

**Buddhist Vihares - Their Temporalities, Modes of  
Succession to the Office of Viharadhipathi:  
A Review of Buddhist Ecclesiastical Law.**

***S. Sarath Mathilal de Silva***

*Dept. of Commerce, University of Sri Jayewardenepura, Nugegoda, Sri Lanka*

**Abstract**

*This study examines the Buddhist Ecclesiastical Law in its historical perspective and the current law in relation to Buddhist Vihares and the mode of succession to the office of Viharadhipathi. In this exercise relevant legislation and the case law are analyzed.*

*Buddhist Ecclesiastical law in Sri Lanka has evolved through the past centuries to become a living force, which reveals through examination the inextricable link between Sinhalese culture and Buddhism and the role played by the religion in the growth of the laws and customs of the country.*

*On account of the enormous service rendered by the Buddhist monks towards the stability and progress of the country, the educational and moral enlightenment of the people, prosperity and happiness of the society, the Kings bestowed extensive tracts of lands, on the temples for their maintenance and upkeep which is evident from the Mihintale slab inscription of King Mahinda IV and the Viharas etc.*

*The appointment of chiefs and priests of temples was a prerogative of the king of the Kandyan Kingdom. In keeping with the ancient tradition, according to Article 5 of the Kandyan Convention of 1815, the British government undertook to maintain and protect Buddhism and Buddhist temples. However, later the withdrawal of the British Government from temples affairs plunged the Buddhist temples into a deep crisis. There appeared on the scene, during the 19<sup>th</sup> century, in addition to patriotic laymen a few Buddhist monks of heroic character intent on reviving the nation and its religion. One of such eminent Buddhist scholar was Ven. Hikkaduwe Sri Sumangala Nayaka Thero who established in 1873 the Vidyodaya Pirivena at Maligakanda which gave birth to our University of Sri Jayewardenepura.*

*Temple property and the rights of Viharadhipathi have been regulated by successive Buddhist Temporalities Ordinances passed in 1889, 1905 and 1931. The statute now in force is chapter 396 as amended by the Buddhist Temporalities (Amendment) Ordinance No. 22 of 1980.*

*The infiltration made by the English law of Trust into Sanghika property has hindered the growth of the Sasana and made the Buddhist priest a trustee which subsumes the lay concept of 'possession'. Since a temple exists for the spiritual welfare of the community, it is imperative that the temple becomes a corporate entity so that endowments be made for the benefit of the Sangha and not to an individual bhikkhu .*

*Doubts, difficulties and impediments may have been encountered by Viharadhipathis, Trustees and the Commissioner of Buddhist affairs in the working of an Ordinance which has- been in existence for more than 75 years. Therefore, it is recommended that the subject be fully examined either by a Commission of Inquiry appointed under the Commissions of Inquiry Act or a Presidential Committee.*

### **Key Words**

Buddhist temporalities, Sanshist temporalities, Eccleristical Law

### **Introduction**

This study examines the Buddhist Ecclesiastical Law in its historical perspective and the current law in relation to Buddhist *Vihares* and the mode of succession to the office of *Viharadhipathi*. In this exercise relevant legislation and the case law are analyzed.

The Buddhist Ecclesiastical law in Sri Lanka has evolved through the past centuries to become a living force, which reveals through examination the inextricable link between Sinhalese Culture and Buddhism, and the role played by the religion in the growth of the customs of the country. The original source governing the Buddhist Ecclesiastical law are the Buddhist scriptures, which contain a composite body of rules and regulations with reference to the conduct of a *Sangha* known as *Vinaya* rules (Books of the Discipline) and succession to ecclesiastical property. (Nandasena Ratnapala 2005.1). But the *Vinaya* rules and the rules relating to the administration of ecclesiastical property have been subject to general modifications in keeping with the actual practice of the *sanghika* in Sri Lanka (Buddhist Commission Report 1959). Thus, in several instances it is necessary to look to the actual practice and customs and rather than to the ancient scriptures.

The Lord Buddha's system of controlling *bhikkhus* was purely democratic. (Ven. Walpola Rahula 2003.p7). According to the *Vinaya* rules of discipline, a *bhikkhu* is entitled to four requisites. *Cheevara, Pindapatha, Senasana and Gilanapathi*. From the advent of *Buddha Sasana* there were famous monasteries so that from the beginning of the *Sasana* there was a monastic life in which the enjoyment of

endowments were regulated. From the time of the establishment of the *Sasana* in Sri Lanka during the time of King Devanampiyatissa in the 3<sup>rd</sup> century B.C. the residence of the *bhikkhu* became the centre of the learning and the monastery was the central focus around which revolved the religious, social and cultural life of the community. With the evolution of the monastery, the basic residence of the *lena* (cave) grew institutional proportions as a corporate personality, to play its role in the substances of the *Sasana*. The monastery enjoyed corporate status during the period of the Sinhala kings upto British rule and the State machinery was used to prevent violation of the rules framed by the *bhikkhus* in the *Katikavata*. In a scenario such as this the property of monastery was always considered *Sanghika* (property of the *bhikkhu* community) and even *pudgalika* (private property) of a *bhikkhu* as enjoyed by the *Vinaya* became known as *Sanghika*, which concept is fortunately still retained in section 23 of the Buddhist Temporalities Ordinance of 1931.

Almost from the inspection of the establishment of the *Sasana* in Sri Lanka there were endowments made for the benefit of the *Sasana*, based on the *Dana* principle - a basic tenet of Buddhism. Despite the undertaking of the British administration, encapsulated in Article 4 of the Kandyan Convention of 1815, which guaranteed to all classes in the Kandyan province the safety of their persons and property with civil rights and immunities according to the laws, institutions and customs established and enforced among them, they did not accept the concept and machinery that guided the monastery and imported many of their laws. The British administration interpreted endowments to monasteries as charitable trust property, vested in a trustee. Under the English law of trusts grafted on to Buddhist ecclesiastical laws, the standard was that of a holder of a private property. The British administration sought to make the resident *bhikkhu* the holder of such property, which ran contrary to the rules of the *Vinaya*, which disallowed *bhikkhus* from holding property. This anomaly would not have arisen if the concept of corporate personality of a monastery was retained by the British administration.

The title to the office of a *Viharadhipathi* of a Buddhist temple or the right to control a Buddhist temporalities is an interesting area of study. A Buddhist Temple is generally under the control of a *Viharadhipathi* who is the principle *bhikkhu* of the temple whether resident or not. He has the full control of the fabric of the temple and the resident monks

The rule of succession to the office of *Viharadhipathi* is the *Sisyanu Sisya Paramparawa* rule - where succession devolves from pupil to pupil. This rule applies when it has been so laid down at the original dedication and is presumed to apply where there is no evidence of the original dedication. This can however, be refuted by direct evidence or by evidence of long custom that another mode of succession had been adopted. A different mode of succession is the *Gnathi Sisya* rule which means election by the *Dayakayas* or by the Maha Nayake alone or with the Chapter of

the *Nikaya* to which the temple belonged. The law regarding succession is still not settled and is in a state of flux. Most of the uncertainty in the law is due to the fact that the early disputes which came before the courts were often decided by the judges to whom the concepts on Buddhist Ecclesiastical law, were unknown and parallels were drawn from views in other countries.

### **Buddhist Temporalities - A Historical Perspective**

In the 3<sup>rd</sup> century B.C during the time of King Devanampiyatissa (247-207 B.C) Buddhism was introduced to Ceylon by the Arahant Mahinda, the son of Emperor Asoka. He brought not only the Buddhist religion but also the complete Buddhist culture, (Ven. Walpola Rahula 2003.p 11).

On account of the enormous services rendered by Buddhist monks towards the stability and the progress of the country, the educational and moral enlightenment of the people, the prosperity and happiness of society, kings bestowed extensive tracts of lands, including large and small villages, on monasteries for their maintenance and upkeep. It is evident from the Mihintale slab inscription of King Mahinda IV and the Sanskrit inscription in *Jetavana* that special departments were established for the administration of large monasteries. With increasing wealth and landed property the economy of the monasteries changed, and along with it the way of life of *bhikkhus* began to change further. (*Epigraphia Zeylanica* 1, pp 84-94J By the 10<sup>th</sup> century A. C., the wealth and the temporalities of monasteries had further increased.(Ven. Walpola Rahula 2003 p. 12). The administration of principal monasteries was carried on by State departments established for the purpose. Officials were appointed in charge of different functions, as well as minor servants to attend to even very small duties. But with changing environment circumstances and economic conditions, changing ideologies among the laymen as well as the monks, a new monastic way of life developed in Ceylon.

Buddhist activities were well conducted during the time of the ancient Sinhala kings, because Buddhist temporalities were properly managed and administrated by a department established within the government. In keeping with this ancient tradition, according to Article 5 of the Kandyan Convention of 1815, the British Government undertook to maintain and protect Buddhism and Buddhist temples.

A new Proclamation was issued on the 21<sup>st</sup> November 1818, where certain measures of administration and policy were modified or made explicit. To ascertain which lands were the property of temples, the Government issued a proclamation on the 18<sup>th</sup> September 1819, requiring the registration of all lands which belonged to temples and, by Proclamation dated 21<sup>st</sup> May 1822, the last date of such registration was fixed at 1<sup>st</sup> September 1822. No land not registered by that date would be granted exemption from taxation as temple lands. By enforcing registration, the Government also desired to check the danger of spurious dedications of land to temple to avoid taxation. The Proclamation of the 14 January 1826 went further and laid down laws against “fictitious transfers of land to persons in official employed for the purpose of evading taxes

and duties upon such lands". When it was brought to the notice of Government that many lands of *Vihares and devales* had still not been registered, a further Proclamation was issued on the 11<sup>th</sup> December 1827, allowing time till 1<sup>st</sup> December 1828, for the receipt of applications for registration. It was also declared that all lands belonging to the *Vihares* and *devales* which had not been registered on or before 31<sup>st</sup> December 1828, would forfeit the privilege of being exempt from the payment of taxes and titles to Government.

In April 1829, Major W.M G. Colebrook arrived in Ceylon being appointed by a Commission of the king George IV under the great seal to examine "into all laws, regulations and usages of the settlements in the Island and into every other matter in any way connected with the administration of the civil government" He was followed by another royal commissioner, Charles Hay Cameron, likewise commissioned to report upon the judicial establishment and procedure in Ceylon. After an exhaustive inquiry, they presented their reports in 1832. among the far-reaching recommendations they made, one was the total abolition of *rajakariya* of compulsory service and the other the removal of distinctions between the courts of law in the Kandyan and Maritime Provinces. But what concerns us now are their proposals regarding the connection of the Government with Buddhism. One recommendation of the Royal Commission of 1829 comprising W.M.G. Colebrook and C. M. Cameron, in particular affected Buddhism adversely. They disapproved of the interference of government in the Buddhist affairs of the country. This later, among others, led to the withdrawal of the British Government from Buddhist affairs which violated Article 5 of the Kandyan Convention of 1815 and ancient tradition of the kings in the country. The Buddhist Commission Report (1959.Chapter 5) claims that vast extents of temple lands were confiscated by the British Government between 1819 and 1853. and after the withdrawal of the Government from active participation in the administration of Buddhism, this process of spoliation and impoverishment was carried still further by the Temple Lands Registration Ordinance of 1856.

From 1840, the year in which Governor Mackenzie refused to sign the warrants appointing priests to the chief temples, the administration of Buddhist temporalities became more and more confused.(Ven. Walpola Rahula p.69). From that time tenants living on temple lands ignored paying the share of revenue that belonged to the temples. In the absence of any legal power either to appoint or to dismiss a lay trustee, some laymen misappropriated and enjoyed revenues that belonged to the temple. Courts of Law were reluctant to entertain a complaint from a *bhikkhu* until he could legally prove that he was the chief incumbent of the temple-often a difficult task. As there was no legal means of collecting and controlling the revenues of the temple lands, the confusion in Buddhist activities was doubly confounded. On the one hand the lay trustees and the tenants misappropriated monastic revenue, and on the other hand the *bhikkhus* themselves began to use temporalities improperly according to their individual whims and fancies. (Ven. Walpola Rahula p.69). But along with the confusion brought

about by the administration of Buddhist temporalities, the conduct of the *bhikkhus* too became reprehensible. This caused great damage to the peaceful harmony and unity that existed between laymen and *bhikkhus*, inevitably paying the way for the deterioration of Buddhist activities and the decline of Buddhism. (Ven. Walpola Rahula, p 69).

When Buddhism and the Sinhala nation had sunk into the piteously helpless situation under a non-Buddhist alien government, once again there appeared on the scene, during the 19<sup>th</sup> century, a few Buddhist monks of heroic character intent on reviving the nation and its religion. The Ven. Valane Sri Siddartha Maha Thera regarded as a Buddhist scholar at that time in Ceylon, established in 1841 a monastery named Paramadhamma-cetiarama at Ratmalana, a suburb of Colombo, and founded there the Paramadhamma-cetiya Pirivena (monastic college), both of which still flourish. Among the *bhikkhus* who studied at the Paramadhamma - cetiya Pirivena, the center where the present revival of Buddhist learning and culture originated, were the Ven. Hikkaduve Sri Sumangala Nayhaka Thera who established, in 1873, the Vidyodaya Pirivena at Maligakanda, Colombo, and the Ven. Ratmalane Sri Dharmaloka Maha Thera who established, in 1875, the Vidyalankara Pirivena at Paliyagoda near Colombo. Through these two *pirivenas*-Vidyodaya and Vidyalankara-Sinhala literature and Buddhist culture and once again received a new lease of life.

### **The Buddhist Temporalities Ordinances, 1889,1905**

#### **(a) The Buddhist Temporalities Ordinance No. 3 of 1889.**

The British Government, passed an Ordinance in 1889 known as Buddhist Temporalities Ordinance No. 3 of 1889, transferring the control of Buddhist properties in each district to a committee of Buddhist laymen elected by the Buddhist *bhikkhus* and laymen of the area, empowering it to elect the trustees of the *Vihares and devales* in the districts. In addition, a Provincial Committee was appointed to act as a check on these district committee. Such an arrangement might have worked well, but the Kandyan of that time found it too complicated to make it succeed. Many provisions, therefore, of the Ordinance remained a dead letter.

Under this Ordinance, the Island was divided into Provinces, Districts and Sub-Districts. Each Sub- District elected a representative to serve on a District Committee which elected its own President. The District Committee appointed one or three Trustees for each temple. The movable and immovable properties of the relevant temple together with all issues, rents, profits and all offerings made for the use of the temple (but not *pudgalika* offerings) vested in the Trustee's. The Trustee had to keep complete and detailed accounts of the offerings and the rent, issues and profits from movable and immovable property and the disbursements made. The commutation of service due to a temple (including the *Dalada Maligawa*) under the Service Tenures Ordinance,

1870 had to be paid to the Trustee. The accounts Trustee were to be audited and the auditor was required to send a copy of this report to the Provincial Council and a duplicate to the relevant District Court. The Court was empowered to entertain an application by the Provincial Council or any interested person in regard to the accounts and to make an order which it thought proper. The Court was also empowered to prescribe the form in which Trustees should keep accounts. The Trustees were bound to follow the Rules made by the District Committee with the approval of the Provincial Committee.

The District Committee was required to maintain a Register in which prescribed particulars had to be entered and the Governor was empowered to appoint Commissioners (nominated by the Provincial Committee) to aid the District Committee in making inquiry into matters to be entered in the Register. The Provincial Committee of the province in which the district of Kandy was included was required to make rules for regulating the procedure to be followed in the election of the *Diyawadana Nilame* and his removal from office. If any property belonging to a temple had been sold, mortgaged or otherwise alienated to the detriment of such temple, a Provincial Committee was empowered to institute legal proceedings to set aside such a transaction and to recover possession of such property.

Section 48 made it unlawful for any temple and any person in trust, or on its behalf or for its benefit to acquire any land or immovable property of the value of Rs. 50/= or upwards without obtaining a license from the Governor. It also provided that any devise, grant etc, made in contravention of this section would result in the property vesting in the lawful heir/s of the person making such devise etc.

#### **(b) The Buddhist Temporalities Ordinance, No. 8 of 1905.**

This Ordinance was enacted “to amend and consolidate the law relating to the regulation and management of the Buddhist Temporalities of this Island” and came into operation on 01.02.1907. Most of the provisions of the Ordinance of 1889 were reproduced in this statute. The more important additions were as follows :

(a) the establishment of the “*Atamasthana* Committee” for the *Atamasthana* of Anuradhapura. It was required to perform with regard to the *Atamasthana* the duties assigned by the Ordinance to a district Committee and was deemed to be a Committee elected under this Ordinance. The members of the Committee were specified except that “the high priest of *Adam’s Peak?*” was empowered to nominate a Buddhist layman to serve on the Committee (Section 5).

(b) the Governor was empowered to appoint one or more Commissioners “for the purpose of controlling and assisting district Committees in the administration of the funds and property of their temples and to invest in them with all or any of the powers set forth in the Commissions of Inquiry Ordinance (Section 15).

(c) the trustee of the *Dalada Maligawa* was to continue to be styled and called by the title of "*Diyawadana Nilame*". The person holding office and his successors were to continue holding that office during their respective lives or until suspended or dismissed under section 16(1). If the office becomes vacant, the successor was to be elected by the members of the District Committees of the province and district of Kandy, the Mahanayakes of Asgiriya and Malwatte temples, the Buddhist *Ratemahathmayas* as holding office within the revenue district of Kandy and the *Basnayake Nilames* of the same district, (Section 17).

**Present legal framework relating to Vihares and their Temporalities: Buddhist Temporalities Ordinance, No. 19 of 1931 and its Amendments.**

The statute now in operation is Chapter 396 - Buddhist Temporalities Ordinance No. 19 of 1931 which came into operation in 01.11.1931. The Ordinance in its preamble states that it is "an Ordinance to amend and consolidate the law relating to Buddhist Temporalities in Sri Lanka". The Ordinance was amended from time to time by Ordinance No. 19 of 1931 No. 9 of 1940, No. 14 of 1941, No. 32 of 1947, No. 22 of 1955, No. 11 of 1968, No. 34 of 1973 and No. 22 of 1980.

The previous Ordinances were administered directly by the Governor. But, the instant Ordinance was to be administered by the Public Trustee-an office originally created by Ordinance No. 1 of 1922 and continued by The Public Trustee Ordinance No. 11 of 1931. The functions and duties of the Public Trustee and the Registrar General in regard to Buddhist Temporalities are vested in the Commissioner of Buddhist Affairs with the enactment of the Buddhist Temporalities (Amendment) Act No. 22 of 1980.

Under this Ordinance, for the first time, the administration of Buddhist Temporalities was assigned to a Government Department. Another noteworthy feature of this Statute was that the expressions borrowed from English Ecclesiastical Law were abandoned and apt and correct expressions such as "*Sripadasthana*" for "*Adam's Peak*" were introduced.

In regard to Trustee, the following provisions may be noted:

- i. a change in the persons to attend the meeting for the election of the *Diyawadana Nilame* who unlike previously was to hold office for a period of ten years (Section 7 & 12).
- ii. a change in the method of the Constitution of the *Atamasthana* Committee (Section 9).
- iii. specific provision that the *Dalada Maligawa*, the *Sripadasthana* and the *Atamasthana* cannot be exempted from the operation of the Ordinance (Section 3).
- iv. in the case of a temple which is not exempted, the *Viharadhipathi* may nominate himself or another person as Trustee (Section 10 & 11).

- v. in the case of an exempted temple, the management of the property of that temple shall vest in the *Viharadhipathi* who is referred to as “Controlling *Viharadhipathi*”. (Section 4(2)).
- vi. in certain circumstances, the Commissioner of Buddhist Affairs is empowered to make any arrangement for the safe custody of the property of a temple or to appoint a provisional Trustee. (Section 11 (2)).
- vii. a trustee can hold office for 5 years, but is eligible for reappointment. (Section 12).

In regard to temple property, some significant features are as follows:

- i. in a claim for recovery of any movable or immovable property or for the assertion of title to any such property, the plea of prescription under the Prescription Ordinance is not available except in regard to rights acquired prior to the enactment of the Ordinance. (Section 34.).
- ii. no prohibition has been imposed against a temple acquiring any land or immovable property as was provided for in the two previous statutes.

I would at this stage express a personal view in regard to one provision in the Ordinance of 1931. I do not favour the appointment of a *Viharadhipathi* or any other *bhikkhu* or *samanera* as a trustee. A person who has decided “to go forth from the Home to the Homeless Life of a *bhikkhu*” should not be involved in such worldly matters as the management of plantations and in the maintenance of accounts. It would be an impediment to realizing the goal of final deliverance as pointed out by the Buddha.

The control of the temporality had been regulated by successive Ordinances passed in 1889, 1905 and 1931. Under the legislation of 1889 the control of Temporalities was more or less in the hands of the *Viharadhipathi*. The statute of 1905 replaced him by a lay trustee under the supervision of District Committee. The Ordinance of 1931, however, gave him the option of nomination of himself or a lay trustee and replaced the District Committee by the Public Trustee and Advisory Committee. There are however, a few temples such as the *Temple of the Tooth* and the *Atamasthana* of Anuradapura to which special provisions applied. Where the nomination has not been made or there are disputes as to the person who may make a nomination, the Public Trustee - now Commissioner Buddhist Affairs can make a provisional nomination.

The temporalities of all temples not exempted from its provisions vests in the trustee or controlling *Viharadhipathi* in whom the properties vest and who receives the income which has to be applied in terms of the Ordinance. Leases of temple property cannot be made except as provided and the Court may set aside improvident leases. One of the gravest abuses in the administration of the

temporalities was the grant of long leases made by the *Viharadhipathis* or trustees to individuals or foreign companies upon terms which were to the prejudice of the temples. Legal provision was made both in the Ordinance of 1905 and that of 1931 to cancel such leases even where they were made before the enactments. In many cases such leases have been cancelled or reviewed. Sale or other alienation of immovable property is valid unless it is the sale of a *Paraveni pangu* or a sale in execution after notice to the Public Trustee. Another check and balance is the provision that a claim for the recovery of any property movable or immovable is not barred by the Prescription Ordinance.

The property which belongs to a temple is *Sanghika* property. That is property dedicated to *Sangha*. Of the dedication there may be direct evidence but more often it is presumed from long use or custom to be temple property. Dedication is a religious ceremony and the form which the ceremony takes has been reproduced in certain cases.

The property which a priest owns in his own rights is called *pudgalika* property. This ownership was in its origin confined to requirements needed for his personal use. But in actual fact, some priests acquire property for their exclusive personal use. Such property unless alienated by them during their lifetime is deemed to be the property of the temple to which they belonged. This provision does not apply to his inherited property, and applies even when there has been a disposition by Last Will or Testament.

The legislation of 1931 introduced an important change when it provided for the registration of *bhikkhus* and the maintenance of registers. There was no earlier statutory requirements to this effect. The ecclesiastical practice has been to keep a register (*lekam mitiya*) in loose leaf of the ordination or *Upasampada* ceremony of *bhikkhus* for the information of the Chapter of the *Nikaya* of which they were members. The Act was enacted that a *bhikkhu* whether or not on ordination should make a declaration in a presented form in duplicate and duly countersigned and forward the two forms to the Registrar General. This officer kept one for his own file and forwarded the other to the Maha Nayaka of the *Nikaya* to which the *bhikkhu* belonged. In the event of any change or modification of the particulars, it is the duty of the Maha Nayaka to inform the Registrar General so that he may make the same entry in his own register. A *bhikkhu* whose name does not appear in the Registrar General's register but passes off as a *bhikkhu* is guilty of a criminal offence. The register kept by the Registrar General is *prima facie* evidence of the facts contained in the register in all courts for all purposes.

A temple up to 1815 enjoyed corporate status and enjoyed independent existence under State patronage and protection. The British administration was concerned with problems of endowments of temples. According to English Law concepts of trust property, these endowments were charitable trust property vested in a trustee. This concept which was grafted on to the *Sanghika* property of the temple sought

to make the resident *bhikkhu* the holder of such property of the temple as trustee and designated him 'incumbent'. If a *bhikkhu* is to be saved from the need to administer the temporalities of the temple, which violates the tenets of the *Vinaya* a temple must be given corporate personality and the concept of an individual trustee must be done away with, so that the trustee is vested in the corporation sole which is the temple, with the right to sue and be sued in any court of law. Once the concept of individual trustee disappears, the temple will be free of the encumbrances of the law and be strong enough to give spiritual guidance to the lay community which is its paramount duty.

### **Case Law**

The principles applicable to Buddhist temporalities and succession to the office *Viharadhipathi* have been to a considerable extent investigated and analyzed by the superior courts in Sri Lanka, namely the Supreme Court and the Court of Appeal. Therefore it is advisable that they all be collected with a view to formulating a Code on the subject. It is useful at this stage to record some of the important judgment by our superior courts.

*Ven. Omalpe Dhammapala Thero v. Rajapakshage Peiris and Others* (2004) case decided by the Supreme Court concerned a declaration of title to a land as temple property. The plaintiff instituted action in the District Court for a declaration of title to the land in dispute viz, an undivided 2/3 of the land as the Trustee of Sri Nagarama temple, Kandebedda and for the ejectment of the original 1<sup>st</sup> defendant. The said land had been sold by a Crown Grant dated 06.02.1921 to the then incumbent of the temple Medhanakara Therunanse in trust for the Kandebedda temple. The original 1<sup>st</sup> defendant claimed the land by prescription. The plaint was filed on the basis that the said land was temple property. Section 20 of the Buddhist Temporalities Ordinance ('the Ordinance') provides that all property appertaining to or appropriated to the land use of any temple and all offerings made other than *pudgalika* property offered to the exclusive use of an individual *bhikkhu* shall vest in the Trustee or controlling *Viharadhipathi* for the time being, of such temple. Section 23 of the Ordinance provides that *pudgalika* property if not alienated by the owning *bhikkhu* during his life time be deemed to be property of the temple to which and *bhikkhu* belonged unless such property has been inherited by such *bhikkhu*. The District Judge dismissed the action on the ground that the land in suit was not *Sanghika* property i.e. a gifted after a ceremony according to the *Vinaya*.

After hearing the case the Supreme Court held as follows:

1. A temple could possess *Sanghika* property, *pudgalika* property and property which is neither *Sanghika* nor *pudgalika* property but could be treated as temple property.
2. A temple is an institution *sui generis* which is capable in law of receiving and holding property. It has the attribute of a corporation for the purpose of acquiring and holding property.

3. A temple could acquire property by the ordinary civil modes of acquisition without a ceremony conducted according to the *Vinaya*
4. The property in suit was in any event temple property purchased or granted for and on behalf of the temple and the title to the said property devolved and vested in the temple on the death of Ven. Owitigama Dhammananda. .

The concept of '*Sanghika*' property and '*gihi santhaka*' (lay property) was considered from the beginning of the 20<sup>th</sup> century in *Wickramasinghe v. Unnanse*. (1921) In this case it was decided that it is by a gift that a temple or any other property can become *Sanghika* and the very conception of a gift requires that there should be an offering or dedication. Until a dedication takes place, the temple property remains '*gihi santhaka*' (lay property). This dedication may take the form of a writing or may be verbal, but in either case it is a formal act, accompanied by a solemn ceremony in the presence of four or more priests who represent the '*soma sangha*', or the entire priesthood. A dedication may be presumed in the case of a temple whose origin is lost in the dim past. This view was accepted and followed in *Wijewardana v Buddharakkita Thero* (1957) where it was held that a Buddhist *Virhara* or temple is not a juristic person and cannot therefore receive or hold property. Any property given to the *Sangha* must be dedicated in the manner prescribed in the *Vinaya*. Then and then only can it become *Sanghika* property. Although property can be given to the *Sangha* it would be done only as *Sanghika* property and also in accordance with the customary mode of dedication. In the Privy Council decision in *Rev. Mapitigama Buddharakkita Thero v Wijewardana*, (1960) it was held that section 20 of the Buddhist Temporalities Ordinance, which vests all property belonging to a temple in the trustee or controlling *Viharadhipathi* of that temple, applies only to *Sanghika* property which has been dedicated to the priesthood as a whole with all the ceremonies and forms necessary to effect dedication.

A similar view was taken in the case of *Kampane Gunaratne Thero v. Mawadawila Pannasena* 77zero. (1998) In that case the plaintiff sued the defendants for a declaration that he is the lawful *Viharadhipathi* of the temple known as Mahagama Rajaramaya, for the ejection of the defendants from the temple premises and for recovery of possession of the same. The temple was constituted on an allotment of Crown land which had been leased to the trustees of a Buddhist Association for the purpose of constructing a Buddhist temple and dedicating it to the *Sangha* after which it was stipulated that the lessor will issue a fresh lease of the land for 99 years in favour of the trustees or the controlling *Viharadhipathi* of the temple. The temple was constructed and a deed 'of dedication' was executed with the approval of the Government Agent and the Commissioner of Buddhist Affairs. The deed appointed the plaintiff as the *Viharadhipathi* of the temple. It was held that the fact that a deed 'of dedication' was executed with the full authority of the state did not by itself, render the temple a *Sanghika Viharaya* which was the basis of the plaintiff's action. The Court took the view that a mere claim to the office of *Viharadhipathi* independently of the title to the

temple and temporalities is untenable. Moreover it was held that as the deed 'of dedication' had not been accompanied by a solemn ceremony in the presence of four or more monks representing the '*Sarva Sangha*' or 'entire priesthood' as prescribed in the *Vinaya*, the temple and its property did not become *Sanghika* property and that the title to the property remained with the State. In other words the property remains '*gihi santhaka*'. G.P.S de Silva, C. J. after considering the aforementioned aspects stated that, 'The essence of a valid dedication is that the property must cease to be '*gihi santhaka*', the dedication must be in terms of the *Vinaya*'\

In *Rev. Oluwawatte Dharmakeethi Thero v. Rev. Kevitiyagala Jinasiri Thero* (1978) it was held, that, the plaintiff could not succeed in that case unless he proved that the premises in question was *sanghika* as he could not claim to be the *Viharadhipathi* of *gihi santhaka* lands. It was also held that the dedication is a *sine qua non* for premises to become *Sanghika* and the mere fact that a temple has been given to the *Sangha* does not make it *Sanghika*. It must be dedicated in the manner prescribed by the *Vinaya* to become *Sanghika*.

The Supreme Court in *Charles v Appu* (1914) discussed the legal aspects pertaining to *Sanghika* property in detail. Discussing the position of *Sanghika* property, De Sampayo, J. stated that,

“ '*Sanghika*' property is inalienable in the sense that the trustee has no power to dispose of it ..... '*Sanghika*' means no more than property belonging to the entire priesthood, that is to say, to the temple, as distinguished from the private property of the priestly incumbent. In this connection it may be remembered that a temple is a corporation, and often acquires property by the ordinary civil modes of acquisition.

Referring to the decision in *Wickremesinghe v. Buddharakkita There-* (1957) it was stated that,

“It would appear from the case of *Wickremesinghe v Unnanse* that for a dedication to the *Sangha* there must be a doner, a donee, and a gift. There must be an assembly of four or more *bhikkhus*. The property must be shown, the donor and donee must appear before the assembly and recite three times the formula generally used in giving property to the *Sangha* with the necessary variation accordingly as it is a gift to one or more. Water must be poured into the hands of the donee or his representative. The *Sangha* is entitled to possess the property from that time onwards. No property can become *Sanghika* without such a ceremony”.

It was stated that the procedure laid down in *Wickremasinghe's case* (1921) for giving property to the *Sangha* is in accord with the *Vinaya* (*Kullawagga*, Sixth *Khandhaka* sections 2.4 and 5). However, although repetitively it has been mentioned that, the property acquired by a temple must be *Sanghika* property and that essentially there should be a dedication to the *Sangha* with a ceremony which included pouring water, this ritual seems to be flawed in certain instances.

Referring to such instances, Dr. H.W Thambiah stated that:

In the Sinhalese inscription as *Periya Pulliyankulam* a dedication to the *Sangha* is recorded. There is no mention of the ceremony of pouring water, although it is mentioned in later inscriptions, such as the one at Dimbulagala, where King Abaya, grandson of the King Devanampiya Tissa dedicated a canal to the *Sangha* by pouring water from a golden vase. Much later, in the time of King Kirti Sri Rajasinghe the Asgiri Vihara, which is the second largest of the Buddhist establishments in the Kandyan Kingdom, was dedicated by the King and this dedication is inscribed on a stone. In 1766 Adigar Pilimalalawa dedicated the Parana Vihara in the Asgiri Vihara premises to the priesthood and the inscription there sets out the ceremony that was performed by the King. All that it says is that the King caused Ehelepola to read the contents of an *ola* dedicating Kahawala and Udasgiri to the new *Vihara* and he offered the writing by laying it on the table before the image. In both these grants, there is no mention of the pouring of water at these ceremonies. Much earlier than that, the *Mahavamsa* records the ceremony of planting a branch of the original Bo tree under which the Buddha sat and achieved enlightenment, which is illustrated by a stone sculpture on the lower and middle architraves of the East Gate of the *Sanchi Tope*. The sculptures do not depict, and the *Mahavamsa* does not refer to, the pouring of any water.”

The Supreme Court in *Ven. Omalpe Dhammapala thero's case* (2004) referring to the above quotation stated that there are two methods of making a dedication to the *Sangha* one with a ceremony which includes pouring of water and the other without such a ceremony. It is also worthy of note that the Buddhist Temporalities Ordinance refers to *pudgalika* property belonging to a priest, which could later become the property of the temple. Section 23 of the Ordinance, which refers to *pudgalika* property acquired by a *bhikkhu* for own use, reads as follows:

“All *pudgalika* property that is acquired by any individual *bhikkhu* for his exclusive personal use, shall, if not alienated by such *bhikkhu* during his lifetime, be deemed to be the property of the temple to which such *bhikkhu* belonged unless such property had been inherited by such *bhikkhu*”.

There is no reference made in the Buddhist Temporalities Ordinance, that the *pudgalika* property, of a *bhikkhu* must be acquired, in terms of the *Vinaya*. This clearly enunciates the principle that the property dedicated with a ceremony to make the offering '*Sanghika*' is not the only way for a temple to acquire property.

The decision in *Kosgoda Pangnaseela Thero and another v. Gamage Pavisthinaharmy* (1986) had clearly analyzed the position with regard to a temple in owning property. After an intensive examination of the past and present enactments dealing with Buddhist temporalities, the relevant provisions and the decided cases with specific reference to the requisite capacity of a temple to receive property. Atukorale, J. was of the view that,

“There is therefore legislative sanction for the proposition that a temple can acquire property otherwise than by way of a *Sanghika* dedication. I am therefore with respect, unable to subscribe to the view taken by the Privy Council in *Rev. Mapitigama Buddharakkita Thero v. Wijewardene* (1960) that section 20 of the Buddhist Temporalities Ordinance deals only with *Sanghika* property, that is, property dedicated to the priesthood as a whole with the customary ceremonies appurtenant to such a dedication.

There are decisions where there are certain *dicta* to the effect that a temple is a corporation and can acquire property. In *Charles v. Appu* (1914), De Sampayo, J., stated that, “it may be remembered that a temple is a corporation, and often acquires property by the ordinary civil modes of acquisition”. This view was cited with approval by Atukorale, J. in *Kosgoda Pangnaseela Thero and another v. Ganage Pavisthinaharmy* (1986). In that case, it was further stated that,

“On a Consideration there appears to me.... that a Buddhist *Vihara* or temple is an institution *sui generis* which is capable in law of receiving and holding property. The view I have formed is that in the context of past legislation the Buddhist Temporalities Ordinance recognizes a Buddhist temple or *Vihara* as an institution with the attributes of a corporation for the purpose of acquiring and holding property, both movable and immovable”

On a consideration of the totality of the material available, which includes not only the case law, but the relevant past and present legislation, the Supreme Court in *Ven. Omalpe Dhammapala Thero's case* (2004) was of the view that the present Buddhist Temporalities Ordinance recognizes a Buddhist temple as an institution with the characteristics of a corporation which could acquire and hold movable and immovable property by the ordinary civil modes of acquisition.

A temple, according to the Buddhist Temporalities Ordinance, means a place of Buddhist worship and would include the community of the *Sangha*, viz. the entire priesthood. The offerings to a temple could include a rupee coin put into a till box or offerings such as bed sheets, plates, cups etc. for the use of the priests. In each of these instances, the dedication may not be accompanied by a solemn ceremony in the presence of four or more priests who represent the ‘*sarva sangha*’ or entire priesthood with the ceremony

of pouring water. In terms of section 20 of the Buddhist Temporalities Ordinance “all offerings made for the use of such temple shall vest in the trustee or the controlling *Viharadhipathi* for the time being of such temple.”. Furthermore, the Buddhist Temporalities Ordinance provides for situations where an individual *bhikkhu* could acquire property for his exclusive personal use. However, as referred to earlier, section 23 of the Ordinance provides that, *such pudgalika* property if not alienated by such *bhikkhu* during his life time be deemed to be the property of the temple to which such *bhikkhu* belonged unless such property has been inherited by such *bhikkhu*. In terms of section 23 of the Ordinance, in a situation where an individual *bhikkhu* departs from this world, without alienating his ‘*pudgalika* property’ acquired by him during his life time, such property would be deemed to be the property of the temple even though such property would have been acquired without ceremony and dedication in the manner prescribed in the *Vinaya*. Therefore the Supreme Court in *Ven. Omalpe Dhammapala Thero*’s case (2004) held that it is a conclusive surmise that in addition to *Sanghika* and *pudgalika* property belonging to a temple, there could be other property which belongs to the temple but acquired without a ceremony and a dedication in the manner prescribed in the *Vinaya*.

The Court of Appeal in *Balapitiya Gunananda Thero v. Talalle Methananda Thero* (1997) held that the priest who was robbed first where the robbing was on the same day, is senior and is entitled to succeed to the *Viharadhipathiship*. Where a document is admitted subject to proof but when tendered and read in evidence at the close of the case is accepted without objection, it becomes evidence in the case. This is the *cursus curiae*. As it was proved that the plaintiff was robbed first, he is entitled to succeed to the *Viharadhipathiship*. Expulsion of a priest from the *Nikaya* and priesthood cannot be proved by the mere entries in registers. It was alleged that the priest was unaware of his expulsion. Expulsion can never be a unilateral act in view of the consequences it entails. Expulsion means nothing less than the immediate termination of the priest’s life as a *bhikkhu*. Where there is no proof of charges being preferred, of an inquiry and the observance of the *aud alteram rule*, there can be no valid expulsion.

In the case of *Jayananda Therunnanse v. Ratnapala Therunnanse* (1961) Basnayake C.J. observed that it is well-established that the offices of *Viharadhipathi* and *Viharadhipathikari* are not the same. In the unreported case of *Welivitiya Sobitha Thera v. Werapitiya Anomadassi Thera* (1995) G.P.S. de Silva C.J. observed that the question whether the terms of *Viharadhipathi* and *Adikari* refer to two distinct officers or to one and the same officer has to be determined on an interpretation of the document itself.

In *Punnaananda Thero v. Welivitiya Soratha* (1951) it was held that the abandonment by a priest of his right to the incumbency of a Buddhist temple does not require any notarial deed or other prescribed formality, but is a question of fact and the intention to abandon may be inferred from the circumstances. In *Jinaratna Thero v. Dharmmaratana Thero* (1957) it was observed that an intention to renounce

will not be inferred unless that intention clearly appears there from upon a strict interpretation of the facts and circumstances of the case and if the facts and circumstances leave the matter in doubt then the inference to be drawn is that there is no renunciation. Thus, there being no presumption in favour of renunciation of a right the onus is on the party who asserts it to prove facts and circumstances from which it can be inferred. In *Kalegama Ananda Thero v. Makkule Gnanassara Thero* (1999) it was held that there is strong presumption against abandonment of the legal right of a lawful *Viharadhipathi*. Abandonment means desertion of the temple coupled with a clear manifestation of a decision not to attend to the functions and duties of such office.

In *Kusalagnana Thero v. Assaji Thero and Others* (2005) plaintiff Nandarama Thero instituted action seeking a declaration that he be declared as the lawful *Viharadhipathi*. Subsequently the priest disrobed. The person who sought to be substituted was ordained by Nandarama Thero on 12.06.1999. However, Nandarama Thero had disrobed on 01.10.1998. The trial court allowed the substitution. The Court of Appeal held that:

- (1) the test to be applied in deciding whether a Buddhist priest discarded his robes with the intention of renouncing the priesthood is whether the act of disrobing was done (1) voluntarily and (2) with the intention of permanently giving up robes.

*Per Wimalachandra, J.*

“ It appears to me that when the said Nandarama Thero disrobed to obtain a photograph as a layman, to apply for a National Identity Card, definitely his intention would have been to give up robes permanently, it is a voluntary act with the intention of permanently giving up robes”

The Court held that:

- (i) Having given up the intention of leaving the priesthood, and declaring and affirming an affidavit to that effect, he cannot thereafter claim to be a *bhikkhu* by putting the robes again. He ought to go through the procedure of robbing and higher ordination afresh to become a *bhikkhu* again,
- (ii) As Nandarama Thero had disrobed on 01.10.1998, Assaji Thero who was ordained on 12.06.1999 by Rev. Nandarama, cannot claim to be a pupil of the said Thero.

*Diets v. Ratnapala Terunnanse* (1938) concerned a status of the plaintiff to maintain a case for the declaration of title against defendant. Defendant maintained that he was entitled to succeed in his appeal for the reason that the plaintiff has no status to maintain this action and that it should have been dismissed on that ground. The plaintiff came into Court averring in paragraph 3 of his plaint that “this land is *Sanghika* property belonging to the Andugoda Temple”. He sought to vindicate title to in his capacity of incumbent. The Ordinance that applies in this case is

Buddhist Temporalities Ordinance No. 19 of 1931. That is an amending and consolidating Ordinance and applies to every temple in the Island other than those that may be exempted by the Governor by proclamation, either wholly or partially. In this instance, it was not claimed that there had been any exemption by proclamation. This Ordinance proceeds to enact in section 4(1) that the management of the property belonging to every temple “shall be vested in a person or persons duly appointed trustee under the provisions of the Ordinance” unless any particular temple is exempted from that requirement, and in section 4(2) that if a temple is exempted from the necessity to have the management of its property vested in a trustee or trustees, the management of the property of such a temple shall be vested in the *Viharadhipathi*, that is to say, in “the principal *bhikkhu* of the temple” who in that capacity is known as the “controlling *Viharadhipathi*. There was nothing to show that this temple had been exempted from the operation of section 4(1) and consequently it is a temple, in regard to which the management of its property is to be vested in a trustee or trustees. Section 20 of the Ordinance takes the matter a stage further. It vests all property movable and immovable, not merely the management of such property, in the trustee or trustees in those instances in which trustees are required to be appointed or nominated under the provisions of the Ordinance, and in instances in which there is exemption from section 4(1) in the controlling *Viharadhipathi*.

In regard to the institution of action for the recovery of any property belonging to a temple, section 18 of the Ordinance enacts that the trustee can sue as trustee where the law required a trustee, that is to say where exemption has not been obtained under section 4(1), and that the controlling *Viharadhipathi* can sue as trustee where exemption from section 4(1) has resulted in the *Viharadhipathi* being vested with the management of the property under 4(2) and with the property itself under section 20. The plaintiff in the *Dias case* (1938) is not a nominated or appointed trustee. He cannot claim to be the controlling *Viharadhipathi* because he has not shown that the temple has been exempted from section 4(1). The Court held that the plaintiff as incumbent pure and simple cannot maintain this action. In *Terunnanse v. Don Aron*; (1932) Dalton and Drieberig JJ. have held that the incumbent of a Buddhist Temple has no right to maintain an action to recover possession of property which is vested in trustees under section 20 of the Buddhist Temporalities Ordinance No. 8 of 1905.

### Conclusions

1. Buddhist Ecclesiastical law in Sri Lanka has evolved through the past centuries to become a living force, which reveals through examination the inextricable link between Sinhalese culture and Buddhism and the role played by the religion in the growth of the laws and customs of the country.
2. After the establishment of Buddhism in Sri Lanka in the 3<sup>rd</sup> century B.C. during the time of King Devanampiyatissa,” many kings later gifted to temples large

tracts of land. A system prevailed under which priests were almost released from administrative functions of the temple property. According to Article 5 of the Kandyan Convention of 1815, British Government undertook to protect and maintain Buddhism and Buddhist temples. However, withdrawal of the British Government from temple affairs together with subsequent proclamations and laws requiring registration of all lands including temple lands plunged Buddhist temples into a deep crisis. Patriotic citizens and Buddhist monks of heroic character intent on reviving the nation and its religion acted against such acts.

3. It is not possible for an individual to decide what further action should be taken to safeguard *Sanghika* property. Doubts, difficulties and impediments may have been encountered by *Viharadhipathi*\*, Trustees and the Commissioner of Buddhist Affairs in the working of an Ordinance which has been in existence for more than 75 years. Therefore I would recommend that the subject be fully examined either by a Commission of Inquiry appointed under the Commissions of Inquiry Act or by a Presidential Committee.
4. Incorporation of the *Nikayas* and the vesting of the temporalities in the incorporated body is one of the suggestions put forward for the protection of the temporalities of *Vihares*. This too is a matter for consideration by a Commission or Presidential Committee with a view to formulating a scheme.
5. The infiltration made by the English Law of Trust into *Sanghika* property has hindered the growth of the *Sasana* and made the Buddhist priest a trustee which subsumes the lay concept of 'possession'. Thus, it is imperative that the temple becomes a corporate entity so that endowments be made for the benefit of the *Sangha* and not to an individual *bhikkhu*.
6. The principles of succession to the office of *Viharadhipathi* have now been to a considerable extent investigated and analyzed by the Superior Courts of Sri Lanka. They should all be collected with a view to formulating a Code on the subject.

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