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LAW OF NON PROFIT VOLUNTARY ORGANISATIONS

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I INTRODUCTION

VOLUNTARY ORGANISATIONS, either in the form of foundations –charity, endowment, public trust and waqf – or organisations – registered societies, cooperatives, non profit companies, trade unions and unregistered associations - engage in extensive social service activities without any motive of making profit.¹ Their importance in the field of religion, culture, art, literature, science, education, health, rural economy, protection of the vulnerable such as women, children, differently-abled and backward classes of people is substantial. Considering their socio-economic significance, fund-supporting laws like income tax exemption, foreign contribution and land grant or corporate social responsibility are at place. The enactments by both the central and state governments govern these spheres depending upon legislative competence. Customary law and common law fill the gap. Pluralism has influenced the genesis and growth of law in this sphere. Constitutional law provides basis support and controlling parameters to the non profit voluntary organisation (NPVO) law. Doctrinally, they are born for fulfilling the social purposes of public benefit and live through the performance of those purposes. Autonomy, democratic functioning, equal access and participation and controlling their acts against abuses and arbitrariness add to their strength and efficacy. Financial integrity, honesty, transparency, confinement of expenses only for the legitimate purposes and accountability contribute to their identities as purposive enterprises. Some of the matters coming under the heading of NPVO law, such as waqf, cooperative societies, trade unions, income tax exemptions and corporate social responsibility, although highly important, are not included in this survey for the reason that they are dealt elsewhere in this volume under respective surveys related to them. NPVO law is a growing law, and in 2019 significant developments have taken place making it clearer and dynamic.

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1 For a treatise on the subject, see, P. Ishwara Bhat, *Non Profit Voluntary Organisations Law* (Eastern Book Co, Lucknow, 2018).

II PUBLIC TRUSTS AND CHARITIES

Protection of property, movable and immovable, belonging to the public trust or endowment is one of the important legal policies under the law of public trusts and endowments. The High Court of Madras judgment in *Idol of Ranganathaswamy, Srirangam*² has certain points to be pondered upon. Certain landed properties had been endowed to the idol by one Gopaldas Family trust. Specific purpose about use of the usufruct had not been mentioned in the trust deed. Charitable acts of feeding the poor and religious acts of 'ubhayam' were carried on behalf of the idol. For sale or alienation of property endowed by the Gopaldas Trust it was provided that prior permission of the High Court of Madras, is required. When approached with factual background that the rent got from agricultural property was meagre and that sale of landed property in prime locality will fetch good amount that could be source of income, the single judge bench of the High Court of Madras after due hearing gave an approval for alienation, monitored the transaction and ensured that the amount is deposited as fixed deposit in a nationalised bank and ordered for use of the income earned as interest for charity. In appeal, the divisional bench of the high court upheld the single judge bench's decision giving the following reasons: (i) since the trust deed did not specify the purpose of dedication for property's use it was not essential to get the prior approval of Tamil Nadu Hindu Religious Endowment Department; (ii) the transaction was supervised by the high court and proper procedure had been followed; (iii) post-sale, the property was developed by the purchaser into flats and sold to various persons, and hence it is against equity to interfere; and (iv) the income from sale proceeds was helping charity. The point number (i) may become problematic in unscrupulous alienation of trust property. The ratio of the case is to be confined to the circumstances of the case that the transaction was monitored by judiciary.

The problem of alienation of land belonging to the endowment in violation of section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 but by invoking tenants protection law was the issue in *J Mohanraj*.³ It was contended by a public spirited devotee that most of the land belonging to Agastheeswara temple in Chennai have been alienated by resort to judicial decrees under Madras City Tenants Protection Act, 1921 which permits sale of land by the landlords to the tenants. In fact, the Act of 1921 is not applicable to religious and charitable institutions. But overlooking this aspect and prohibition under section 34 against alienation of immovable property of the endowment without the permission of the commissioner, such deviations were taking place as per the petitioner. The high court issued directions to the authorities to implement the guidelines given earlier in another case and take stern steps for recovery of property alienated in violation of the law.

*Shyam Kumar v. Laccha Ram*⁴ is a case demonstrating right of the persons interested in trust property to legally challenge the transfer of immovable property

2 *Idol of Ranganathaswamy, Srirangam, Tiruchi v. Gopaldas Dwarakdas Family Trust Estate, Tiruchirapally*, AIR OnLine 2019 Mad 601.

3 *J. Mohanraj v. Commissioner Hindu Religious Endowment Board Nungambakkam High Road Chennai*, AIR OnLine 2019 Mad 547.

4 AIR OnLine 2019 Raj 342.

belonging to the public trust made by the trustees without complying with the requirements under the Rajasthan Public Trust Act, 1959. Getting a prior consent of assistant commissioner for transfer of immovable property (in the current case shops belonging to the public trust) is a pre-requisite under the law. The assistant commissioner shall satisfy about the qualifying circumstances like failure of objects of the trust, mismanagement or maladministration of trust property or court's direction for transfer after giving an opportunity of hearing to the managing trustee. In the instant case without prior permission of the assistant commissioner, the manager had executed a power of attorney for transfer of property in favour of a person who sold the property to the purchaser. The tenants of the said property complained to the assistant commissioner about violation of the law, who in turn asked them to seek the directions from the district court. The district court declared the transaction null and void from the inception. The high court upheld the competence of tenants as beneficiaries to be treated as 'persons having interest in the trust' and dismissed the appeal. In view of the legal policy that property of public trust shall be duly protected against loss, the expanded interpretation of 'persons having interest' in the case attains significance.

In *Gurupad Sambhav Ram v. Prashanth Sinha*⁵ the trial court and first appellate court had decided a suit for declaring transfer of immovable properties of a public trust as void on account of lack of prior permission of the registrar of public trust on preliminary matter such as delay, valuation of property for court fee *etc.*, without deciding the question whether the suit property was trust property and whether prior permission of the registrar of public trusts had been obtained or not. No evidence had been collected although issue had been framed. The high court remanded the matter to the trial court for trying afresh all the issues. The approach of the high court is welcome from the viewpoint of security of public trust's property against unauthorised alienations.

In *Bashiruddin v. Madarasa Islahul Musalemin Baijantpur Rayapur*⁶ the issue was whether an educational institute constituted under a public trust can successfully issue notice of eviction of tenants from the premises on the ground that the accommodations were needed for housing its teachers. The Chhattisgarh Accommodation Act, 1961 has exempted educational institutions and charitable public trusts from its operation. The High Court of Chhattisgarh upheld the first appellate court's decision that the issue of notice was valid and the erstwhile lease deed was terminated. In promoting the purpose of the public trust to impart education this approach has greatly contributed.

In *Uttam Vithalrao Tekale v. Rajabahu Sapan Shelke*,⁷ the matter before the High Court of Bombay was whether plaintiffs who were not members of the trust (and thus not coming within the expression 'persons interested in the trust') could invoke the jurisdiction of civil court for reframing the scheme for administration of

5 AIR OnLine 2019 Chh 771.

6 AIR OnLine 2019 Chh 881.

7 AIR OnLine 2019 Bom 256.

the trust without seeking the prior permission of the charity commissioner. The court answered the question in negative and set aside the scheme formulated by the civil court although agreed to the proposition that the court had jurisdiction. Since the existing scheme was allowing for smooth functioning of the trust there was no need for its reformulation.

The principle that a custom prevails until law alters it in the sphere of religious institution's functioning is hinted in the *Mula Vahnikula* case.⁸ When conducting of Karaga festival is traditionally done by hereditary archakas, a counter claim and interference by other archakas led to unrest in a temple of 450 years old temple of Sri Dharmaraya and Drowpadamma temple. The Muzrai Department of Karnataka Government took over the management, and Tahsildar issued an order recognising a non hereditary archaka as entitled to perform Karaga. The divisional bench of the High Court of Karnataka issued direction to the tahsildar to permit hereditary archaka to perform Karaga if representation was made by the party. Delay in disposal of representation came in the way of festival for two years. The Supreme Court directed the tahsildar to expeditiously decide giving opportunity of hearing to the contesting parties. The tahsildar issued order permitting holding Karaga festival by parties on rotation basis. When this was challenged, the high court quashed the order of tahsildar as violating the divisional bench decision. The judgment implies that unless the customary practice of hereditary archaka performing Karaga festival is legally regulated or modified, the custom shall continue.

The High Court of Kerala in *A K Kora*⁹ considered the scope of section 92 of Civil Procedure code in the light of Supreme Court's decision in *Swami Paramatmanand Saraswati*¹⁰ and ruled that when any person acting under a trust claims any relief not pertaining to breach of trust but seeks remedy against unjustified interference and trespass, his claim does not come within the ambit of section 92. Hence, seeking prior permission of the competent court is not essential.

Ramakrishna Mission v. Kago Kunya is a case¹¹ where the Supreme Court considered that Ramakrishna Mission is neither 'State' under article 12 nor 'authority' under article 226 on the ground that the financial nexus between the state and the trust is not substantial. This has deviated from the liberal approach adopted in the *Rudani* case¹² and narrowed down the scope of remedies available to employees. From the angle of regulations over public trusts in the interests of human rights this approach is narrow and problematic.

8 *Mula Vahnikula v. State of Karnataka*, AIR Online 2019 Kar 888.

9 *A K Kora v. St Mary's Orthodox Church, Attimkundu Kakkor*, AIR OnLine 2020 Ker 70 dated 9.12. 2019.

10 *Swami Paramatmanand Saraswati v. Ramji Tripathi* AIR 1974 SC 2141.

11 AIR Online 2019 SC 321.

12 *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V R Rudani* (1989) 2 SCC 691.

The spirit of secularism and rationalism under the Preamble, article 25 and article 51-A was invoked in the *Anbazagan* case¹³ challenging the validity of instructions given by the HRCE Department to all the temples under their jurisdiction to offer pujas and homas praying for rainfall in the context of prolonged drought. The High Court of Madras declined to interfere in the matter of faith, belief and practice, and noticed that since farmers also join in pujas in temples during the times of distress, the courts shall not interfere. Further, the circular is applicable only to the religious institutions under the department's control and optional to the devotees.

When the Registrar of Public Trusts interprets the trust deed giving effect to the intention that the position of managing trustee shall devolve upon members of the family of maker of trust, and makes appointment accordingly, it is not to be interfered with by the judiciary. This was so held in *Vimal Kesharwani* case by the High Court of Chhattisgarh.¹⁴

In *Hajari Mal v. State of Rajasthan*¹⁵ the High Court of Rajasthan declined to interfere with the lower court's that in view of unauthorised occupation of public premise relating to which the local administration had proceeded for eviction and under the law, court's jurisdiction on matters of eviction is excluded, the remedy sought could not be granted. The ruling sends a message that law of public trust operates within the general sway of rule of law and unauthorised occupation cannot be made good by any 'clever' strategies. Similarly, as decided by the High Court of Gujarat in *Lawrence Ranchodbhai* case,¹⁶ an orphan who continued to live from his childhood in the premises of a charitable organisation cannot claim any right of adverse possession against the charitable trust in spite of long duration of his stay. This has really the effect of protecting the acts of charity against abuses.

Non profit educational institutions gathering support from related law like Right of Children to Compulsory and Free Education Act, 2009 is a matter discussed by the High Court of Gujarat in *Swanirbhar Shaala Sanchalak* case.¹⁷ When the government was incurring expenses of more than Rs 10, 000 per student per year, its resolution to limit the reimbursement of non-grant schools only to the extent of Rs 10, 000 was declared as arbitrary and liable to be set aside.

In *M Siddiq*,¹⁸ a sensitive and long-pending case on title dispute on place of worship at Ayodhya, the Supreme Court dealt with some of the issues of NPO law. Firstly, the court stated that the two premises justifying juristic personality of Hindu idol were: (i) when the dedication of a property by a devotee to an idol is for charitable

13 *V.Anbazhagan v. Commissioner, Hindu Religious and Charitable Endowments Department, Chennai* , AIR 2019 Mad 210.

14 *Vimal Kesharwani v. Vinay Gupta*, AIR OnLine 2019 Chh 850.

15 AIR Online 2019 Raj 793.

16 *Lawrence Ranchoddas Christian v. Gujarat Christian Service Society* AIR OnLine 2019 Guj 231.

17 *Swanirbhar Shaala Sanchalak Mahamandal (Gujarat) Rajkot v. State of Gujarat*, AIR OnLine 2019 Guj 84.

18 *M. Siddiq thr LRs v. Mahant Suresh Das*, AIR OnLine 2019 SC 1420.

or religious purpose, even in the absence of creation of trust, the institution shall be treated as juristic person because of the noble purpose; (ii) the expectations of both the present and future worshippers are to be respected, if necessary by the legal framework's intervention. Creation of artificial legal personality of the idol was a perennial source of support to the community of devotees. The court observed,¹⁹

There was a clear state interest in giving effect to the will of the founder or testator who has so dedicated property, as well as for ensuring that the property is at all times used for the purpose of the dedication. A legal fiction was created by which legal personality was conferred on the religious or charitable purpose for which the endowment was made. In the case of a dedication for an idol, the juristic personality finds 'compendious expression' in the idol itself. By conferring legal personality, the court gave legal effect to the dedication by creating an entity to receive the properties so dedicated. By stating that the artificial person created is in fact the owner of the dedicated properties, the court guarded against maladministration by the shebait. Even though the artificial legal person cannot sue without the assistance of a natural person, a legal framework was brought into existence by which claims for and against the dedicated property could be pursued.

Hence, idol is a site of legal relations centring round the purpose of dedication. On the basis of documentary and oral evidence, the court concluded that the idol of 'Bhagwan Sri Ram Virajman' became the focus of genuine, long standing and profound belief of Hindu devotees for offer of prayer at the site believed by them as birth place of Sri Ram.²⁰ The court viewed, "In the case of Hindu idols, legal personality is not conferred on the idol *simpliciter* but on the underlying pious purpose of the continued worship of the deity as incarnated in the idol. Where the legal personality is conferred on the purpose of a deity's continued worship, moving or destroying the idol does not affect its legal personality. The legal personality vests in the purpose of continued worship of the idol as recognised by the court. It is for the protection of the continued worship that the law recognises this purpose and seeks to protect it by the conferral of juristic personality."²¹

It was also contended on behalf of Sri Ram Idol that the idol's personality was merged with the legal personality of birth place and thus, 'Asthan Sri Ram Janam Bhumi' was a juristic person. This meant that the disputed land, by itself being juristic person, had excluded the claims of adverse possession, and established a clear title based on people's faith about *Janam Bhumi* as a place of birth of Sri Ram and the continuous practice based on belief and faith to have *parikrama* for perambulating around the idol. Additionally, it was argued that the idol itself was *Swayam Bhu*, and that by linking the idol's location to specific location of land all competing claims on the idol's location got simply excluded. This was countered by the opposing party by

19 *Id.*, para 120.

20 *Id.*, para 126.

21 *Id.*, para 127.

stating that such claims could not be made on the basis of faith and belief, but that actual physical manifestation of demonstrable link between idol and land should be established. Various precedents were discussed. The *Ram Jankijee deities* case²² was held not applicable as the two separate temples claimed as two different units under Bihar Land Reforms Act for the purpose of ceiling limit was not applicable because the case was decided on the basis of deed of dedication whereas Ayodhya case was based on faith and belief exclusively. The Privy Council's decision in *Jaina Sacred Hill* case²³ had not considered the Hill as an object of ownership by virtue of faith and belief but recognised the title derived from the Raja, and hence it was also not relevant for the present case as it involved title based on faith and belief only. Another argument based on Privy Council's decision on ownership of unoccupied hill in *Madura, Tirupparankundram* case²⁴ was held not applicable as the facts were pertaining to res nullius, a situation different from Ayodhya dispute. The *Chidambaram temple* case²⁵ pointing out vacuum as the shape of god, although pointed out about shapelessness of God, did not become relevant as the case at hand involved god and parikrama with form. The *Chockalingam Pillai* ruling²⁶ which recognised Endowment Commissioner's supervision over temple management even in the absence of due installation and consecration of idol also did not help the instant case as it involved express dedication. The *Masjid Shahid Ganj* ruling²⁷ by the Privy Council had not recognised immovable property as juristic person apprehending non-application of land/property rules on the holding of the juristic person. The court in *M Siddiq* said, "The conferral of legal personality on corporeal property would immunise property not merely from competing title claims, but also render vast swathes of the law that are essential for courts to meaningfully adjudicate upon civil suits, such as limitation, ownership, possession and division, entirely otiose."²⁸ In addition, religious pluralism under the Constitution did not contemplate specific method of worship giving an entitlement to property. The court also stated, "Religious diversity undoubtedly requires the protection of diverse methods of offering worship and performing religious ceremonies. However, that a method of offering worship unique to one religion should result in the conferral of an absolute title to parties from one religion over parties from another religion in an adjudication over civil property claims cannot be sustained under our Constitution."²⁹ By reasoning on these lines, the court declined to recognise legal personality of either *Janam Bhumi* or of land used for *parikrama*.

Secondly, the court has engaged in an elaborate discourse on *de jure* and *de facto shebais*, their rights and obligations in relation to the idols and the community

22 *Ram Jankijee Deities v. State of Bihar* (1999) 5 SCC 50.

23 *Sir Seth Hukum Chand v. Maharaj Bahadur Singh* (1933) 38 LW 306 (PC).

24 *Madura, Tirupparankundram v. Alikhan Sahib*, (1931) 61 Mad LJ 285.

25 *Sri Sabhanayagar Temple, Chidambaram v. State of Tamil Nadu* (2009) 4 CTC 801.

26 *Chockalingam Pillai v. The Commissioner for Hindu Religions and Charitable Endowments (Administrations Department) Madras*, AIR 1971 Mad 405.

27 *The Mosque, Masjid Shahid Ganj v. Shiromani Gurdwara Parbandhak Committee, Amritsar*, AIR 1940 PC 116.

28 *Id.*, para 201.

29 *Id.*, para 203.

of devotees. Being human agencies to help, defend and manage the properties of the idols and execute the activities therein, their role and responsibilities are significant. *De jure shebait*s have the exclusive right to represent the idols in suits and bind the idol by their action, but do not have competence to harm the interests of idols by maladministration.³⁰ In case of misuse of office or maladministration, under section 92 of Code of Civil Procedure, 1908 they can be removed or new scheme may be formulated through a representative suit. To be qualified as *de facto shebait* the aspirant should conform to the standards of genuine interest, long association and real control over management.³¹ When both the types of *shebait* position are not prevalent, a genuine worshipper with continued association and interested in benevolent outcome may file suit on behalf of the idol as its next friend.³² In the instant case, the claim made by the Nirmohi Akhara for management and charge of idol in the position of *de facto shebait*s was not established on the basis of evidence. Their position as *pujaris* and providers of religious service in the locality did not amount to *shebait* at all. Further, the suit filed by them was barred by lapse of limitation period as there was no continuing wrong but denial of access to the place was absolute. In this circumstance the plaintiff in suit 5, genuine worshipper as next friend of the idol, was entitled to represent the idol, who is a perpetual minor in the eye of law.

Thirdly, the court dealt with the concept and practice of waqf by user. Long, continuous and exclusive use by the Muslims for charitable or religious purpose gives scope for waqf by user.³³ In the circumstance of the case, the plaintiff in suit no. 4, the Central Sunni Waqf Board was not considered as satisfying the requirement of exclusive and continuous use. Applying the evidentiary rule of preponderance of probabilities, the court found the claim of the Hindus better established than that of the Waqf Board.

30 *Id.*, para 372. A *de facto shebait* is vested with the right to manage the debutter property and bring actions on behalf of the idol. A bona fide action for the benefit of the idol binds it and its properties. As compared to a *de jure shebait* whose rights can legally be traced to a deed of endowment, a *de facto shebait* is vested with the right by mere possession and exercise of management rights. The protection of the idol's properties is at the heart of this extraordinary conferral of rights.

31 *Id.*, para 401: A claim of rights as a *de facto shebait* must be substantiated with proof that person is in exclusive possession of the trust property and exercises complete control over the right of management of the properties without any let or hindrance from any quarters whatsoever. For all practical purposes, this person is recognised as the person in charge of the trust properties.

32 *Id.*, para 339 "There may arise a situation where a shebait has been derelict in the performance of duties, either by not taking any action or by being complicit in the wrongful alienation of the endowed property. In such a situation, where a suit is instituted for the recovery of the deity's property, the action is against both the shebait and the person possessing or claiming the property in a manner hostile to the deity. The remedy for an action against mismanagement simpliciter by a shebait can be found in Section 92 of the Civil Procedure Code 1908."

33 *Id.*, para 745: "The law recognises that where, since time immemorial, worship has been offered at a land with a mosque, the land is presumed to have been dedicated for a religious purpose and even absent a dedication, is waqf by user. However, this may not be extended to the extinguishment of competing and established religious rights of another community in the same property particular in the face of the evidence noted above."

Fourthly, preference to the collective body like trust rather than recognition of rights of individual litigant is clear when the court gave a relief of transfer of disputed land and other acquired land by the Central Government to a registered trust. Citing from *Deoki Nandan* case, the court had pointed out, “When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty.”³⁴ The court directed that in the scheme of management or body of trust appropriate representation may be given to the Nirmohi Akhara.

Finally, equity has been relied upon as a substantive principle of doing complete justice under article 142 of the Constitution. Accordingly, the court ordered the central or state government to grant five acres of land at appropriate place in Ayodhya to Sunni Waqf Board for construction of mosque in the background of unjustified demolition of the disputed structure.

III LAW RELATING TO REGISTERED SOCIETIES

The extent of power of Registrar of Societies under Karnataka Societies Registration Act, 1960 to regulate the activities of registered societies is sometimes a point of controversy. In *BDA Employees Welfare Association* case,³⁵ the order issued by the registrar under section 25 of the Act directing the petitioner not to take any major decision was held to be *ultra vires* of the Act as no such power was conferred under the law. Further the action of the registrar was not preceded by conducting inquiry. In *Badri Prasad Madhyamika Vidyalaya* case the deputy registrar cancelled the renewal certificate without deciding the preliminary matter whether renewal is maintainable and what procedure shall be followed as per the directions of the high court in its earlier proceeding. The court held the cancellation as arbitrary and erroneous.³⁶ In *Janardan Gulabrao Moon* rejection of registration of a society on the ground that it used ‘Rashtriya’ in its title was upheld as a reasonable restriction as it gives an impression of state sponsorship.³⁷

The list of members in any registered society is important for conducting fair election and various activities of the society. As decided in *Yug Chetana Shikshan Sansthan* case,³⁸ when the list submitted by any society is approved or modified by the assistant registrar of societies under section 4-B of the Societies Registration Act, 1860 in an arbitrary manner, without application of mind or hearing or scrutiny, the high court can issue writ of *mandamus* to the officer for immediate modification after due hearing and insisting on the parties to cooperate. In *Madarasa Arabia* case,³⁹

34 *Deoki Nandan v. Murlidhar*, 1956 SCR 756.

35 *DDA Employees' Association, Bangalore v. Registrar of Societies, Bengaluru*, AIROnline 2019 Kar 943.

36 *Badri Prasad Madhyamik Vidyalaya Parihar v. State Of Uttar Pradesh*, AIROnline 2019 All 1190.

37 *Janardan Gulabrao Moon v. State of Maharashtra*, AIROnline 2019 Bom 40.

38 *Chairman, Yug Chetana Shikshan Sansthan v. State of UP*, AIROnline 2019 All 414.

39 *Madarasa Arabiya Ahle Sunnat Nurul Ullom v. State of Uttar Pradesh*, AIROnline 2019 All 1417

where the names of nine new members were added by a manager of the society without informing the existing 51 members who were in the approved list of members in violation of the memorandum, and the list of 60 members was notified by the assistant registrar, the High Court of Allahabad quashed the list. It directed the deputy registrar to prepare a tentative list after going through details required for the purpose of bye law, publish it in local news papers having wide local circulation, call for objections and hear or consider them, and then finalize the list.

Supervising the electoral process to the position of office bearers of society ensuring a free and fair manner is a responsibility cast upon the deputy registrar of societies under the Uttarkhand law. When the deputy registrar directs the office bearers not to hold election when the election is notified by the parties, the aggrieved parties sought high court's intervention. The court ordered for monitoring election by the deputy registrar who subsequently reports that office bearers were chosen in an unopposed manner and refers the matter to the prescribe authority. The act of reference to prescribe authority rather than actual supervision was questioned in the high court. The court in *Vibha Bhatnagar* case⁴⁰ quashed the order of reference to prescribe authority. The case pointed out the illegality in omission to exercise power and function of the registrar.

One of the menaces in the life of societies is ignoring the mandates of the law insisting on annual general body meeting, scrutiny and approval of the audited account statement, acceptance of the annual report after due deliberation and conducting election for office bearers, if any. In fact, annual general annual general body meeting is a crucial forum for democratic participation and control by the common members. In *Rajya Vokkaligara Sangha* case,⁴¹ under section 27 –A (1) (a) of the Karnataka SRA, 1960 the state government appointed an administrator in view of non conducting of annual general body meeting and non submission of audited account statement for seven years. The provision did not expressly require prior hearing before appointment. Further, it was a temporary arrangement until election of office bearers under the supervision of the administrator. The facts of the case reveal suppression of account, pilferage of huge amount of money collected from medical students of the Sangha's college and gross abuse of power by the directors. The High Court of Karnataka rejected the claim for hearing before appointment of the administrator, and upheld the government's order in the circumstance of the case. The court emphasised the need for love for God (*daiva preeti*), fear of sin (*papa bhiti*) and morality of collective life (*sangha neeti*) among the elected office bearers of society and observed:⁴²

Unfortunately, the recent developments not only in the petitioners' Sangha, but also in any other Society, the persons who want to become Members of a particular Sangha or Society, try to become Members only to improve their wealth, earn name and fame. Therefore, it is high

40 *Vibha Bhatnagar v. State of Uttarkhand*, Special Appeal No. 74 of 2015, D/- 21/11/2019; AIR 2020 Utr 22.

41 *Rajya Raita Vokkaligara Sangha v. State of Karnataka*, AIR OnLine 2019 Kar 69

42 *Id.*, para 52.

time for the members of a particular Society to elect a reasonable personality, who can achieve the goal and object of a particular Society. Then only effective steps can be initiated to bring forward a particular Society. Otherwise one day, the concerned Society will be ruined by the Members, who aspire for wealth, name, fame, power and money which should not be encouraged.

Strikes as methods of persuasion cannot be claimed in exercise of freedom of association resulting in violation of rights of other citizens. Thus societies like bar associations have no right to go in strike. The High Court of Uttarakhand in *Ishwar Shandilya* observed, "Strikes are in violation of the law laid down by the Supreme Court, and amount to contempt. The office bearers of the Associations, who gave the call for the strike, cannot avoid their liability for contempt. Every resolution to go on strike, and to abstain from work, is per-se contempt."⁴³

IV FOREIGN CONTRIBUTION REGULATION ACT, 2010

In the *Institute of Public Health v. Union of India*,⁴⁴ the Central government acting under Foreign Contribution Regulation Act, 2010 refused to renew the license given under the FCRA 1976 to the petitioner Non Profit registered society ever since 2015. The non-profit society was providing health service and academic research and the denial of renewal had the consequence of freezing the bank account of the society which adversely affected the livelihood of employees. For not renewing the registration no speaking order was given except one-line statement that the refusal was in the public interest. The High Court of Karnataka held the order as cryptic in nature, suffers from perversity and cannot be sustained in the eye of law for want of speaking order. Following *Victoria Memorial Hall* case,⁴⁵ the court directed the union government to consider the renewal application afresh and give a speaking order.

In *Sulo C Daniel*,⁴⁶ the High Court of Madras noted the differences between the FCRA 1976 and FCRA 2010 in the matter of opportunity for compounding and the scope of offences. The case involved prosecution for suppression of receipts in the designated bank account, conspiracy and violation of FCRA. The petitioner claimed that there was inadequate opportunity for cross examining and representing before the trial court. The court disposed the matter giving directions for recalling the witnesses for cross examination at the petitioner's cost without delay.

In *Arvind Khanna* case,⁴⁷ the high court in its revisional jurisdiction had quashed FIR against the petitioner on the ground that the foreign contribution of Rs 9 crores received was by way of gift from his father and was through a foreign company which had held certain funds on behalf of the said father and that the income tax authorities had taken into account the said amount for assessment. The Supreme Court, in appeal against the revision order, stated that the high court was in error in holding that there

43 *Ishwar Shandilya v. State of Uttarkhand*, AIR OnLine 2019 Utr 496.

44 AIROnline 2019 Kar 149.

45 *Victoria Memorial Hall v. Howrah Ganatantrik Nagarik*, (2010) 3 SCC 732.

46 *Sulo C Daniel v. State represented by Inspector CBI*, AIR OnLine 2019 Mad 176.

47 *Central Bureau of Investigation v. Arvind Khanna*, AIR OnLine 2019 SC 1390.

was gift and no violation of FCRA. The court ordered for continuation of the prosecution from where it was stopped.

In *Advantages India* case⁴⁸ decided by the High Court of Delhi, there is an extensive discussion of the issues relating to constitutional validity of the FCRA. The case involved challenge to the constitutional validity of the FCRA 2010. Facts of the case disclose receiving of huge amount (Rs 92 crores) as foreign contribution by a registered society having FCRA license/registration, and having objectives such as health and education service to the people and submission of fake, bogus and contradictory bills showing utilization of the funds. The executive officers of the NPO had incurred enormous travel expenses. The High Court of Delhi rejected all the contentions relating to unconstitutionality of FCRA. It proceeded with the normal presumption in favour of constitutionality of the legislation. *Firstly*, the court held that the practice and policy of confining CBI inquiry to cases where a very high pecuniary value of FCRA violation is alleged is a consistent principle and is not violating articles 14 and 21. *Secondly*, the contention of negative equality by stating that while 13000 cases are investigated by ordinary police and 32 cases are entrusted to CBI for probing is absurd and not convincing, and hence there is no violation of right to equality. *Thirdly*, the Court found no sub delegation of powers. *Fourthly*, court did not agree with the proposition that one who inspects himself shall investigate. *Fifthly*, absence of the provision relating to arrest of the accused person and the classification between cognizable and non-cognizable did not amount to violation of right to equality. The judgment has vindicated worthiness of law in ensuring that in the name of trans-national charities corrupting the political life, incentivising disruption, funding terrorism is averted and simultaneously state power is not abused to suppress the expressional freedom. The court has noticed the presence of adequate inbuilt procedural safeguards.

V A BRIEF ASSESSMENT

It can be gathered from the above survey that the developments in 2019 reflect broadly continuation of the major legal policy of the Non Profit law that law shall facilitate the non profit organisation (NPO) activities, regulate their abuses and remediate the grievances so that rights of parties are adequately protected. The growth of the law in *M Siddiq* relating to legal personality of the idol, rights of shebait and worshippers, and rule of equity and complete justice has brought greater clarity and enabled smooth determination of the case. Insofar as registered societies are concerned, since NPOs are expected to act as schools of democracy ensuring its features in the functioning of the registered society is a major concern of the law. FCRA as a fund facilitating law and a discipliner has the responsibility of ensuring both rule of law and fairness in action against FCRA violators.

48 *Advantages India v. Union of India*, AIR OnLine 2019 Del 1460.