

FAITH & TITLE - ADJUDICATION BY COURTS

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The Gordian Knot of Religion, Belief ,Facts and their resolution

1. The legend of 'Gordian Knot' says that in the city of Gordia (located in present day Turkey) a knot was tied to an oxcart which was impossible to open. It was believed whoever opened the knot would rule all of Asia. Alexander, the great warrior opened the knot by cutting it with his sword and went on to conquer substantial parts of Asia. Similarly many complex issues of Religious Practices arose in India and were boldly decided by the Judges in Pre- Independence India. These issues like the proverbial 'Gordian knot' intertwined the Religious Beliefs, Customs, Myths and Legends, Historical facts and fiction. The judges with remarkable dexterity resolved the legal issues and laid down the principles of Law .Notably, these principles laid down almost 100 years ago in the judgments are still relevant and being followed by our Supreme Court of India .
2. The Rights of Worship at the Parshavnath Hill-A mountain range of hills and forests (located in present day Jharkhand) between two competing sects of Jainism namely Digambar and Shwetamber was decided by the Courts Law in 1933.
3. The Privy Council rendered the Decision on 12th May, 1933 in the Decision **Hukum Chand Vs Maharaj Bahadur Singh ILR vol (XII) pg 681** authored by Sir John Wallis . The Appeal arose from the decision of Patna High Court rejecting the claim of the Digambaris that the Hill was a debutter property of Jaina deities and they have an absolute right to worship at the Hill as per their tenets.

This claim of the right to worship of Digambar Sect was decided in a lucid manner resolving the Vexed issue while laying down the principle of Law regarding Matters of Faith and Title of Land .

The claim of sanctity of the Parasnath Hill was made on the basis of religious beliefs of the Jaina Religion. The Court recognized the sacred nature of the Parasnath Hill for all Jainas referring to earlier decision of Lord Phillimore in Maharaj Bahadur Singh Vs Hukum Chand ;

“The Jains recognise 24 highly saintly personages-men who have attained salvation or Nirvana, who are called Tirthankars (finders of the ford, across the river of death). These four and twenty are counted in many respects as higher than the gods or some of the gods in the Hindu Pantheon.

Twenty of them are believed to have attained Nirvana in the present cycle of the world's history upon the Hill Parasnath in the district of Hazaribagh in Bengal, with the result that the hill is held in reverence by Jains. The hill itself has some remarkable natural features, and rises into several peaks. Twenty spots apparently marked out by natural features, are believed to be places from which the 20 Tirthankars quitted earth ; and at each of these spots, a footprint of the Saint is worshipped. There is a small enclosure covered with a cupola, which at the present moment is made of white marble. These spots have been set apart from remote antiquity. The four remaining Tirthankars quitted earth in other parts of India. In respect of them conventional spots have been since the year 1868 set apart and treated in a similar way.

Upon the hill there are also a shrine to a lesser Saint called Gautama Swami, an important temple in one of the highest parts of the mountain-called Jalmandil, certain platforms set apart for religious contemplation and two Dharamsalas or-rest-houses for pilgrims. The hill is much frequented by pilgrims, who take the 24 shrines or tonks in regular order, worshipping at each.

According to the tenets of the Digambara, this worship must be performed fasting, and the whole hill is so sacred that from the moment they set foot on it, they must abstain from any office of nature, even spitting.”

CRYSTALLISING THE REAL ISSUE BETWEEN THE TWO SECTS OF JAINS

4. The Court noted that the hill was sacred for both Digambars and Svetambars. However Digambars further set up a claim against Svetambars that any action contrary to Plaintiff- Digambers beliefs such as employment of Humans on the Hill or making any dwellings thereon was also against their religious beliefs and they sought for injunction against such actions. The Judges narrowed down the real issue involved in the matter in the following terms

*“These are matters for the Jains themselves, and the civil Courts are only concerned with them in so far as they are relevant to questions of civil right such as an alleged interference with the plaintiffs' rights of worship on the hill, and in that case the issue must be, **not whether the acts complained of are in accordance with orthodoxy or with previous practice, but whether they do in fact interfere with the plaintiffs' rights of worship.**”*

The following were Facts noted by the Judges of Privy Council for adjudication;

5. The Hill itself was 25 square miles in extent and at 4500 sq feet height . ‘Shikharji’ which was a place of worship considered sacred by the Jains was located at the topmost point of the Hill The pilgrims had to walk about 6 miles from the village Madhuban situated at the base of to the Shikharj to perform worship.
6. The Privy Council referred to the report of the year 1846 by one govt official Lieutenant Beadle, whereby it was stated that the Hill was covered in dense jungle except at the Top.It was infested with wild beasts and was uninhabited by Man except for Santhal Hamlets .Since the coming of British Raj, Lt. Beadle Opined that the number of pilgrims started increasing annually. The construction of Grand Trunk Road passing through underneath the Hill brought many pilgrims as it was located only 200 kms

from Calcutta on the Grand Trunk Road, thereby resulting in increased popularity of the shrine.

7. The Privy Council noted that the Jain shrines on Parasnath Hill were of great antiquity but very little was known as to the time when the sanctity of the whole Hill was first obtained acceptance. From 16th to 18th Century the Jagat Seths ,A wealthy and powerful family of Bankers at Murshidabad ,belonging to Swetambaris Sect maintained the shrines .However they moved to Calcutta in 1765 when East India Company ceded the Territory.
8. At the Decennial Settlement in 1790 and Afterwards at the Permanent Settlement ,the Hill was included in the zamindari of Raja Of Palgunj , which raised a legal presumption that the Hill was his Property. Thereafter during the 19th Century the Raja of Palgunj bore the expenses for the maintenance of the shrines and recovered the amounts spent by taking a share of pilgrims offerings.
9. In 1872 the disputes between the Raja and the Swetambaris was settled by an Ekrarnama(agreement) whereby the Raja granted to Swetambari sect land, stones and timber for new shrines .This **ekrarnama in the opinion of the Privy Council was a clear admission of title of the Raja.**
10. In 1888 the Swetambaris filed a suit against the Raja when the lessee of the Tea Plantation started a Lard Factory which involved slaughtering of Pigs,a thing peculiarly offensive to the Jainas. In the Said suit the issue of the Hill being a debutter property of Jaina deities was raised but was rejected by the Trial Court and High Court .In the said proceedings the High Court affirmed the title of the Raja to the Hill.
11. Thereafter various legal proceedings between the Digambaris and Swetambaris were filed. The Two sects were engaged in the struggle to acquire the Raja's title.
12. The Privy Council noted that the basis of the finding recorded by the Subordinate Judge Ranchi that the Hill is a debutter property of Jainas because of their belief in the sanctity of the Hill by both the sects.

13. Around 1900 the Shwetambar started construction of a grand white marble temple at the top of the hill at the highest peak. Digambaris were strongly opposed to this as it affected the unique and most impressive characteristics of the place. This led to the dispute between the two sects of Jainism.

The Swetambaris had all along been in the management of shrines situated on top of the Hill and acquired by purchase of the ownership rights from the Raja of Palgunj in the year 1918.

Having purchased the rights in the Hill ,in year 1920 the Swetambaris started posting sentries and night watchmen on top of the hill .Dwellings were made for sentries and pujaris and other temple servants who were working at the shrine. Also dharmashala and resthouses were being made for pilgrims .A gate was proposed to be constructed at the top of the winding pilgrim way which started at the foot of the hill from Madhuban.

TRIAL COURT PROCEEDINGS

14. Civil Suit was filed at Civil Court Hazaribagh in representative capacity by the Digambaris under Order 1 Rule 8 against the shwetambaris claiming the entire hill and every stone of it is held sacred and is an object of adoration and worship and on account of special sanctity no building for human habitation can be constructed and the very idea is sacrilegious .

The Digambaris filed there written statement stating that the construction of structures of human habitation was not prohibited as per Jain tenets and it was not sacrilegious since it was unconnected with the religious practices Thereafter the Suit was transferred to the Court of Subordinate Judge Ranchi before whom the evidence was led and decision rendered .

The Subordinate Judge Ranchi considered the evidence led by the Digambaris regarding the sanctity attached to the Hill by the Jains held that the Hill was the **debutter property of the Jain Deities**. It also granted the

prayers in the suit against the Svetambaris on the basis that the Plaintiff Digambaris were entitled to see that **the Hill-their most sacred Tirth –was kept immaculate and not defiled or desecrated** .Accordingly the Svetambaris were restrained from posting sentries and night watchmen on the Hill or proceeding further with the building of proposed dwellings and dharmasalas and also restrained from erecting the gate to obstruct the access of Digambaris to the Hill.

APPELLATE PROCEEDINGS BEFORE HIGH COURT

15. Appeal was preferred before the Hon'ble Patna High Court whereby two learned Judges reversed the part of lower court decree holding that the Hill was debutter property of Jain Deities but the Property of the Raja of Palgunj ,whose title passed on to the Svetambaries by the Sale deed dated 9th March,1918.The High Court held that the acts complained of by the Digambaris in their suit were not interfering with their right to worship .

BELIEF OF DIGAMBARS IN SANCTITY OF THE HILL WOULD NOT CONFER OWNERSHIP AS DEBUTTER PROPERTY OF JAINA DIETIES

16. The Decision by the High Court on Appeal overturned the finding of the Subordinate Judge on the ground that the Evidence no doubt proves that in the belief of the Jain Community a ***spiritual quality in some way attaches to the Hill but this is a matter of faith and cannot itself determine the Physical Ownership of the Hill.*** The Privy Council Agreed with the High Court judges that the Hill was not the Debutter property of the Jaina Deities but the Property of the Raja .

The Judges framed the ***question succinctly*** that in order to be granted Injunction ***the Digambaris must prove that their Right to Worship was being interfered with by the acts of the Svetambaris.***

The Judges reasoned that Eating, Drinking, Spitting and other seemingly irreverent and unseemly acts in a place of worship are naturally and properly

prohibited in a place of worship i.e, in the ancient 'Ashtana of Jin Temples'
.But these rules by analogy cannot be applied to the vast expanse of the Parasnath Hill and must be subject to reasonable modifications.

Moreover the Privy Council reasoned that no serious objection was taken when the military sanatorium was existing on the Hill or to the plantations with their cooly lines though they involved complete disregard to the Jain tenets .In fact the Judges noted the writing of Lt. beadle that there was a religious mela held on the Hill every year for a fortnight in January and the shopkeepers ascended with grain and other provisions for the wants of the Worshippers and also there was evidence that a Hindu mela is held on the Hill every Year.

The Judges noted that in another Suit in 1910 it was proved that by immemorial Custom the primitive and backward santhals in the neighborhood are entitled to hold a hunt on the Hill enjoined on them by their religion on one particular day in the Year. Eight to Sixteen Thousand Santhals take part in the Hunt working wound the Hill and across Pilgrim way and the day ends with the sacrifices to the Gods and their annual Caste meeting .

It was reasoned that since **none of these things however distasteful appear to have interfered with the Jainas right of worship on the Hill** because no steps were taken to stop these practices glaringly in conflict with the tenets of Jain religion .Therefore it was held that the act of constructions of dwellings for pujaris and pilgrims and to station sentries and night watchman on the top of the Hill cannot be said to **be obstructing the right of worship of Digambars.**

In view of the aforesaid the Appeal filed by the Digambaris was dismissed and the Decision of High Court holding the Hill to be the property of the Raja of Palgunj and the Digambar sect had no right of Injunction against the

Swetambar sect from making constructions and posting sentries and night watchman on top of the Hill.

INTERESTING QUESTION OF LAW AND RELIGION BEFORE SUPREME COURT OF INDIA IN 1970

17. Another contest of faith between Digambars and Swetambars reached Supreme Court of India in the case of **Ugamsingh Mishrimal Vs Kesrimal and Ors (1970(3) SCC 831**. The Digambar sect filed a Suit in Court of Civil Judge Bhilwara claiming right to Worship of the Idol of **Adeshwarji, the First Tirthankar** in the temple named after him at Paroli in Rajasthan without interference from Swetambars. The Digambar sect claimed that as per their belief the idol of Adeshwarji which was without eyes was being worshipped in the temple since many years. However on the night of 23rd December 1949 the Swetambaris attempted to convert the Idol to swetambari sect by putting chakshus or eyes in the idol artificially.

In a reversal of Roles from the Hukum Chand Case this time the Swetambaris claimed that the Suit was not maintainable as it was not of civil nature but pertained to religious rights and rituals of the Jain religion.

The Supreme Court applying the ratio of Judgment in **Hukum Singh Case** rejected the contention of the Defendants Swetambars that the Suit was not maintainable under Section 9 Civil Procedure Code, 1908. Supreme Court held that the Right of Plaintiffs -Digambaris to worship at the temple was being Interfered with by placing chakshus(eyes), Dhwasadand and Kalash. ***Since the Digambaris would never worship an idol which is 'Nirakar' and by putting Chakus and Dhajadand on the Idol would be interfering with the right of Swetambars*** to worship the idol.

The Supreme Court affirmed the findings recorded by the High Court giving right of worship the idol of Adinathji in the temple to the Digambars and

although the Swetambars were in management of the Temple they cannot add chakshus (eyes) to the idol and cannot put clothes on the idol as the digambars worship the idol only in nirakar form.

RAM JANAM BHOOMI CASE AND BELIEF IN SANCTITY OF THE LAND WHERE LORD RAM WAS BORN

18. A similar issue arose in the Momentous Ram Janam Bhoomi Case in **M Siddiq Vs Mahant Suresh Das and Ors (2019 (18) SCR 1** whereby one of the plaintiffs in Suit No 6 claimed that the land on which Lord Ram was born was sacred to Hindus as per their belief and therefore the land itself is a 'Juristic Person' and no claim of title can be made on the said land by any other party.

In this context of mixed question of belief in sanctity of an immoveable property being conferred certain rights by virtue of the faith of the Religious Community the principle laid down in the Case of Hukum Chand Vs Maharaj Bahadur Singh was referred and relied upon by the Supreme Court .The Supreme Court applied the same reasoning to narrow down the emotionally charged issue of Religious Faith and Belief to be essentially to determine the title of the land . The relevant para 174 of the decision is being reproduced for reference;

"The consequence of absolute title

174. In the present case, the recognition of 'Asthan Sri Ram Janam Bhumi' as a juristic person would result in the extinguishment of all competing proprietary claims to the land in question. This conferral of 'absolute title' (resulting from the conferral of legal personality on land) would in truth render the very concept of title meaningless.

Moreover, the extinguishing of competing claims would arise not by virtue of settled legal principles, but purely on the basis of the faith and belief of the devotees. This cannot be countenanced in law. The conferral of legal personality by courts is an innovation arising out of

necessity and convenience. The conferral of legal personality on Hindu idols arose due to the fundamental question of who the property was dedicated to and In whom the dedicated land vested. The two clear interests that the law necessitated protection of were the interests of the devotees and the protection of the properties from mismanagement. In the present case, there exists no act of dedication and therefore the question of whom the property was dedicated to does not arise and consequently the need to recognise the pious purpose behind the dedication itself as a legal person also does not arise.”

WHETHER RAM JANAM BHOOMI IS A JURISTIC PERSON

19. The Supreme Court of India further laid down the principles to be followed in all cases of religious places where claim is made by a Community on the basis of strong faith and belief in the sanctity of the place/land/immovable property in the following words in para 205 of the decision;

*“205. It is for all the reasons highlighted above that **the law has till today yet to accept the conferral of legal personality on immovable property. Religiosity has moved hearts and minds. The court cannot adopt a position that accords primacy to the faith and belief of a single religion as the basis to confer both judicial insulation as well as primacy over the legal system as a whole.** From Shahid Gunj to Ayodhya, in a country like ours where contesting claims over property by religious communities are inevitable, our courts cannot reduce questions of title, which fall firmly within the secular domain and outside the rubric of religion, to a question of which community’s faith is stronger. On a consideration of all the factors outlined above, it is thus held that the second plaintiff in Suit 5 – **‘Asthan Shri Ram Janam Bhumi’** is not a juristic person”*

Thus the Supreme Court of India laid down that mere assertion of sanctity of a place of worship on the basis of faith and belief would not confer any juristic personality in the immoveable property.

CONCLUSIONS AND LESSONS IN JUDICIAL WISDOM

20. In my Opinion the Remarkable Decision of Privy Council and subsequently Supreme Court of India shows Judicial Statesmanship, Wisdom and Scholarship wherein the Hon'ble Judges had considered the Complicated issues of Religious Faith and Belief .

The Court Adjudicated with clarity of thought and applied simple reasoning on the Complicated issue of Religious faith and belief of Jain community is not the real issue but it was primarily a title dispute and Court proceeded to decide the issue of title . The Judges narrowed down the scope of the adjudication to be whether the Digambars are being prevented from practicing their religion and faith or not by the swetambars.

The Court concluded that Since there was no interference with the right of the Digambars to practice their faith by the acts of swetambars no Injunction can be granted to the Plaintiffs-Digambars .

The Approach of the Court as observed from the decision is a shining example for Judges and Lawyers who are involved in deciding upon emotionally charged issues of Religious Faith and Belief by applying simple common sense logic In this Manner the Hon'ble Judges solved the vexed and complex issue of Right of Worship of Digambar sect at the Parsavnath Hill thereby cutting the Gordian Knot like Alexander the Great to resolve the complex issue of religion, Faith and Legal Rights of Jainas.
