitutional right is not enforceable by a person against the State by through writ litigation under Article 32 or Article 226 of the Indian Constitution. However, the fact that a deity has been allowed by courts to act through the shebait (or in their absence or in case of maladministration by a shebait, through a next friend) to raise or defend any proprietary claim over hundreds of years, supports the plaintiff's contention that the Indian Constitution (subsequent to the insertion of Article 300A) recognizes limited constitutional property rights of every legal person, including a juridical entity such as a deity. The right to property is indeed a valuable constitutional right²⁵⁴ available to every “person”.

²⁵⁰ Constitution (Forty-fourth Amendment) Act, 1978, § 34.

²⁵¹ See *supra*, Part 3.

²⁵² But see *Indian Handicraft Emporium v. Union of India*, (2003) 7 SCC 589, ^ 111; *State of Haryana v. Mukesh Kumar*, (2013) 1 SCC 353; *B.K. Ravichandra v. Union of India*, C.A. No. 1460/2010 (Supreme Court of India), ^ 15 (*hereinafter* Ravichandra).

²⁵³ In our opinion, property rights being recognized as human rights under customary international law and human rights law were precisely the reason why the Indian Parliament created a constitutional right to property under Article 300A, while removing fundamental right to property available to Indian citizens under Article 19(f) in Part-III of the Indian Constitution.

²⁵⁴ See Ravichandra, *supra* note 252, ^ 21; *Delhi Airtech Services Pvt Ltd v. State of U.P.*, (2011) 9 SCC 354, ^ 30. In addition, the Apex court has held that even in absence of any

7. Conclusion

The dharmic worldview of most of the segments of the Hindu pantheon has laid its faith in anthropomorphic conceptions of its deities, attributed with human traits. The deities have been conceived and regularly worshipped as living beings with essentially modest human characteristics rather than exaggerated supernatural beings. It is this faith of millions that has driven our courts to regard Hindu deities as juristic entities so as to meet the basic requirements of the deities, in consonance with the belief of the worshippers, such as ownership of property, upkeep and maintenance of the deities and their place of worship, conducting regular worship with the performance of prescribed rituals, etc. Throughout the jurisprudence on the subject, seldom have the courts attempted to clip the rights of the deities, as it would go against the historical backdrop in which the need for courts' interference in such matters arose in the first place. As held very recently by the Supreme Court of India in the famous *Mahakaleshwar Mandir* case²⁵⁵, the state has a constitutional obligation to invest fund for protection and preservation of not only ancient monuments and structures including temples of archaeological and historical importance, but also of sanctum sanctorum and 'deity' of spiritual importance. State has to ensure that Puja or Prayer Ceremonies are performed in a manner which is befitting to the deity and protects the infrastructure which is linked to the preservation of the deity.²⁵⁶

A close reading of the *Sabarimala Reference* and *Ram Janmbhoomi* judgments, coupled with an originalist interpretation of constitutional provisions in the Indian Constitution (such as Article 25 of the Indian

substantive provision in a parliamentary or a legislative act, no "person" can be deprived of or restricted from dealing with their property in any manner they like merely on an executive fiat or without a legal authority, see *State of Rajasthan v. Basant Nahata*, (2005) 12 SCC 77, ^59; *K.T. Plantation Pvt. Ltd. v. State of Karnataka*, (2011) 9 SCC 1, ^ 168.

²⁵⁵ See *Sarika v. Administrator, Shri Mahakaleshwar Mandir Committee, Ujjain (Madhya Pradesh) and Ors.*, (2018) 17 SCC 112, ^ 6 (*hereinafter* Mahakaleshwar Mandir). ('In this judgment, the Division Bench held that Mahakaleshwar Jyotirlingam at Ujjain, being a deity has so much importance for spiritual and other gains. It is a constitutional duty to protect it as envisaged in Article 25 and Article 26 read with Article 49 of the Indian Constitution. Essentially, the state has both a positive obligation to protect a deity's interests under Part-III provisions and a directive principle under Article 49 which further guides it towards that constitutional duty. Moreover, Article 51-A of the Indian Constitution enshrines a fundamental duty on every citizen to promote harmony and spirit of common brotherhood, as well as to value and preserve the rich heritage of our (India's) composite culture. Article 51-A further enshrines a fundamental duty to strive towards excellence in all spheres of individual and collective activity which would include furthering the goal of the aforementioned constitutional duty. The state is duty bound to do acts necessary to preserve the deities/historical monuments such as the Mahakaleshwar Jyotirlingam.')

²⁵⁶ *Id.*, ^ 48.

Constitution) and the GC Act, establish it beyond doubt that Hindu deities are well within their rights to claim access to certain fundamental rights available for all ‘persons’ under the Indian Constitution. We believe that even though the two separate judgments by Nariman J. and Chandrachud J., in the *Sabarimala Reference* case (with respect to a deity or Hindu idol’s fundamental or constitutional rights) lack a binding value, it would be very beneficial for a future case to clarify the legal position on fundamental rights of juristic persons which has been upset by *Sabarimala Reference*. There is no doubt that on a close inspection, the holdings of these two separate judgments in *Sabarimala Reference* are inconsistent with the existing law and originalist reading of the Constitution. We hope that the suggestions provided by us in order to balance²⁵⁷ a hard-case before a court involving competing interest between a deity’s fundamental rights against state intervention or competing interest/rights of another person are beneficial for judicial authorities, practitioners and academicians alike. It is also important for legal academicians and practitioners alike to focus on what the originalist²⁵⁸ reading of the Constitution supports²⁵⁹ in order to do justice to balancing the rights of a deity, other persons and state intervention. Rangarajan²⁶⁰ has recently opined that temple deities and rivers could be considered “citizen” under Indian law and like Indian citizens, have a guarantee of all constitutional rights. This shows that according to a growing segment of lawyers, the conceptual evolution of deities could evolve to understand the deity as a natural person or citizen itself.

Importantly, the *Ram Janmabhoomi* judgment has provided various clarifications to the gaps existing in the prevalent time before the case was decided. The bench’s recognition of the various components by which legal personality can be conferred upon by the legal system are immensely beneficial to all courts of law. Not only the Indian legal system, but all legal systems abroad can benefit from the simple yet non-exhaustive components determined by the court to recognize a legal person. Moreover, in light of the *Ram Janmabhoomi* judgment, giving a legal shape to the Hindu idea of

²⁵⁷ See *supra*, Part 4.

²⁵⁸ See generally Gautam Swarup, *Why Indian Judges Would Rather Be Originalist: Debunking Practices of Comparative Constitutional Law in India*, 5 Indian J. Const. L. 55, 74-76 (2012). (‘As argued by Swarup, the Indian Constitution and its provisions were specifically hand-tailored for suiting the Indian socio-political and legal context. Evolving our Constitutional culture can be best done through originalism. An originalist reading of the Constitution would be most legitimate form of interpretation.’)

²⁵⁹ See Indic Studies Society JGU, *supra* note 154. (‘At 32 mins and 30 secs, Prof. Sayan Mukherjee (JGLS) stresses upon importance of an originalist reading of the Constitution whilst asking a question to Mr. Vaidyanathan concerning the Sabarimala case.’)

²⁶⁰ See C.S. Rangarajan, *Temple deities are citizens, have Constitutional Rights*, Sunday Guardian Live, January 19, 2019, <https://www.sundayguardianlive.com/opinion/temple-deities-citizens-constitutional-rights> (Last visited on November 25, 2020).

'sacred spaces' by identification of land as juristic entity does not seem to be required as the idols/deities themselves are capable of reclaiming their spaces and physical manifestations. In this light, it would be interesting to observe the outcome of the pending appeal before the Civil Court in *Krishna Janmbhoomi* case and see how the court adopts the existing jurisprudence on deities and Hindu idols to adjudicate the dispute. We are certain that the principles laid down in the *Ram Janmabhoomi* judgment are going to have a central impact in the *Krishna Janmabhoomi* case.

Before parting, we would like to reiterate the famous words of Prof. Baruah, "Courts need to establish a connection between what they take the concepts to be, the specific rights that are being debated, and what is required by the application of those concepts."²⁶¹ Prof. Baruah's critique of employing constitutional values in judicial decision-making is equally important when transposed to determination of legal personality and scope of a juristic person's rights by courts. The lack of explanation for why courts employ concepts to reach certain conclusions, the way they employ these concepts and why they restrict or expand the scope of specific rights creates not only an undesired haziness in the existing jurisprudence, can also lead to long "periods of darkness" (as remarked by the Constitution Bench in *Ram Janmabhoomi*²⁶²). The power of the legal system to confer legal personality, as well as lay down the scope of rights, duties and liabilities of a juristic person is very large and with no conceptual limits.²⁶³ Such power needs to be exercised with immense responsibility. The presence of 'coherence' in judicial decision-making is important.²⁶⁴ We hope that not only courts and the legislature, but practitioners, academicians and law students remember to pay importance in justifying the concepts and interpretations employed by them to reach the best outcomes for the legal system to achieve and strive for maximizing coherence whilst evaluating the scope of legal concepts.

²⁶¹ See Pritam Baruah, *Human Dignity in Adjudication: The Limits of Placeholder and Essential Contestability Accounts*, 27 Canadian Journal of Law and Jurisprudence, 329-356 (2014), ^ 15. ('In this seminal article analysing the constitutional value of human dignity, Prof. Baruah discusses various core principles of adjudication.')

²⁶² See generally *Ram Janmabhoomi*, *supra* note 5, ^ 106-110. ('The bench emphasizes on how courts across the world have often denied natural persons and other legal units legal personality, effectively denying human rights of the natural persons. As per the court rights of people or human beings also depends on legal units other than natural persons such as a deity.')

²⁶³ See *supra*, Part 5.1.

²⁶⁴ See Pritam Baruah, *Logic and Coherence in Naz Foundation: The arguments of Non-Discrimination, Privacy and Dignity*, 2 NUJS Law Review 505 (2009).