

COMMENTARY ON HINDU RELIGIOUS ENDOWMENTS (1986). By Nihar Ranjan Chakraborty. S.C. Sarkar & Sons (P) Ltd., Calcutta. Pp.13+xvi+319. Price Rs.110.

THE AUTHOR of the book<sup>1</sup> under review has attempted to delineate the premises of the law with regard to Hindu religious endowments in a lucid and vivid manner. Its object is not only to point out the law as it exists today but also to appraise it in its modern proper perspective.<sup>2</sup> It is a study of judicial decisions as well as legislative enactments. The author has highlighted and focused attention on the development of law from pre-Independence era. The work contains ample material and factual analysis of the problem in detail.

The book has been divided into seven chapters. Each chapter contains sections. The first chapter is devoted to constitutional protection of religion and court's jurisdiction in matters of religion. It deals with constitutional provisions particularly articles 25 and 26. The chapter throws light on how the Constitution guarantees the freedom of religion to various communities including minorities, as well as on how it provides safeguards to their religions through their direct link with religious beliefs, practices and institutions including Hindu religious institutions. There is a sub-section dealing with the judicial treatment of the question relating to caste in the domain of religion.

Section 1 of the second chapter examines trusts under English and Hindu laws. It provides a brief history of English law of trusts the role of the Court of Chancery, definition and nature of English trusts and their classification, nature and scope of English trusts of a religious nature, administration of charities including English religious trusts, appointment and removal of trustees, and schemes. Section 2 reflects on Hindu Law of religious and charitable trusts. It deals with religious purposes and charity under this law, the scope and concept of *dharma*, bequests for *dharma* and the like in nutshell. The author defines religious purposes and charity with the help of judicial decisions.<sup>3</sup>

There is an excellent discussion on whether the bequest in favour of *dharma* and God, and for raising *samadhis* or tombs can validly be made under Hindu law. The bequest for the worship of God like a bequest for *dharma* without specifying its object is void. In the opinion of the author, general bequests for God are not too vague to be given effect to by courts. It is a well settled law that bequests for raising *samadhis* or tombs or provisions in a bequest for worshipping thereat are invalid. According to the author, this view is not correct; the validity of such a bequest must be determined according to the usage, not by religion.<sup>4</sup>

The third chapter is devoted to trusts in favour of idols-*debutter*. It explains the concept of juristic personality of Hindu idols. In the opinion

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1. Nihar Ranjan Chakraborty, *Commentary on Hindu Religious Endowments* (1986).

2. *Id.*, preface.

3. *Id.* at 60-62.

4. *Supra* note 1 at 69.

of the author the concept of their worship was unknown in *Vedic* period.<sup>5</sup> It is a well settled principle of Hindu law that an idol is a juristic person having juristic status and can vindicate its right by a suit. A brilliant discussion has been made by the author with respect to the liability of the idol to pay taxes. Ordinarily an idol has been exempted from this liability under the Income-tax Act 1961. But the Supreme Court in *Jogendra Nath Naskar v. Commissioner of Income-tax*,<sup>6</sup> laid down that Hindu idol is a juristic entity capable of holding property and can be taxed through *shebaitis* who are entrusted with the possession and management of its property. The author says that the case is not helpful to the body of worshippers.<sup>7</sup> In the opinion of the reviewer, the idol must be exempted from the purview of the Act in order to protect Hindu religion so that its utility could not be diminished in the eyes of the Hindu community.

Fourth and fifth chapters deal with *shebaiti* (management) of *debutter* and administration of *debutter* respectively. In the case of dedication of a property absolutely in favour of a deity, the same vests in the deity as a juristic person but its management is entrusted to a person called *shebait*. Although *shebaiti* is heritable, it cannot be transferred freely. Its alienation is restricted and permitted in special circumstances only due to the special nature of property. It can be alienated only for legal necessity and preservation or benefit of the idol. In this context, the author discusses and places reliance on the judgment of the Calcutta High Court in *Nagendra Nath v. Rabindra*<sup>8</sup> where the court discussed the subject of alienation of *shebaiti* in detail.<sup>9</sup>

In the opinion of the author, a writ of *mandamus* can be issued to compel the *shebait* of a public religious institution to perform his duty as powers of High Courts under article 226 are of widest amplitude.<sup>10</sup> It is relevant to note that under section 92 of the Code of Civil Procedure 1908, as amended in 1976, a suit can also lie against *shebait* for the reliefs mentioned therein.

The sixth chapter examines the nature of *math*, *mahant* and *mahantship*. It also deals with the appointment of *mahants*. The author states that a *math*, in its original and narrow sense, denotes the abode of an ascetic or a *sanyasi*.<sup>11</sup> As regards the appointment of *mahant*, the intention of the founder is the supreme consideration; if he lays down a particular rule of succession to *mahantship*, that rule is adhered to. The author points out that "like the institution of *math*, *mahantship* is an institution *sui generis*. He is neither a trustee in the English sense nor an owner of the trust property but is accountable as a trustee in respect of obligations and duties imposed on him."<sup>12</sup>

The seventh chapter draws conclusions and makes suggestions. The author mentions that several statutes are already existing for controlling Hindu public

5. *Id.* at 86.

6. A.I.R. 1969 S.C. 1089.

7. *Id.* at 94.

8. A.I.R. 1926 Cal. 490.

9. *Supra* note 1 at 150-51.

10. *Id.* at 194-95.

11. *Id.* at 227.

12. *Id.* at 233.

religious endowments in different states in India but not a single statute is there to prevent and control malpractices and maladministration of managers of private Hindu religious endowments. He suggests that a government department should be set up to keep a record of all private endowments and to oversee their working in all states.<sup>13</sup>

Lastly, the book contains three appendices. Appendix I is devoted to *yajamana-vritti*, *shishya-sancharam* and other rights related to priestly office. Appendix II deals with statutes and bills, e.g., the Limitation Act 1963, Guruvayoor Devaswom Act 1978 and Religious Trusts Bill 1960. After appendix II the author gives bibliography. Appendix III deals with relevant provisions of the Income-tax Act as amended, and the exemption of income of public religious trusts.

There are quite a few printing errors in the book.<sup>14</sup> It is hoped that the author would eliminate these and other mistakes in the next edition.

On the whole, the book is very useful to lawyers as well as academicians who have keen interest in the study of Hindu law of religious endowments. The publishers deserve praise for giving a good and attractive get up to the book.

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13. *Id.* at 271.

14. For example, at page 73, in para 4, for "cash" it should be "case;" at page 111, in para 4, "promises" should be "properties;" at page 112, in para 3, "Hige" should be "High."

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