Validity of the Haryana Sikh Gurdwaras (Management) Act, 2014: A Constitutional Analysis

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Abstract

The State of Haryana enacted the Haryana Sikh Gurdwaras (Management) Act, 2014 for management of Sikh Gurdwaras located in Haryana. The legislation has been challenged before the Supreme Court of India as being *ultra vires* to the Constitution of India. In the context of this challenge, the central issue of this paper deliberates upon whether Haryana has legislative competence to enact the impugned legislation.

The legislative competence of Haryana may be questioned; given the fact that there already exists an Inter - State Body Corporation, the ShiromaniGurdwaraParbandhak Committee (SGPC) created by a central legislation, namely the Punjab Reorganisation Act, 1966 for administration of Sikh Gurdwaras.

This paper argues in favour of Constitutionality of the legislation in question. This paper employs a detailed analysis of the pith and substance tests; to argue that the impugned Act is a legislation on a subject mentioned in Entry 32 of the State list in Schedule VII, and limiting the jurisdiction of the SGPC in Haryana is an incidental encroachment on a matter beyond Haryana's legislative competence which does not affect the validity of such a legislation. This paper further illustrates that the provision with respect to the SGPC was incidental, consequential, supplemental, and transitional in nature and Section 72 of the 1966 Reorganization Act which creates the SGPC allows successor States to make separate provisions for them. The paper presents several other set of arguments to demonstrate that in the light of Constitutional principles, principles of statutory interpretation and judicial precedents the Haryana Sikh Gurdwaras (Management) Act, 2014 is a valid legislation and is well within the legislative competence of the State of Haryana.

KEYWORDS: Gurdwaras, Sikh, Constitutional Law, Punjab Reorganisation Act, 1966

Introduction

A constitutional analysis more often than not transcends the contours of constitutional arguments and traces its roots to historical events of utmost significance. Keeping this in mind, a careful glance at the history of Sikh Gurdwara management will reveal a close resemblance between the claims of Sikhs of Haryana in their Haryana Sikh Gurdwara (Management) Act, 2014; and the Sikhs in undivided Punjab, who fought for restoring the management of Sikh Gurdwaras in the hands of the Sikh community, more than ninety years ago.[1]

Until 1920, most Gurdwaras in Punjab were managed by *udasimahants*who traditionally inherited the custodianship of these Gurdwaras.[2] Allegedly, they started

[1]Tan Tai Yong (1995): "Assuaging the Sikhs: Government Responses to the Akali Movement, 1920-25", *Modern Asian Studies*, 29 (3): 655-703.

[2]Tan Tai Yong (2005): *The Garrison state: the military, government and society in Colonial Punjab, 1849-1947.*

to behave like sole proprietors and several malpractices by the *mahants*were reported owing to their narrow self-interests.[3] Members of the Sikh Community resisted the *udasimahants*andwere brutally massacred, but the struggle of the Sikhs against the *mahants* bore fruits when they could finally claim control over Sikh Gurdwaras in the province of Punjab.[4] The ShiromaniGurdwaraParbandhak Committee, a management board created through Sikh Gurdwaras Act of 1925 was entrusted with the responsibility of overseeing the functions of Sikh Gurdwaras in undivided Punjab. The longstanding claim of the Sikhs received the stamp of legitimacy.[5]

In 1966, through the Punjab Reorganization Act, the state of Haryana was created[6]. Section 72[7] of this Act, provides for the transformation of the ShiromaniGurdwaraParbandhak Committee into an Inter – state body corporation, allowing it to function in successor states. Therefore, by virtue of this provision the ShiromaniGurdwaraParbandhak Committee is able to exercise supervision and control over Gurdwaras in Haryana.

In the course of events since 1966, now a major political party in Punjab exercises hegemonic powers over the ShiromaniGurdwaraParbandhak Committee.[8] Members from other states, such as Haryana have little say in the management of Sikh Gurdwaras. On multiple issues, such as Sikh identity[9] and elections[10] to the ShiromaniGurdwaraParbandhak Committee, there have been conflicts between the Sikhs in Punjab and Haryana. The voice of the Sikhs in Haryana with respect to Sikh Gurdwara management has been suppressed by the Sikhs in Punjab owing to the fact that the Sikhs in Punjab controls the ShiromaniGurdwaraParbandhak Committee.

In light of these events and keeping in tune with history, the Sikhs in Haryana demanded a management board exclusively for themselves. A management board that allows them to govern what is theirs, just what the Sikhs in Punjab craved for nearly nine decades ago. Therefore, the Haryana Sikh Gurdwara (Management) Act, 2014 was enacted.

The constitutionality of the legislation has been challenged and Haryana must defend it in the Supreme Court of India, in order to protect their demand with constitutional legitimacy. This paper will analyse the legal situation, and shall ultimately argue in favour of constitutionality of the legislation.

Legislative Competence and Constitutionality

The legislative competence of Haryana to enact the Haryana Sikh Gurdwara (Management) Act, 2014 has been brought under question. The issue whether Haryana possesses the requisite legislative competence is the primary ground of

[3]Ruchi Ram Sahni, Struggle for Reform in Sikh Shrines, Sikh Itihas Research Board, SGPC. Amritsar, 1965, p. 6; Mohinder Singh, TheAkali Struggle, Retrospect, pp. 18-19.
[4] Paul R. Brass, Language, Religion, Politics in North India, p. 283, 84, 311, 312. See Also; Vinod Kumar, Akali Politics in the Punjab p. 31
[5]Section 42, SIKH GURDWARAS ACT, 1925.
[6]PUNJAB REORGANIZATION ACT, 1966.
[7]Section 72, PUNJAB REORGANIZATION ACT, 1966.
[8]YogeshSnehi (2014): "Vicissitudes of Gurdwara Politics", *Economic and Political Weekly, 49 (34)*
[9]Sehajdhari Sikh Foundation v. Union of India, (2012) I.L.R. 1 P&H 347.
[10]Kashmir Singh v. Union of India, (2003) I.L.R. 1 P&H 345

challenge to the constitutionality of the Haryana Sikh Gurdwara (Management) Act, 2014.

According to the Constitution of India[11], the Parliament and the Legislatures of States derive their power to legislate from the Union and State List respectively, provided in Schedule VII[12]. This arrangement can be described to be a division of powers between the Union and the States and a demarcation of legislative terrain assigned to the Parliament and State legislatures.

A dispute with respect to legislative competence is essentially a question, as to who has the constitutional sanction to legislate with respect to a certain subject matter in issue.[13] In the present circumstances, there is a dispute as to the subject matter of the Haryana Sikh Gurdwara (Management) Act, 2014.

The Haryana legislation creates a management board, which is in the nature of a corporation for management of Sikh Gurdwaras within Haryana. On a plain view, this appears to be an enactment with respect to a subject matter mentioned in Entry 32 of List – II as it pertains to incorporation of a corporation, an enactment within the legislative competence of Haryana. However, Sikh Gurdwaras are already being managed by the ShiromaniGurdwaraParbandhak Committee, an inter–state body corporation.[14] This is where the dispute arises because the power to legislate with respect to an inter-state body corporate has been assigned to the Parliament by virtue of Entry 44 in List – I.[15] The Haryana Legislation impliedly curtails the jurisdiction of the ShiromaniGurdwaraParbandhak Committee over the Gurdwaras in Haryana.

Therefore the deeper question to be explored is whether Haryana is competent to do so, within India's Constitutional mechanism. The doctrine of pith and substance is the relevant principle which needs to be considered, to provide a solution to the dispute.[16]

The doctrine of pith and substance is brought to use when the legislative competence of a legislature with respect to a particular enactment is challenged with reference to the entries in different legislative lists, because a law dealing with a subject in one list within the competence of the legislature concerned is also touching on a subject in another list not within the competence of that legislature. In such situations, the pith and substance of the legislation has to be ascertained, which is the true character and nature of the legislation.[17]

This particular elucidation of the doctrine is extremely crucial for the examination of the validity of the Haryana Sikh Gurdwara (Management) Act, 2014. The indispensable question that arises is regarding the true nature and character of the Haryana Sikh Gurdwara (Management) Act, 2014. The enactment creates a management board of the nature of a corporation to administer Sikh Gurdwaras in Haryana. It is an enactment with respect to a corporation and incorporation of a corporation which falls within Entry 32 of List – II. The power to legislate with

[11] Kashmir Singh v. Union of India, (2003) I.L.R. 1 P&H 345
[12] Schedule VII, INDIA CONST.
[13] E.V. Chinnaiah v. State of Andhra Pradesh, (2005) 1 S.C.C. 394
[14] Entry 32, List – II, Schedule VII, INDIA CONST.
[15] *Supra* Note 7; *See Also; Supra* Note 10.
[16] Entry 44, List – I, Schedule VII, INDIANCONSTITUTION
[17] Prafulla Kumar Mukherjee v. Bank of Commerce Ltd., (1946 – 1947) 74 I.A. 23

respect to a subject matter in an entry in List – II is well within the legislative competence of Haryana. Therefore, judged on this ground the legislation seems to be valid.

However, as mentioned earlier it impliedly curtails jurisdiction of the already existing ShiromaniGurdwaraParbandhak Committee. The legislation impliedly is touching upon a subject matter present in Entry 44 of List – I, that is the subject matter pertaining to Inter – State Body Corporations. How does this affect the validity of the Haryana Sikh Gurdwara (Management) Act, 2014? Does it render the legislation ultra vires the Constitution of India? Or in spite of such implied touching upon, the legislation survives the test of constitutionality?

It becomes immensely necessary to understand the doctrine of incidental encroachment[18] to analyse the situation. The doctrine of incidental encroachment delineates that, if it is found that the legislation is in substance on a matter assigned to the legislature enacting that statute, then it must be held valid in its entirety even though it may incidentally trench upon matters beyond its competence, i.e., on matters included in the list within the competence of the other legislature.

This doctrine stems from the principle that courts must make every effort to harmonize two conflicting legislations.[19] It is imperative for the court to reconcile any conflicts between the legislations, and ensure continuance of operation of both legislations. Courts must interpret statutes liberally to achieve this constitutional mandate.[20]

The Haryana Sikh Gurdwara (Management) Act, 2014 by no means is legislating on Inter – state body corporations. Substantially, it is creating a body corporate for management of Sikh Gurdwaras in Haryana. It is only by necessary implication that it is curtailing the jurisdiction of an inter–state body corporation, the ShiromaniGurdwaraParbandhak Committee. The curtailment of the jurisdiction of the ShiromaniGurdwaraParbandhak Committee is nothing but an incidental encroachment on a subject matter beyond the legislative competence of Haryana.

It is a settled principle in Indian constitutional law, that while determining the constitutionality of any legislation such incidental encroachment does not affect the validity of an enactment.[21] Therefore, this paper argues that judged in the light of the doctrines of pith and substance and incidental encroachment, the Haryana Sikh Gurdwara (Management) Act, 2014 is a valid legislation.

Consequential, Incidental and Supplemental Provisions

Arguments in favour of constitutionality of the Haryana Sikh Gurdwara (Management) Act, 2014 can also be located in the Punjab Reorganization Act, 1966[22]. In *Kashmir Singh v. Union of India*,[23] it has been explicitly noted that the provisions of the Punjab Reorganization Act, 1966 are consequential, incidental and

[18] Vijay Kumar Sharma v. State of Karnataka, (1990) 2 S.C.C. 562
[19] Offshore Holding Private Ltd. V. Bangalore Development Authority, (2011) 3 S.C.C. 139
[20] SubrahmanyamChettiar v. MuttuswamiGoudan, A.I.R. 1941 FC 47
[21] D.N. Banerji v. P.R. Mukherjee, A.I.R. 1953 SC 58

[22] State of Bombayv. F.N. Balsara, A.I.R. 1951 SC 318.
[23] *Supra* Note 6

supplemental in nature.[24] The provisions are transitional and aim to provide for any dispute or problematic situation that might arise due to the reorganization of states.

The implication of such a judicial pronouncement is that, the provisions are not intended to be permanent in nature and successor states are at a considerable liberty to create for themselves mechanisms of governance distinguished from those provided temporarily in the Punjab Reorganization Act, 1966.[25] Justice Bali notes, keeping in mind the nature of these provisions that they must be liberally interpreted.[26]

A glaring example of a transitional provision in the Punjab Reorganization Act, 1966 is Section 72[27] itself, which creates the Inter – state body corporate governing Sikh Gurdwaras in Haryana. Section 72 provides that the Inter – state body corporate will continue to function in the state of Haryana *until other provision is made by law with respect to such body corporate*.

The phrase 'until other provision is made by law' indicates, quite clearly that the inter–state body corporate was not intended to function permanently in the state of Haryana. The inter – state body corporate could function in successor states as long as successor states did not create any law with respect to them.

Additional evidence to establish that the inter-state body corporate was only a transitional provision can be spotted in the Punjab Reorganization Act, 1966. The *Kashmir Singh*[28] judgment comments on the structure of the Punjab Reorganization Act, 1966. Chapter VII of the Punjab Reorganization Act, 1966 lists provisions with respect to certain corporations. Sections 67 – 71 provide for specific corporations such as the State Electricity Board or the State Warehousing Corporation.[29] There are provisions in this section for dissolution of these specific corporations. Section 72, which creates the inter–state body corporate, is also placed in chapter VII. A cardinal principal of statutory corporation requires one to interpret provisions in the same light if they are grouped together under one head. Though Section 72 does not explicitly provide for the dissolution of the inter – state body corporate, it does carry a clause that says that the body corporate will function until other provision is made by law with respect to it. Therefore, considering the legislative room provided and interpreting Section 72 in the light of the other Sections in Chapter VII, it can be concluded that the inter – state body corporate can be dissolved and successor states can create provisions for themselves. This conclusion is buttressed by the fact that such Section has not been placed in Chapter VIII.[30]Chapter VIII contains provisions with respect to the BhakraNangal and Beas projects, and they are intended to be permanent arrangements. If the legislature had envisaged the Inter – state body corporate to be a permanent creature, they would have definitely placed it in Chapter VIII.

Therefore, it is argued that the Inter – state body corporate was a supplemental and transitional provision and the state of Haryana does have competence to create a provision for management of Sikh Gurdwaras in Haryana.

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[24]*Supra* Note 10
[25] Supra Note 6, Chapter VII
[26]*Ib*id, Chapter VIII
[27]*Ibid*
[28]*Supra* Note 6
[29]Siraj-ul-Haq Khan *v*. The Sunni Central Board of Waqf, A.I.R. 1959 SC 198.
[30]*Supra* Note 7

Conclusion

The paper has closely examined the doctrines of pith and substance and incidental encroachment, and the legal inferences which can be drawn from transitional, incidental, consequential provisions. Through a scrutiny of the Haryana Sikh Gurdwara (Management) Act, 2014, the paper has sought to establish its true nature and character. It is an enactment which aims to create a management board for governing Sikh Gurdwaras in Haryana. There was no legislative intent to legislate on inter – state body corporations, a subject matter in List – I and is beyond the legislative competence of Haryana. However, the legislation curtailed the jurisdiction of an inter–state body corporate functioning in Haryana. But that does not amount to legislating on a subject in List – I.

This paper has analysed the nature of Section 72, one that creates the inter–state body corporate. Section 72, being a transitional provision itself allows successor states to create separate provisions for management of Sikh Gurdwaras. Therefore the state of Haryana had constitutional sanction to enact the Haryana Sikh Gurdwara (Management) Act, 2014. Combining these two arguments, there cannot be an iota of doubt that the curtailment of the jurisdiction of the inter-state body corporate was an incidental encroachment on a subject matter beyond Haryana's legislative competence; but such incidental encroachment does not affect the validity of the impugned legislation, in this case, the Haryana Sikh Gurdwara (Management) Act, 2014.

Therefore it is finally submitted that the state of Haryana possess the requisite legislative competence and the Haryana Sikh Gurdwara (Management) Act, 2014 is a valid legislation.

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