

Criminal Tribes & The Raj: An Ideology of Control in Colonial India

Anjan Saha

Abstract: *'Criminal tribes', born criminals or 'Denotified Tribes' represent a concept etched onto the minds of people at the time of British rule, varnished over with legislation and preserved for considerable period. The arbitrary categorisation was first made by the company raj in 1871 and this dubious status reigns even today, reducing them to one of the most neglected elements of Indian society. In India in the late 19th century there existed several wandering groups akin to gypsies of Europe. There were travelling magicians, traders, cultivators, pastoralists and forest dwellers. Their so called rootlessness caused severe headache for the authorities. Not only did their wandering existence reinforce an economy the East India Company was attempting to replace with settled agricultural production, but these wanderers might well have proved themselves indistinguishable from roving bands of thugs. Their desire to feel in control of this floating population encouraged the production of official stereotypes like criminal tribes. They have taken recourse to theories of criminology and social control prevalent in the western world, to justify the passing of the Criminal Tribes Act 1871, branding for the first time some tribes as a whole, as criminals. Therefore, in a nutshell, in this essay an effort has been made to find out the philosophical justification/rationalisation of this notorious act and its operation.*

Keywords: Criminal tribes, the Raj, East India Company, Nomads, Criminal Acts under colonial rule.

Introduction

Nomadic communities the world over have always been considered to be more criminal than not, and their 'restlessness' or constant movement is

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স্বাধীনতার পঞ্চবার্ষিকী: প্রথম সাধারণ নির্বাচনের প্রেক্ষাপটে পশ্চিমবঙ্গ

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সারাংশ ২০২১ সালের পশ্চিমবঙ্গে আজ আমরা সচেতন নাগরিকরূপে সম্ভদশ বিধানসভা নির্বাচন প্রক্রিয়ার অংশীদার, ভারতবর্ষ স্বাধীনতার ৭৫তম বার্ষিকীর দ্বারপ্রান্তে উপনীত। কিন্তু কেমন ছিল ১৯৫২ সালের প্রথম সাধারণ নির্বাচনকালীন পশ্চিমবঙ্গ! সদ্য স্বাধীনদেশের একটি অনভিজ্ঞ অগণিত সমস্যাজর্জর অঙ্গরাজ্য গণতন্ত্রের অগ্নিপরীক্ষার কতখানি উত্তীর্ণ হয়েছিল এবং কিভাবে, কি ছিল শাসক কর্তৃপক্ষ, রাজনৈতিক দলসমূহ, সংবাদমাধ্যম ও নির্বাচকমন্ডলীর ক্রিয়াকলাপ ও মতাদর্শ? আলোচ্য প্রবন্ধে আলোকপাত করা হয়েছে সংখ্যার বিচারে পৃথিবীর বৃহত্তম গণতন্ত্রের প্রারম্ভিক পরীক্ষার চালচিত্র সম্পর্কে, পশ্চিমবঙ্গ নামক ভারতীয় অঙ্গরাজ্যের প্রেক্ষিতে।

পশ্চিমবঙ্গে প্রথম সাধারণ নির্বাচন অনুষ্ঠিত হয় ১৯৫২ খ্রিষ্টাব্দ, জানুয়ারীর প্রথম তিন সপ্তাহে, ‘জনপ্রতিনিধিত্ব আইন (১৯৫১)’ অনুসারে এবং সংবিধানসম্মতভাবে ভারতের নির্বাচন কমিশনের পরিচালনাধীনে - জাতির উদ্দেশ্যে প্রদত্ত বেতার ভাষণে (২২.১.১৯৫১) প্রধানমন্ত্রী নেহরুর ভাষায় যা ছিল প্রজাতন্ত্রের গণতান্ত্রিক কাঠামোর ভিত্তিস্বরূপ (*The Statesman 1951: November 23*)। রাজ্যে ঐ বিপুল কর্মযজ্ঞ সম্পাদনে নিয়োজিত হয়েছিল প্রায় ১৮,০০০ ভোট কেন্দ্র, তিন লক্ষ ব্যালট বাক্স এবং ২.৬৩ কোটি ভোটপত্র (*Bandopadhyay 2009: 154*)। বিধানসভা ও লোকসভার নির্বাচন একত্রে সংঘটিত হওয়ায় এবং একাধিক প্রতিনিধি বিশিষ্ট আসনের উপস্থিতির কারণে সামগ্রিক প্রক্রিয়াটি ছিল যথেষ্টই জটিল, বিশেষত যখন জনসংখ্যার তিন-চতুর্থাংশ ছিলেন অক্ষরজ্ঞানশূন্য (*Bagchi 1998: 2973*)। অনভিজ্ঞ নির্বাচকমন্ডলীকে বিষয়টি সম্পর্কে ওয়াকিবহাল করার উদ্দেশ্যে চলচ্চিত্র প্রেক্ষাগৃহগুলোতে নিয়মিত কেন্দ্রীয় তথ্য ও সম্প্রচার মন্ত্রকের দ্বারা প্রযোজিত সংশ্লিষ্ট কিছু তথ্যচিত্র পরিবেশিত হত, আকাশবাণীর কলকাতা কেন্দ্র থেকেও সম্প্রচারিত হত নির্বাচন সম্পর্কিত বিবিধ অনুষ্ঠান (*যুগান্তর ১৯৫১: নভেম্বর ১৬ এবং The Statesman 1951: December 14*)।

তদানীন্তন সদ্যস্বাধীন দেশের রাজনৈতিক মানচিত্রে ভারতের জাতীয় কংগ্রেসের বিপুল প্রতিপত্তিজনিত কারণে বিরোধী দলগুলি স্বাভাবিকভাবেই প্রক্রিয়াটির নিরপেক্ষতা নিয়ে সংশয়ী ছিলেন। পশ্চিমবঙ্গ রাজ্য লেখ্যাগারে রক্ষিত ইন্টেলিজেন্স ব্যুরোর নথি অনুসারে (Serial No.119/24, File No.353/24)মুখ্য নির্বাচন কমিশনারের উদ্দেশ্যে ২৬/০১/১৯৫২ তারিখে লিখিত পত্রে সোসালিস্ট পার্টির শিবনাথ ব্যানার্জি অভিযোগ জানান যে, সাধারণ ভোটার ও বিরোধী দলীয় কর্মীদের পুলিশের সক্রিয় সহযোগিতায় কংগ্রেস স্বেচ্ছাসেবকরা ভীতিপ্রদর্শন করছেন। কমিউনিস্ট পার্টির পক্ষে মুজাফফর আহমেদ পক্ষপাতমূলক সরকারী দৃষ্টিভঙ্গি এবং বিরোধী দলীয় প্রচারাভিযান রুদ্ধ করার অপচেষ্টার সম্পর্কে সন্দেহ হন। মুখ্যমন্ত্রী ও মুখ্য নির্বাচন কমিশনার অবশ্য যথাক্রমে সরকারি

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Empire & Women: Company Raj, Custom of Sati and Princely States upto 1840s

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Abstract

After the custom of Sati was outlawed in 1829, British Officials were confronted with the issue of its prevention without transgressing the political limits imposed on their authority by the system of subsidiary alliance. This essay explores the various ways in which the British officialdom negotiated the disjunction between their acknowledged moral imperative to end sati and the complexities of their diverse political relationship with princely states across west and central India, under the jurisdiction of Bombay Presidency.

The survival of the custom of sati in many of the states of princely India after Bentinck's proclamation of 1829 represented both a humanitarian and political trouble spot for the British. Indeed, the rite's survival in states allied to the British power could be perceived as a glaring flaw in Bentinck's showpiece social legislation. Although the continued existence of sati in the princely states did not evoke public outrage that accompanied the debate on the subject in British India prior to 1829, press reports of individual satīs, especially the mass immolations that accompanied the deaths of some Indian rulers, could still elicit popular sympathy and horror. More importantly, the continued existence of legal sati in states allied to Britain undermined the government's pretension to have dealt effectively with the issue - *The Times* (London) for example called the government's failure to address the issue of sati in the princely states 'a disgrace to a Christian Company and an offence our common humanity' (Major 44). But British officialdom was aware that sati was a domestic issue that was technically outside the purview of British authority. Political circumstances dictated that the 'moral' momentum of the much publicised prohibition in British India could not simply be extended to the princely states. Any interference with an issue such as sati, though not impossible, was implicated in a wider debate about the acceptable limits of colonial intervention in sovereign states.

As the paramount power in the subcontinent, the British Government wielded a considerable degree of influence with the Indian princes. The system of subsidiary alliance technically precluded the British from any authoritative intervention in their internal affairs, but, in changing political and economic situations, and in line with imperial exigencies, the British sometimes took decisions that transgressed the terms of their treaties. Moreover, even when stopping short of issuing direct orders, the British could influence the direction of internal policy through 'advice' administered by

Escaping the Revolution: Interpreting French Migration after 1789

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Abstract: *The French Revolution of 1789 is regarded to be an epoch making event – a watershed in history with ample justification. However, the incident triggered a massive wave of political migration. Émigré (French for emigrant) from all levels of French society dispersed throughout Europe in the 1790s. Politically speaking, these 'enemies' of the Revolution belonging overwhelmingly to the Aristocracy and Clergy, attempted to mobilize their host societies against the Revolution, which grew increasingly radical as it spilled across French boundaries. The response of the Revolutionary France was swift and brutal, as the emigres were stripped of their titles, property, rights and promised an immediate visit to guillotine should they dared to return. At the same time they became agents in a multifaceted process of cultural transfer, as part of their attempt to earn their livelihood in exile. They had demonstrated that there were alternatives to the revolutionary process outside of France, before most of them returned to their motherland under Napoleon Bonaparte.*

Keywords: Emigres, Jacobites, Directory, Huguenots, Ancien Regime, Third Estate, Jacobin.



Shanghai Cooperation Organisation (SCO) and Grand Strategy of PRC: Some Observations

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Abstract— Being the most populous country and the second biggest economy in the world, the PRC (Peoples Republic of China) is one of the most consequential State Actors in the contemporary international order/system by any yardstick. Like other great powers she follows a strategic vision or grand strategy to accomplish her aims. Meanwhile, importance of SCO (Shanghai Cooperation Organisation) can be gauged from the fact that this relatively new international body, set up in 2001, accounts for 60% of the land mass and 45% proven energy reserves in the world. In this essay I would like to analyse how SCO fits into the Beijing's foreign policy framework and Grand Strategy and whether the different aims and goals of the SCO are aligned with PRC's interests and objectives.

Keywords— Peoples Republic of China (PRC), Shanghai Cooperation Organisation (SCO), Grand Strategy, Communist Party of China (CPC), Central Asian Republic (CARs), Confidence Building Measures (CBMs), Regional Anti-Terrorist Structure (RATS), Silk Road, Collective Security Treaty Organisation (CSTO), design, emergence.

I. INTRODUCTION

Since the establishment of the People's Republic, its relative power grew enormously in economic, political and military terms. As its importance on the world stage is increasing, it is more and more important to analyse China's Grand Strategy, by starting with a working definition. With "Grand Strategy", we intend "the collection of plans and policies that comprise the state's deliberate effort to harness political, military, diplomatic, and economic tools together to advance that state's national interest" (Feaver, 2009). From this definition, we can identify three main elements that are fundamental when talking about Grand Strategy: the goals, which have to be aligned with national interest; the means, which is to say the instruments a country can actually use to achieve its goals; and the policies, here intended as how a country mobilises its resources towards an end. Murdock & Kallmyer (2011) notice that "nations, like people, are not single-cell entities that pursue only one objective or interest. They pursue a combination of security, economic and value goals, each of which can be (and is) defined

variably (as is from physical to material or emotional security), and which can change with the context (such as, with the nature and extent of the security threat)". As the goals can differ greatly from nation to nation and also from an historical and political phase to another, identifying them should be the priority in analysing a Grand Strategy. But resources of Nation are not infinite. Thus, an effective Grand Strategy should acknowledge a nation's capabilities and then prioritise its goals. With this in mind, Colin Dueck (Dueck, 2011) underlines that for Grand Strategy to be fruitful, it requires 'successful, accurate and realistic ordering and identification of strategic ends and means, including the relationship between them'.

Ionut Popescu (2013) identifies two main models to explain the formation of Grand Strategy, **design** and **emergence**. According to the design (or rational planning) model, States "formulate, adapt and implement a long-term coherent strategic plan to define and accomplish the nation's goal, and do so despite the efforts of adversaries to counter your actions, and in the face of inherently unpredictable changes in international system". However,

this is not the only model which has been used to explain Grand Strategy's formation. Following the emergence model, a State's Grand Strategy is not the result of an adequate and careful planning, but it is the consequence of an adaption process; in this sense, "organisations can learn over time, thus allowing for coherent, consistent, and often successful strategies to emerge" (Popescu, 2013). Defining Chinese Grand Strategy is not easy, as there is no mention of it in any official document. Because of this, some may think that the emergence model better explains Beijing's strategy; some may even argue that China has yet to formulate one Grand Strategy (Stanzel. et al., 2017). But the reality, I believe is the other way round.

II. EVOLVING GRAND STRATEGY OF PRC

The starting point in any analysis of China's foreign (and domestic) policy is simple: the ultimate aim of the actual ruling class is the maintenance of *political stability* (read: the maintenance of the CCPs monopoly of power). Stemming from this, Medeiros (2009) identifies three long-term priorities in Chinese foreign policy: *sovereignty and national integrity, economic development and international status*. These are strictly related to the objective of political stability. If China cannot preserve its sovereignty, the ruling elite will lose its credibility; if CPC cannot provide socio-economic development, then it will not be able to uphold its social contract, which is the source of its legitimacy; finally, the rise of China to a status of international superpower would represent the coronation of the long path started in 1949, when, thanks to the CPC and Mao, China ended the so-called "century of national humiliation".

Having identified the objectives of Chinese foreign policy, it is important to analyse which are the tools Beijing employs to achieve those goals. From the economic side, a fundamental instrument for PRC is trade; China currently is among the top-three exporters for all the G20 countries. This is extremely important, because, as Phillip Saunders notices, "trade dependence can generate significant political influence as groups that benefit from trade with China mobilize to protect their economic interests" (Saunders, 2014). Not only trade is important; the recent "One Belt One Road" initiative is a clear example of the usage of Chinese economic power in the international arena. Also China's military, the People's Liberation Army (PLA) is becoming a more effective tool among Beijing foreign policy instruments. In the last few years, PRC has undergone a radical transformation of its army following three main pillars: development and procurement of new capabilities; personnel reform and

quality improvement; development of new military doctrines (Finkelstein, 2007).

The SCO was founded in 2001 comprising China, Russia, Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan; was enlarged further with India and Pakistan joining the organization in June 2017. The main aim of the SCO is primarily facilitating cooperation in the security field, but other goals are presented in its Charter; among these, we found "jointly counteract terrorism, separatism and extremism", "facilitate comprehensive and balanced economic growth" and "promote a new democratic, fair and rational political and economic international order" (Shanghai Cooperation Organisation, 2001). From these objectives it may already look clear how the SCO fits Chinese Grand Strategy. Moreover, Central Asia represents an area of particular interest for China because of the new opportunities it has presented since the early 1990s, as the fall of the Soviet Union led to a partial vacuum in the region. In this sense, the SCO represents a perfect case study showing why Chinese Grand Strategy should be considered an example of emergence model, as stated above. Bearing in mind the main objective of Beijings foreign policy (i.e. political stability), Chinese policy makers adapted to the new international context of post-1991 Central Asia; and, while recognising the possible problematic potential of this scenario - with the risk of a new wave of separatism - the PRC was able to deal with the region in a new way, turning it from a danger to an opportunity.

Hamid Golpira, expressed the salience of this region through the opinion of the former National Security Adviser of USA, Zbigniew Brzezinski. Brzezinski said, "Control of the Eurasian landmass is the key to global domination and control of Central Asia is the key to control of the Eurasian landmass.... Russia and China have been paying attention to Brzezinski's theory, since they formed the Shanghai Cooperation Organisation in 2001, ostensibly to curb extremism in the region and enhance border security, but most probably with the real objective of counterbalancing the activities of the United States and NATO in Central Asia" (Tehran Times, November 20, 2008). As prime movers of SCO, Russia and China can be said to be contending powers vying for supremacy on the global stage with the United States (Hu, 2014). Nevertheless, China took the lead role by devising the mechanism to combat three evils – separatism, extremism and terrorism waged by radicalized elements, while promoting economic ties (Boland 2011:8). This development gave a new dimension to the organization towards multilateralism; meant for tackling security issues especially in Xinjiang. Xinjiang creates a sense of vulnerability in the national psyche of China. The

separatists, if successful, would snatch one-sixth of China's territory away, cut off its connectivity with Central Asia, strip it off its nuclear testing grounds and the oil reserves in Tarim basin. This arrangement has also addressed the concerns of Central Asian Republics (CARs) regarding the territorial integrity and committed them to concerted efforts against perceived common threats from the extremist forces, especially to curb nationalist sentiments among Turkish speaking Uyghurs. There are many areas where the convergence of interests is taking place. SCO provided China an opportunity to make ingress in the Central Asian region to meet her ever growing energy needs and to dominate Central Asian markets through extensive commercial activities. Russia on the other hand, conceived SCO as an opportunity for preserving its strategic interests in CARs and to maintain her traditional influence over the near abroad (Dmitry, 2003). As far as the Central Asians are concerned, security vulnerability was one of areas of concern, hence, the leadership of CARs felt strengthened by associating themselves with this organisation. Under the purview of SCO, however, it is a viable forum to prevent interstate conflict among member states and to make CBMs (Yuan, 2010).

The fundamental role played by China in the institutionalisation of the Shanghai Cooperation Organisation in 2001 is notable. This initiative demonstrates a historical turning-point in China's foreign policy: an unprecedented active engagement of Beijing in establishing a regional organisation. In fact, China's role was crucial to Central Asia's regional security architecture. China sees the SCO as an instrument for its regional recognition and as a tool to improve its image of a responsible power. As the SCO has been the first organisation inspired and built by Beijing, its good development is considered to be a test for the Chinese leadership proving that China can do what other great powers have done before it. It is also the evidence that a 'new kind of organisation' - as China describes it - can be created by developing countries, which reproduces China's foreign policy guidelines. The so-called 'Shanghai Spirit' of mutual trust, benefit, equality, consultations, respect for diversity of cultures and aspiration for joint development, is constantly put forward by the Communist Party of China (CPC) as a new pattern shaping non-Western regional integration. Moreover, China's preference for multilateral engagement in Central Asia also arises out of its necessity of making itself more acceptable in Central Asia. China expects Russia to stay in Central Asia and engage it there, because China knows the objective ground reality of Russia wielding considerable influence in the Central Asian states. In this context, SCO can become a powerful link between China and Russia. In fact, SCO can be

considered as an outgrowth of the Sino-Russian cooperation. The future of SCO depends very much on this cooperation. Central Asia is the backyard of Russia and any problem with Russia could land China in problematic environment. Thus, China wants mutual accommodation and engagements with Russia in Central Asia in order to pursue its energy related goals in Central Asia. China also wants to seek the Russian strategic help in checking and curbing the Uighur separatism. Russian help in its military modernization is having the utmost importance for China. China has entered a "strategic partnership" with Russia and concluded a bilateral "Treaty of Good Neighbourly Friendship and Cooperation" in July, 2001 in Moscow.

III. SOVEREIGNTY AND NATIONAL INTEGRITY

The issue of sovereignty and national integrity is clearly fundamental within Chinese foreign policy priorities; the status of Taiwan, the separatist movements in Tibet and Xinjiang and the disputes in the East and South China Seas are all questions considered fundamental by Chinese policy makers. Since the summit of the then-called "Shanghai Five" in 2000 in Dushanbe, Tajikistan, the group started focusing on security issues, and, in particular, on what Chinese officials define "the three evils": separatism, extremism and terrorism (Sutter, 2010). Therefore, the SCO plays a fundamental role when it comes to the fight against separatism (and, doing so, in preserving Chinese national integrity), in particular for what it concerns the question of Xinjiang. Xinjiang is mainly inhabited by Uyghurs, an Islamic minority which speaks a Turkic language. The region was conquered by the Qing Dynasty only in 1759, but they had serious problems in establishing their control over the region. In 1944, an independent Eastern Turkistan Republic was founded, but it was short lived, as it came back under Chinese control in 1949. Most of the Uyghurs (around 10 million) live in Xinjiang, but big communities are also found in Kazakhstan (around 220,000 people), Uzbekistan (55,000 people) and Kyrgyzstan (50,000 people); smaller communities are present also in Pakistan and Russia. The Xinjiang Autonomous Region is characterised by great social unrest, mainly due to the activities of the pro-independence movements. The dissolution of the Soviet Union, the civil wars in Central Asia (Afghanistan, Chechnya and Tajikistan) and the rise of Islamic fundamentalism made Xinjiang a top priority for Chinese ruling class (Sutter, 2010). The Shanghai Cooperation Organisation was then used to prevent the new-born Central Asian States to provide hotspots for Uyghur nationalists and to become "safe heavens" where separatist

movements could organise their activities. In particular, since the 1990s (years before the establishment of the SCO), the Chinese government had been collaborating with Central Asian countries on extraditing Uyghurs suspects; these activities were then formalised by the SCO Charter in 2001 (Cooley, 2014).

It had been proved by SCO itself that it had come up as a regional stage to respond to the hazard of terrorism together. Its key organization for the purpose was Regional Anti-Terrorist Structure (RATS) situated in Uzbekistan, Tashkent and it was formed during the conference of heads of states in 2002. The main functions of SCO also include gathering and assessment of terrorists' organizations related information, swapping of related information and familiarity amongst members of SCO etc. In spite of its limited capability, RATS had assisted to avoid 250 terrorist assaults within two years of its formation in member states. Attempts had been made by SCO to encourage collaboration against terrorism amongst members by arranging various military exercises together, organizing defense minister's meeting on regular basis and arranging training sessions for security forces for the members from Central Asia. The initial military exercise of SCO was held successively in Kazakhstan and China in the year 2003 (Allison, 2004). Another this type of exercise was conducted by the security forces of members of SCO in March 2006, named as East-Anti-Terror-2006. It was conducted in Uzbekistan (Maksutov, 2006). Simultaneously, war games, named Peace Mission 2005 were held by China and Russia in year 2005, whereas there was a participation of all SCO states' troops in Peace Mission 2007, held exclusively in Russia. It was reckoned to be the biggest exercise of SCO because it included about 80 aircrafts and 6500 troops from all members of SCO.

According to the Declaration on the Establishment of the SCO, the Shanghai Spirit is characterized by "mutual trust, mutual benefit, equality, consultation, respect for multi-civilizations, striving for common development". By many, the principle of "respect for multi-civilizations" has been interpreted as another expression for "non-interference". Moreover, Ambrosio states that the SCO represents an additional defence tool against regional or global democratic trends, being therefore useful to ensure regime survival (Ambrosio, 2008). Because of these reasons, Ziegler refers to the Shanghai Cooperation Organisation as the "club of authoritarians", established to minimise the effects of the "colour revolutions" in neighbouring countries (Ziegler, 2013). Thus, SCO is perfectly aligned to Beijing's aims to preserve sovereignty and national integrity. Many western analysts and policy makers regard SCO as anti-US, anti-

Western bloc, or as a Russian and Chinese anti-Western vehicle to have some check on the emerging great power's row in the region over the strategic-cum-economic gains. (Aris, 2009). This argument was strengthened when SCO during the Astana Summit (2005), called for US to vacate its bases in Central Asia.

IV. SOCIO-ECONOMIC DEVELOPMENT

Historically, Central Asia has always been fundamental when it comes to Eurasian trade. Nowadays, the region has restored its pivotal role because of its natural resources and commercial routes (Institute for Strategic Studies, National Defense University of People's Liberation Army, 2015). Moreover, central Asian markets are complementary to the Chinese one, providing natural resources in exchange for consumer goods. In this sense, China strongly expanded its economic activities in the region, becoming the largest exporter in the region in 2008. As mentioned above, Charter of SCO emphasises the importance of economic growth and the necessity to create an alternative economic system. The Shanghai Cooperation Organisation has been a useful forum for bilateral and multilateral initiatives and investments, like the Interbank Association, established in 2005 to coordinate regional investments, or the Business Council, established in 2006 as an advisory body for the involvement of business communities. Moreover, in 2007, Wen Jiabao affirmed that China's ultimate goal was to create a free-trade zone in the region (Cooley, 2014). The economic integration of central Asia is also functional to the first goal of Chinese Grand Strategy (i.e. territorial integrity); linking Beijing's economy to the countries at its West is fundamental for the development of the Xinjiang region, and economic prosperity guarantees more political stability therein. Another economic sector in which central Asia plays an important role is, as aforementioned, transports. In this context, it is impossible not to mention the so-called "One Belt One Road" initiative; of the six corridors that aim to link China to Europe, two will involve central Asian countries. The first, usually referred to as "the New Eurasian Land Bridge" will connect China to Europe through Kazakhstan and Russia, while the second, known as "Central-West Asia Corridor", will involve Kazakhstan, Uzbekistan, Kyrgyzstan and Tajikistan. Among these countries, Kazakhstan has been particularly active, trying to maximise the impact of these new infrastructures establishing Special Economic Zones along the routes (International Crisis Group, 2017). The Shanghai Cooperation Organisation is acting in a more and more proactive way vis-à-vis the One Belt One Road

Initiative. In 2014, Xi Jinping announced the establishment of a Silk Road Fund of \$40 billion, and, as the SCO Secretary General Dmitry Mezentsev said, the decision was welcomed by all the SCO Member State (Institute for Strategic Studies, National Defense University of People's Liberation Army, 2015). As one scholar point out, the term Silk Road 'manages to create warm feelings outside China' but also 'stirs up equal enthusiasm domestically because it taps into memories of former greatness and its new assertions, placing China once more at the centre of the world'.

There is a cultural side to China's initiative in Central Asia. The learning of Chinese language has become quite popular and is probably the second most taught foreign language, after English, in the universities of Kazakhstan and Kyrgyzstan. An office affiliated with its Ministry of Education has established a range of Confucius Institutes in Central Asia to teach Chinese language and spread Chinese culture. Although these Institutes are certainly not unique to Central Asia; Tashkent in Uzbekistan was the site of a pilot project in June 2004 even before the first formal one was established in Seoul later in the same year. China has encouraged Central Asians to study at its universities and also delegated Chinese professors to teach and work in Central Asia. It has also sent cultural delegations like orchestras and theatre troupes to visit and perform in Central Asian countries (Laurelle & Peyrouse, 2012: 133-140).

Meanwhile, the countries of Central Asia are to some extent wary about the expanding influence of China. It may be very useful to them economically, because it helps development, but all countries fear too much dominance, especially from a country they have got used to regard as poorer than themselves and in many ways inferior. Russia, which was for so long master of the whole region before and during the Soviet period, may enjoy good relations with China but sees its own interests directly threatened by the Chinese advance into Central Asia. The Russian leaders know it is to their advantage to get on with China, but they cannot relish the fact of this strongly rising neighbour at the same time, as they themselves may be on the back foot, and even on the decline, in Central Asia. China's rise is inevitably a challenge to Russia. The writers of a relevant article (Pantucci & Peterson, 2012) aptly summed up China's role in Central Asia as follows:

With Russias influence in the region at a historically low ebb and the widespread perception across Central Asia that the United States will strategically abandon the region once most combat troops

have withdrawn from Afghanistan, Beijing has carved out an inadvertent empire. Lacking a clear strategy and attempting to keep a low profile (a characteristic Chinese approach), China has become the most consequential actor in Central Asia.

Several crucial points emerge from this extract. For China, what counts most in Central Asia is developing its own economy, especially in Xinjiang. Central Asia may still be a zone of conflict. However, the New Silk Road and the prosperity it brings are more important than conflict in the overall scheme of things, as well as being potentially able to ameliorate tensions by promoting peace. Another point to emerge from the quoted extract is that China has not laid any long-term plan to expand into Central Asia. The expansion has just happened more or less by the force of circumstances and Chinas need for resources and energy. But, most important of all, China had surpassed the activities of all other players in Central Asia. According to Dadabaev (2007), however, SCO is doomed to face huge problems when it comes to economic integration, mainly because of its central Asian Member States. Firstly, those countries are competitors in many economic fields, and in particular in the energy sector. Secondly, efficient economic integration would probably require some loss of sovereignty, which is seen as unacceptable by all the countries. Lastly, central Asian States are currently pursuing different model of economic development: Kyrgyzstan and Kazakhstan are implementing liberal measures, Tajikistan relies on foreign aids and Uzbekistan is characterised by State-led development.

V. INTERNATIONAL STATUS

The last point of Chinese Grand Strategy aims at restoring Beijing's status as a great power in the international scene. This is pursued in two main ways: challenging the unipolar international system created by the United States after the end of Cold War, and establishing a well-defined sphere of influence on its borders. The Shanghai Cooperation Organisation, in light of the American policy since the 1990s, is functional to both objectives. After the collapse of Soviet Union, the United States granted recognition to the new-born central Asian countries with the Freedom Support Act of 1992. The American policy towards those countries was mainly aimed at integrating those countries in the international political and economic system, at fostering the process of denuclearisation, at accessing the region's natural resources and at protecting those countries to possible

imperialistic ambitions of Russia (Ziegler, 2013). However, the region remained essentially marginal for the United States.

The situation dramatically changed with the terroristic attacks on New York and Washington: in few months, central Asia was under the international spotlights. After the attacks, central Asian countries cooperated with the United States: American bases were opened in Uzbekistan and Kyrgyzstan, while Kazakhstan and Tajikistan granted the use of their airports for refuelling (Ziegler, 2013). Initially, the interests of the former Soviet countries, Russia, China and the U.S. in the region were compatible: fighting Islamic terrorism and providing stability. Since 2002, however, a series of events drastically changed the relation between SCO countries and the United States. According to Ziegler (2013) the most important are:

- The publication, in 2002, of the National Security Strategy in the United States, which for the first time mentioned the concept of preemptive attack. This has been seen as a credible threat for non-democratic States' sovereignty.
- The consequent intervention in Iraq in 2003, aimed at carrying out a regime change in Baghdad. The intervention was unanimously criticised by SCO countries, in particular with those whose population is Muslim.
- The colour revolutions: starting in Georgia in 2003, these pro-democracy revolutionary movements reached Kyrgyzstan and Uzbekistan in 2005. They were seen by all SCO members as attempts organised by the United States to attempt regime changes.

As result of these events, SCO members became more intolerant towards American presence in central Asia. At the Organisation 2005 Summit in Astana, Uzbekistan requested for the American troops to leave from Karshi-Khanabad airbase. Moreover in the same year Iran was granted observer status to the organisation causing great concern in Washington, which included Tehran in the 'axis of evil'.

These have been the main elements that characterised how the Shanghai Cooperation Organisation has been functional to China's aim to gain international status as a great power: firstly, the Organisation has been used to contrast American influence in Central Asia, which, with the intervention in Afghanistan and the establishment of bases in former Soviet countries, could have led to an enlargement of NATO to China's borders; secondly, SCO is a useful tool to strengthen Chinese

influence over central Asia, thus providing more stable foundations for its global claims; lastly, SCO provided China with a great forum to engage with other countries which oppose American unipolarism (primarily Russia, but also Iran).

VI. CONCLUSION

Among the most important international trends in the first part of the twenty-first century is that China is rising at the expense of other major powers, including both Russia and the USA. The role of Xinjiang demonstrates that China's foreign policy not only is about the seas to the east and south but also shows the country as facing west. Xinjiang also shares in and contributes to the changing balance of power that favours China over the USA and Russia, above all as it affects Pakistan, the Central Asian region and Turkey. The idea of a Silk Road is actually not particularly new. Pushing trade and economic development from China westwards into Central Asia and beyond, has been a process for some time, and it is something that appears to be in the basic interests of the people of the region. China's push has been more or less worldwide so the Central Asian section is not something in contradiction with what China is doing elsewhere. China needs resources and the infrastructure that can help provide them.

The decision taken by Obama to withdraw combat forces from Afghanistan by 2014 offered new opportunities to SCO (and therefore to China) to diminish American influence in central Asia; moreover, Afghanistan will be able to be involved more in the SCO framework, strengthening the expansion southward of the Organisation (Institute for Strategic Studies, National Defense University of People's Liberation Army, 2015). However, different problems still exist in all of those fields, limiting the potentials of the Organisation. In the security sphere, the main problems come from Russia, which is generally more focused on the Collective Security Treaty Organisation (CSTO, a formal Russia-dominated alliance that involves Russia, Armenia, Belarus, Kazakhstan, Kyrgyzstan and Tajikistan). As Wishnick (2009) noted, Russia has been seeking to increase the cooperation between the two organisations, but it met China's refusal. As of now CSTO has been granted only the status of an observer. On the other hand, Russia has been cautious in getting involved in the establishment of SCO financial institutions such as SCO Development Bank or SCO Development Fund.

Finally, regarding Chinese influence in central Asia, the American withdrawal from Afghanistan offers opportunities as well as challenges. From China's perspective, an SCO's active role is obviously preferable

than American or NATO involvement (Ziegler, 2013). However, SCO's attitude toward Afghanistan has always been problematic. As Sutter (Sutter, 2010) notes, "the U.S.-led Operation Enduring Freedom accomplished more in the area in five months than the Shanghai grouping had accomplished in five years". As SCO officials admit, the lack of consensus among the Organisation's member about their individual policies towards Kabul has prevented the SCO from developing coherent proposals (Cooley, 2014). Therefore, American withdrawal from Afghanistan has caused various tensions inside SCO, and a common policy has yet to be found.

The Shanghai Cooperation Organisation has great potential to be a heavy-weight in global politics, and its recent enlargement strengthen its position. It can be a fundamental instrument of foreign policy in the hands of Beijing bureaucracy allowing them to pursue their strategic interests in the area in a much more efficient way. Moreover, the SCO represents, as stated earlier in this paper, a clear example of how Chinese Grand Strategy has been defined by the PRC policy makers not in a systematic way as the so-called design model would suggest, but more according to what is usually referred to as emergence model: Beijing adapted its strategies to the new scenario that came into place after the demise of Soviet Union in Central Asia, thus turning an area that risked to be problematic in an opportunity. However, great problems still persist, and they are likely to significantly reduce SCO's ability to shape Eurasian future. The way these problems are faced, together with (sometimes partly) exogenous factors (American commitment in central Asia, the implementation of Iran nuclear deal, the stability of the Chinese regime, Russian economic performance, just to name few of them) will determine the future of the Organisation, and, perhaps, of the world.

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

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

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

I. INTRODUCTION

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

Having 'juristic personhood' assigned to a non-human entity cannot be considered a right, but a privilege. It is legal fiction. Depending upon their social usefulness, states and courts choose to treat some non-human entities as if they were endowed with the rights of a person. These entities are obviously not flesh-and-blood persons. Yet

juristic persons have the right to own property, to enter into contracts and to sue. Idols of Hindu gods are deemed persons in this sense. Idols are to modern Hinduism what corporations are to the world of business. In a hyper-capitalist country like the United States, business corporations have been granted the rights of free speech and freedom of religion, which used to be reserved only for citizens. In a hyper-religious country such as India, temple idols have been granted the right to own and litigate property, a right normally reserved for citizens.

II. RAMJANMABHOOMI ISSUE

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

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

Meanwhile, the legal case surrounding the idols drags on. The retired judge of Allahabad High Court, Deoki Nandan Agarwal collected revenue records and other documents to claim the land belonged to Lord Ram before filing a writ petition before the abovementioned High Court in 1989. In his suit (Bhagwan Sri Ram Virajman Vs. Rajendra Singh), he appointed Bhagwan Sri Ram Virajman – Lord Ram himself – as the lead plaintiff. He pronounced himself Ram Lalla's 'next friend'¹ – a provision that would allow him to conduct legal battle on Ram's behalf. In 2010, Special Bench of Allahabad High Court comprising Justice Sibghatullah Khan, Justice Sudhir Agarwal and Justice Dharam Veer Sharma ruled that (Special Bench: 2010), one-third of the land would go to Ram Lalla (Lord Ram as child), while the remaining would be split between the other two plaintiffs². The next year, the Supreme Court stayed the order on grounds that no party had wanted a three-way split. In the judgment, Justice Sharma ruled that once consecrated, or worshipped long enough, 'there is no difference' left 'between idols and deities'. The stone statue, in other words, becomes the deity and acquires perpetual ownership rights, with no time limit, to all the properties vested in the deity by its devotees. As legal owners of property, idols – through their human 'next friends' - have the right to move courts to secure their interests, regardless of whether the original idol is in existence or not.

III. PHILOSOPHICAL AND JUDICIAL CONTESTATIONS

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

In 1925, the question before the Special Bench (comprising Justice Shaw, Justice Blanesburgh, Justice Edge, Justice Ali) of Bombay High Court in *Pramatha Nath Mullick Vs. Pradyumna Kumar Mullick*³ (Pramatha Nath Mullick 1925) was whether the custodian of an idol was entitled to move it from the family shrine to his own

private residence. Writing for the Bench, Justice Shaw rejected the request on the grounds that 'the will of the idol in regard to location must be respected' and came up with this famous ruling:

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

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

It is because of this precedent-setting judgment that the law can treat idols not as judicial fiction meant for purposes of taxation and other administrative purposes, but as real persons endowed with 'will' and 'interests'. Thus the judgment insisted that the *shebait*, or temple custodian-priest, must consult the idol in matters regarding the location and mode of worship because 'it is open to an idol, acting through his guardian, to conduct its worship in its own way at its own place'. The idol, in other words, has preferences and predilections regarding how it 'wants' to be worshipped. In case there is a conflict between the *shebait* and the idol, the court makes room for a 'disinterested next friend' to step in. This provision of next friend, incidentally, has opened the door to political machinations in the Ayodhya dispute. Following the footsteps of Deoki Nandan Agarwal, the first 'Ram sakha', all subsequent 'next friends' of Ram Lalla have been affiliated to the RSS or the Vishwa Hindu Parishad⁴.

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

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

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

The tension between popular and philosophical Hinduism when it comes to divine landlordship has not been reconciled. It harks back to the very beginning of idol worship in recorded history and the bitter opposition it faced from the orthodox defenders of the Vedas. As the German philologist Max Muller put it, ‘Religion of the Vedas knows of no idols’. In Vedic times, the gods were worshipped through *yagnas* or sacrificial offerings, and *mantras* or sacred utterances. This meant that ritual ceremonies could be conducted anywhere and the gods were expected to come down from their celestial abode, participate in the *yagnas* and enjoy the sacrificial food and drink. Around the beginning of the Common Era, open-air Vedic altars began to give way to permanent structures with images and idols of gods that seemed more and more human-like. The devotees would now have to visit the gods living permanently in their new earthly homes. The first recognisably Hindu idols date back to the second century. Slowly but surely, ‘temple Hinduism’ – to use a

phrase coined by Richard Davis – began to dominate over Vedic Hinduism. Scholars have offered many reasons for this, chief among them being the imitation of Buddhists and Jains who began to produce images of their founders. The reassertion of Dravidian and shudra gods and the doctrine of *ahimsa* are all cited as possible reasons for this remarkable shift.

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

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

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

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

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

The answer provided by Justice T. Venkatrama Aiyar in *Deokinandan Vs. Murlidhar* in 1956 (Decided by a four-judge bench of the Supreme Court), is as follows: The *phala* — spiritual benefit — of a donation lies in the act of relinquishing something of value for god; the *daan* itself is what is spiritually meritorious. The idol

need not be the owner of the gifts that the devotees bring, but rather a symbol of their pious purposes. As Aiyar ruled in *Deoki Nandan*:

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

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

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

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

IV. CONCLUSION

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

V. NOTES

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

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Abreviation(s) Used:

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