Managing a Hindu Temple
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LAW

Managing a Hindu Temple

Meeting the challenges of operating under American laws and tax codes

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In an ideal world, getting together to build an edifice for the worship of God would be a very simple matter of duty and dharma. Until that ideal world is in place, though, we are stuck with one in which the laws of society largely influence the enterprise of temple organization. The better prepared we are to deal with it, the more successfully we can spare ourselves the myriad headaches that often arise for temples in the US today.

The purpose of this article is to alert temple leaders and members to these issues in order that we anticipate the potential problems and thereby avoid or mitigate them. Some of the suggestions here are legal in nature, while many are based on simple common sense. While the discussion centers on US law, most of the same advice applies in other nations. And, naturally, with regard to a particular temple or situation, it is prudent to consult a lawyer familiar with the facts and circumstances of the specific temple group as well as the law of the particular state. Please note that this article should not be construed as legal advice.

Why incorporate the temple?

There are three goals to keep in mind in establishing a temple organization: first, the organizational structure should serve the stability of the temple, so that,

second, the temple can serve the religious and spiritual needs of the community, so that, third, the community can worship and serve God. Of course, there are many models of temple organization, from huge temple complexes to simple shrine mandirs served by a single priestly family, to monastic societies, and everything in between. For any temple, the objectives of holding property and avoiding personal liability of directors are two paramount considerations. Formalizing the entity is critical in doing so. I suggest that incorporation is mandatory.

Incorporation means adopting a formal structure and filing documents with the state's corporation office to recognize the entity. Unincorporated religious organizations are not recommended, as the risk of personal liability is too high, although it may be technically allowed in some states. Specifically, anyone acting on behalf of an unincorporated association may be held personally legally responsible for the debts and liabilities of the association, such as those arising from contracts or personal injuries.

A temple is generally set up as a not-for-profit or nonprofit corporation under the laws of the state. There is no one set of rules governing all the 50 American states and the District of Columbia, so the temple's own attorney will be the best source of information about this, as well as all other aspects of the operation.

Being a nonprofit corporation means that no one can profit personally from the activity of the temple: any economic activity can only be for the tax-exempt purposes of the temple. The fact that no one can profit does not, of course, mean that the temple cannot pay a reasonable compensation for services rendered, even by directors. If the temple ever closes, all of its remaining assets have to go to another similar organization or they will be taken over by the state. A temple also cannot intervene in political campaigns or employ a substantial part of its activity in attempting to influence legislation.

By incorporating, we formalize the institution of the temple, establishing it as an entity with a certain set of relationships and responsibilities to the community. At that time we create a board of directors or trustees whose obligations to the temple and the community are stated and understood. Incorporation gives members (if the temple has members), donors, the congregation and the community a reason to have confidence in the future of the temple. It sets up a fairly predictable decision-making process, and it protects the directors or trustees from personal exposure for the debts and liabilities of the temple. Even if the temple organization

is starting out very small, it should be incorporated from the beginning.

It is also important to take the time to agree on an operating plan that will truly serve the temple's distinct needs. When drawing up these instruments, organizers should work closely with an attorney and be vigilant that nothing is taken for granted. Having rules in place and following them helps to avert conflicts before they arise. The bylaws of an organization are especially important, as they state the details of how it will operate, such as its governing structure, board and officers, election procedures, membership rules and methods for changing all the rules.

The organization need not be set up as a democracy, with each member having an equal say in the election of the board. The Catholic Church, for example, is set up in a way that recognizes its internal hierarchical nature. A Hindu temple set up under a dominant religious leader can adopt a set of rules and guidelines as a part of the constitution or articles of incorporation and bylaws of the temple that recognize the leader's preeminence in deciding matters of both religious teaching and organization. For example, bylaws of this type of temple organization can provide that its religious leader may appoint all or a certain number of members of the board. Or it may provide that the leader has veto power over all or certain decisions of the board, such as those entailing matters of religious principles. It is also possible to set up the temple with a self-perpetuating board that appoints new board members without a vote of the membership.

A very small temple corporation may consist of two or three directors, and a large one may have dozens, depending upon state rules. One individual's say in a small situation is far greater than on a larger board. The character of the temple and the desires of its organizers and supporters will dictate its organizational framework and personality. In this regard, an organization that depends on public support may also find that it must be open to more inclusive decision-making than a smaller or more specialized one that may be able to function via a more exclusive system.

After incorporating, the temple will be required to observe certain formalities of state law, including the very important annual meeting, which must be held, with formally recorded in minutes kept by the secretary. Although this and other rules might seem to be unnecessary to a small organization, compliance is the best way to protect the corporate good standing and public good faith of the temple. Most states also require corporations to file certain basic information periodically to keep their registration current. Failure to do so may result in suspension of the temple's

corporate standing. The state also has the authority to suspend any corporation if it violates state law or policy.

Designate the temple as a "church "?

When they hear the word church, many people do not realize that under American law and tax codes the term includes the institutions of all types of religious faiths, not just Christian. In fact, the designation of a Hindu temple as a "church " declares the truth of our existence as religious institutions on equal par with all others. We enthusiastically acknowledge our status as members of the rich diversity of the American religious life. A religious organization doesn't have to use the word church in its name to be a church. A current example is the Hindu Society of Minnesota, whose new temple suffered extensive vandalism just before it was to open. The temple is a legal church, and its president would occasionally refer to it as "our church " when talking with the media about the attack. The language made it easier for the local people, mostly church-going Christians, to understand the significance of the temple for the Hindus.

After incorporating, most temples in America obtain tax exempt status as a "501(c)(3) organization " (named for the section of the tax code regulating them). The "church " designation can be requested when applying, or later. Section 501(c)(3) status is available to corporations that demonstrate that they are supported by the public for educational, scientific, religious or charitable purposes. Under the 501(c)(3) designation, the temple is exempt from real estate property taxes on land used for religious purposes, from sales tax in some states and can get nonprofit rates for postal mail. As a 501(c)(3), but without the "church " designation, the organization is required to file form 990 with the IRS each year detailing its revenue, expenses and activities, and answering questions about political activities, family or business relationships among directors and employees, etc. The form is public record, available to anyone who requests it. There is also the little-known "corporation sole " structure (see following section).

To be considered a church, the organization must have characteristics such as "recognized creed and form of worship, & distinct religious history; ordained ministers selected after completing prescribed courses of study; literature of its own; [and] established places of worship " (See IRS Tax Guide for Churches and Religious Organizations, http:/www.irs.gov/pub/irs-pdf/p1828.pdf). Although the Sanatana Dharma does not track these features as closely as some other religious

traditions, it is well within the definition, and Hindu places of worship easily qualify as churches. As a church, a temple is not required to file the IRS form 990 annual information returns. A church does not have to disclose finances. And although church records are not entirely inaccessible by the authorities, it is much more difficult for the government to audit a church. The IRS may only initiate a church tax inquiry if the authorities reasonably believe that the organization: (a) may not qualify for the exemption; or (b) may not be paying tax on an unrelated business or other taxable activity.

Board functions and responsibilities

If the temple has a board of directors or trustees, the confidence of the membership in that board depends on its functioning strictly according to its authority. Its highest priority is its fiduciary duty, that is, the special care it must take with the resources and trust of others. Conflicts of interest, self-dealing, willful misconduct, and recklessness are all violations of fiduciary duty and must be strenuously avoided. A system that places great importance on transparency in the board's work will help tremendously.

It is important that the temple board pay close attention to paperwork, for so much depends on written documentation as to the existence, health, financial condition, liabilities and, especially, the accountability of the temple. A board must always act by way of resolutions--proposed, debated and passed--with the secretary keeping a record in the minutes of every step. By clarifying up front what it intends to do through carefully chosen language in a resolution, the board avoids later conflict and misunderstandings, and the action becomes an official act of the board. It is also a good idea to institute and to follow rules for the conduct of board and membership meetings. These may or may not be included in the bylaws but should be formally adopted by the board. At the same time, temple leaders must be flexible in their leadership styles without being capricious or arrogant.

Members of the temple board should recognize that their membership is a matter of service and responsibility, not status or privilege. They must be actively involved in the temple's life, be interested in solving problems and be able to work with the other members and the temple's management. Accountability to the best interest of the temple must always be the goal of each board member. For instance, the temple must always pay its debts, as the payment of debts is part of the purpose of any organization that serves the public trust. This is an example of accountability to

others. The board's accountability to donors and members can be demonstrated through a practice of keeping all books of the temple open for inspection by members and, if necessary, the public, as to salaries, donations, debts, assets, etc. This is an excellent way to preserve the community's trust in the temple's leadership. Especially in these days of public mistrust, a temple can protect its public image by demonstrating that it is open to scrutiny.

It is especially incumbent upon the temple board to keep the administrative and financial books and records open to reasonable inspection by members and in excellent condition to ensure confidence of the membership and the community. Great care should be taken to avoid financial misconduct by the board, and the best way to accomplish this is to keep the process scrupulously accurate and transparent. Receipts must be given for all donations over $250 and should be given for donations over $100.

Above all, it is critical to avoid abusing the eligibility rules for tax exemption. The organization must be organized and operated exclusively for religious or other charitable purposes; net earnings may not go to benefit any private individual, and the purposes and activities may not be illegal or violate fundamental public policy. And while it might appear to be flouted by many highly visible American religious organizations, perhaps the most stringent rule is the prohibition against attempting to influence legislation or intervening in political campaigns.

Accountability of the board to the temple itself is greatly aided by directors' avoiding any activity that might possibly be a conflict of interest. Temples are particularly susceptible here, because those in positions of authority are so eager to help, including assisting in the many business transactions that keep a temple going. Even when this motivation is above reproach, as it generally is, a profit motive can occasionally come into play--or appear to do so (which may be just as dangerous). And, unfortunately, even situations that begin in good faith can go bad as well, if we are not careful.

An example of a conflict of interest would be a situation where Director X, who has volunteered to get the temple roof repaired, gives his brother-in-law's roofing company the contract at a good price. Later it is discovered that another company would have beat that price if it had been allowed to bid. Of course, it's more common for temple members and directors to give selflessly and without regard for gain in matters concerning their temple, but that makes it even more important

that not only the conflict but even the appearance of a possible conflict must be avoided. In the roofing illustration, Director X can avoid the conflict by disclosing his relation to the roofing company, telling the board it needs to receive a number of competitive bids and removing himself from consideration of the contract. Then the board is able to weigh all the factors--including the fact that the brother-in-law is a good friend of the temple--before granting the contract to him or another.

As another illustration that is not so obvious, temple fund-raisers often casually suggest to potential donors that their gifts to the temple might be advantageous for their tax situation, without realizing that they are 1) giving unqualified tax advice and 2) in a position of a direct conflict of interest. The conflict is that their unqualified tax advice is being used to encourage the donation. Solicitors should always tell potential donors to obtain independent tax advice.

If board members act with a reasonable standard of care, most states' laws shield them from personal liability. A simple limitation of liability provision in the temple's charter or articles of incorporation will help in giving a sense of security to would-be directors. The most common kinds of liability in temples are claims for personal injuries occurring on temple premises or accidents involving temple automobiles driven by temple employees or volunteers on temple business. Legitimate claims like these are part of doing business and are covered by the temple's ordinary liability insurance. Unfortunately, it is not unheard of for people to name directors individually in an attempt to speed up a settlement. On the other hand, a board that recklessly hires a manager with a known criminal history could, in fact, incur considerable financial difficulty for the temple if the manager causes harm to, say, a festival bystander. To avoid such possibilities, it is wise to work with the temple's insurance agent and attorney to put into place a complete system of risk management steps for the board.

Actual misconduct or gross negligence of board members is not generally covered by a limitation of liability/indemnity clause in the charter or articles of incorporation. If a board member strongly disagrees with a board course of action to such a degree that he feels the board is no longer acting in the best interest of the temple, it is important to create a clear record of the disagreement in order to avoid potential personal risk. He should have his dissent explicitly recorded in the board's minutes.

It is good to remember at all times the fact that a temple board is supporting the

religious life of its congregation and that it owes a high duty of care to the temple and its resources. This should be kept in mind even to the smallest consideration, like accidentally walking off with a pen that belongs to the temple in one's pocket. Maintaining the highest standards of honesty and integrity in our behavior as temple leaders is a minimal ethical requirement to fulfill our service.

Practical Temple Management

In dealing with management, a few good practices will help keep the temple running smoothly and demonstrate integrity for all to see:

State the manager's authority clearly in terms of the nonprofit purposes of the temple.

Set out in writing job descriptions, ethics rules and conflict-of-interest prevention policies for board members and officers, management, employees and volunteers.

Create and work within an annual operating budget and have regular independent financial audits; annually prepare cash flow and income projections and a financial statement.

Plan fund-raising programs in compliance with the Council of Better Business Bureaus' Standards for Charity Accountability (see http:/www.give.org/standards/newcbbstds.asp).

Follow a set procedure for hiring and evaluating managers.

Devise a procedure for reporting and disclosure by the manager to the board on matters such as employment problems, potential or threatened litigation by anyone, illegal or criminal acts of employees and any violence or threats of

violence.

If a manager is ineffective, the temple board should take steps proactively to help improve his or her performance before the situation becomes difficult. Likewise, if board members are ineffective or impede the work of the board, the best course is always to strive to improve by discussing, asking questions and seeking to find alternatives with the person involved. Of course, the fact that someone frequently has objections might not mean that the person is just being troublesome. Maybe there are significant problems with how the board operates. The board leaders should be open to considering these matters in light of the mission of the temple and treating everyone concerned with the greatest respect and dignity possible. The process and outcome will thus elevate everyone.

It should be remembered that while the courts are extremely reluctant to look into the internal affairs of a church, this privileged status is not absolute. A court will accept a dispute that can be decided on "neutral principles of law, " such as a real estate or contract matter, in which the temple is acting as a business corporation, even if it may concern purely internal matters, but not with respect to issues where the decision depends on doctrinal matters. While they would refuse to examine whether a priest's qualifications made him unsuitable for hiring, they might consider whether his contract allowed for termination without cause. While they would avoid issues regarding disciplining members for doctrinal reasons, they might look into allegations that certain activities violate the rule against assets benefiting individuals. My advice is to stay out of courts as much as possible by using alternative methods of dispute resolution.

Volunteers

Volunteers are a tremendous asset to a temple and should be treated as such. For their benefit--and the temple's as well--volunteers' duties should be carefully delineated. Set forth the expectations of volunteers in writing and give them clear guidelines for the work to be done. The volunteer should know the extent of the commitment in advance so that there is a clear understanding on both sides. Again, for the protection of all, volunteers should be included in the temple's liability insurance and should be advised to speak with their own insurance agents to determine whether they have any personal risk that should be covered under their own policies. This particularly applies for those volunteers who drive a temple vehicle or drive their own vehicle on temple business or who work with children. In

the process of working to carry out the mission of service to the temple, volunteers do, after all, often have quite a lot of contact with the public. It is a good idea for frequent volunteers to consider buying an inexpensive umbrella policy to supplement their ordinary homeowners' liability policy.

Zoning disputes

There can be nothing so contentious as initially obtaining land for a temple. In 2000, President Clinton signed the Religious Liberty Land Use and Institutionalized Persons Act, which gave religious institutions a special status vis-a-vis local land use regulations. In the past, zoning and planning obstacles could be placed in the way of religious groups meeting in everything from private homes to storefronts and rented theaters to large complexes. It often seemed that this treatment was reserved for minority religions, but Christian groups frequently had the same complaint. Under this new law, government units making land use determinations must treat religious organizations at least equally with secular ones, and cannot exclude or limit religious uses just because they are religious.

This law is in response to neighborhood conflicts over land use, often the source of difficult disputes and a huge obstacle for many--if not most--new temple projects. While the law is a valuable aid and certainly will help in intractable situations, it is a better idea to take a positive, proactive approach with activities like neighborhood events, open houses, distribution of sweets to neighbors at festival times, and even facilitated meetings where both the temple body and the prospective neighbors can make their feelings known in order to minimize the potential animosity. Forcing the temple's way into the community through legal means found in this act may result in decades of disharmony with the surrounding community.

Conflict resolution

Numerous relationships exist within a temple, between and among the board, the management, the priests, volunteers, donors, members, temple devotees and the outside community. In each combination there is the potential for disagreements, disputes and full-blown conflict. I strongly recommend that difficulties affecting any of these relationships be handled first through a type of process called "alternative dispute resolution " or "ADR." These are methods other than the system of lawyers

and courts. The most widely used methods are mediation and arbitration.

Litigation, unfortunately, seems to bring out the worst in people, is costly, and tends to freeze people's positions, leaving little chance of reaching a truly amicable resolution or settlement. ADR, on the other hand, is a way of resolving disputes that honors both sides and aims to reach a win-win solution. It is a good idea to include a clause providing for disputes to be submitted to arbitration or mediation in all organizational documents, including bylaws, as well as in all contracts and agreements to which the temple is a party. In this process, which is less formal than litigation, a religious elder or other individual respected by both parties may act as the arbitrator/mediator, or it can be done by a person trained in ADR. The American Arbitration Association (AAA) has offices in most every city and has experienced people who will get acquainted with the basic facts of the situation and then allow both sides to present their case as part of the process of arbitration or mediation. Temple leaders should be comfortable calling upon them to assist when there are disputes, for the mutual benefit of all involved. The AAA has guidelines for "Drafting Dispute Resolution Clauses " at www.adr.org

In conclusion

Temples generally operate without problems. People work together smoothly to serve God and the congregation, but difficulties can arise, so it is advisable to prepare for such difficulties in advance. To protect the assets of the temple is the first responsibility of those involved in temple work. It is thus important to be up front. Don't shy away from these issues because they embarrass you or make you uncomfortable. Set up the rules by which everyone will play and then follow them yourself most carefully. Keep in mind the tremendous responsibilities entailed in operating a public institution and ensure that they will all be adequately met.

As you may know, the US is perceived as a highly litigious society. But there is another reason for stressing, as I have, this strict way of doing business in your temple. It is common for US temples to be built with the contributions of a large number of people and with broad public interest. There is a lot at stake. Notwithstanding the nature of our own personal involvement in temple work, the mission must be unaffected. Remember, the temple is the place where we leave our egos at the door seeking darshan and to worship God.

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Priest-Owned Temples

How a religious organization can be set up with a priest or spiritual leader in sole control

Some states (16 or 17) permit the little-known type of entity called a "corporation sole " for churches, which may provide a good format for some small temples. It gives a single individual who is the head of a religious organization, such as a priest, swami or pandit, certain legal capacities and advantages, especially being able to: 1) hold church property in perpetuity, 2) hold church property without subjecting it to personal debts, and 3) protect personal assets from church liabilities. Essentially, the person is the corporation, and when he dies the successor takes his place. So, the corporation-sole temple can exist in perpetuity, just as a major temple can. Satguru Sivaya Subramuniyaswami, founder of Hinduism Today, advocated priest-owned temples under the corporation-sole structure. He felt that entire priest communities, such as the Sivacharyas of South India, could establish a network of their own temples in the West. Instead of being underpaid and overworked employees, they could run their own independent temples earning both a good income and respect in the process.

Washington is one of the states that allows corporation sole. Their Revised Code 24.12.010 states, "Any person, being the bishop, overseer or presiding elder of any church or religious denomination in this state, may, in conformity with the constitution, canons, rules, regulations or discipline of such church or denomination, become a corporation sole, in the manner prescribed in this chapter, as nearly as may be; and, thereupon, said bishop, overseer or presiding elder, as the case may be, together with his successors in office or position, by his official designation, shall be held and deemed to be a body corporate, with all the rights and powers prescribed in the case of corporations aggregate; and with all the privileges provided by law for religious corporations." Some other states allowing corporation sole are California, Colorado, Hawaii, Michigan and the two Carolinas. See www.geocities.com/corporatesole/for more information.

The corporation sole is the model used by the Catholic Church (and some other churches) in many states. In fact, the concept of corporation sole originated with the Catholic Church as far back as the 4th century. It came into American law via English Common Law, under which it was used by the Church of England. In the Catholic system, the bishop or archbishop, as the head of a diocese, owns the Church property in his capacity as "corporate sole." The Catholic Church is a hierarchical organization, strictly following what is known as canon law, which dictates all powers and duties of Church officials, including how decisions are made, how funds are allocated, and how successors are chosen. This structure has been followed by the Catholic Church for generations, and the Internal Revenue Service is perfectly comfortable with it for those reasons. The hierarchical structures present within many guru and priestly lineages, for example, are clear and traditional and should sustain the requirements of the corporation sole.

The IRS states, "A corporation sole may own property and enter into contracts as a natural person, but only for the purposes of the religious entity and not for the individual office holder's personal benefit. Title to property that vests in the office holder as a corporation sole passes not to the office holder's heirs, but to the successors to the office by operation of law."

It should come as no surprise that this type of entity is subject to tremendous abuse. There have been numerous tax scams over the last several years--and they continue today--that promise to protect individuals' personal assets from tax liability. All the person has to do is to claim to be a leader of his own church and file the corporation sole documents in an approving state (usually for a fee to the person promoting the arrangement, of course). In fact, there is no protection for personal assets from tax liability through the corporation sole, and the government stringently prosecutes those who would avoid paying taxes by these means. They do so in order to enforce the underlying rule that the corporation sole exists only for the benefit of the religious entity.

Because of these problems, a corporation sole will obviously raise a red flag with the IRS. But a temple that adheres in good faith to the rules should not have any problems obtaining approval and maintaining good standing. There is a wealth of information on the web regarding the corporation sole, but beware, much of it is produced by scammers, so read carefully and look to the sources. Also, do not be surprised if your otherwise competent attorney has never heard of this corporate form before you mentioned it!