MIDS WORKING PAPER 250

HINDU TEMPLE, THE BRAHMIN PRIESTS, AND THE LEGAL INTERVENTIONS

FOR SOCIAL JUSTICE IN TAMIL NADU

T KANNAN

MIDS Working Paper #250
December 2025

Hindu Temple, the Brahmin Priests, and the Legal Interventions

for Social Justice in Tamil Nadu

T Kannan

MIDS Working Paper No. 250

Hindu Temple, the Brahmin Priests, and the Legal Interventions for Social Justice in Tamil Nadu

by T Kannan

Published by
Madras Institute of Development Studies
79, Second Main Road, Gandhi Nagar
Adyar, Chennai 600020 India
Phone: 044 2441 1574/2589/9771
pub@mids.ac.in | www.mids.ac.in

Hindu Temple, the Brahmin Priests, and the Legal Interventions

for Social Justice in Tamil Nadu

T Kannan[1]

Abstract

This paper attempts to problematise the judicial interpretations on how the doctrine of the 'essential aspect of religious practices' has forced the judiciary to extract the essence of religious practices of the Hindu temple ritual worship from the religious scriptures of Agama to protect the Freedom of Religion under Articles 25 and 26 of the Indian Constitution to the religious practices of Hindu denominations. When the social justice legislation—the *Archaka* legislation—was passed in the Tamil Nadu legislative assembly in 1970 with the objectives of the abolition of hereditary succession of temple priesthood, and the formalisation of the appointment of temple priests based on educational qualification and training in the Agama Shastras, the Brahmin temple priests opposed it claiming that it was made against the prescriptions of Agama. They further challenged this legislative intervention in the Supreme Court in 1971 contending that it violated their freedom of religion that is protected under Articles 25 and 26. The Supreme Court in its final verdict on the dispute in 1972 gave an ambiguous judgement that the appointment of priests was within the powers of the secular administration and stated that a priest to be appointed in the temples should have all the qualifications stipulated by the Agama. The judicial decisions on this dispute for the last five decades had claimed that they had protected the freedom of religion under Articles 25 and 26, but this paper submits that they had played a major role in upholding the Brahminical notions of ritual worship and religious practices of the temples rather than paving the way for social equality and justice in the temple worship in Tamil Nadu. They helped only the Brahminical forces to convert their notions of religious 'rites' into the secular notions of the 'rights' of religious denominations. The higher judiciary, in its legal rationalisation of Agama in determining the essential religious practices of the Hindu denominations, has transformed it into explicit prescriptions of what had been the latent preconditions for the Brahmanical formulations of priesthood.

[1] Assistant Professor of Sociology, NALSAR University of Law, Hyderabad; Research Affiliate, Madras Institute of Development Studies (MIDS).
Email: tkannan@nalsar.ac.in

Introduction

The Hindu temples were/are not mere places of worship and religious spirituality but also the sites of social hierarchies, political power, and economic interests. Therefore, it is hard to say that temples exist merely as a 'sacred' entity. The sacred-ity of them cannot be understood without their 'other,' the 'profanity' of their material existence in terms of owning landed properties that came through the endowments and the other wealth accumulation and revenue generations from the various other religious ritual activities of everyday worship and the festivals. The profanity of the temples can also be understood in another aspect from what their 'sacred' excludes in terms of 'purity' and 'impurity.' The Brahminical notions of purity and pollution play a vital role in equating 'purity' with the 'sacred' and thereby defining the sacred nature of the deities inside the *Sanctum Sanctorum* as 'pure' and the entities to be prevented from the 'defilement' of the 'touch' of the *Sudra* and the *Panchama*.

The communities of Brahmin priests claim that the temple is a sacred entity and its ritual worship should be largely governed by the Agamic prescriptions. These *Agama shastras* accord the most privileged status to certain sections of Brahmin temple priests among the twice-born *Varna* to enter into the *Sanctum Sanctorum* (Garbhagriha) to perform *Poojas* and the other rituals to the deity, whereas certain other categories of Brahmins and other caste groups of the twice-born Varna were given different ritual spaces within the temple premises, and the caste groups belonging to *Sudra* varna have to stand beyond the west of *Dwajasthambam* (almost near the main entrance of the temple in the outer premises (*Prakaara*) of the temple). The *Panchamas* (Untouchables) are nowhere in this picture because they do not belong to the *Chaturvarna* of the Hindu social order and are not even allowed to enter the main village and town where the temple is always located. Thus, the Brahmanical notions of 'purity' and 'impurity' are widely used to mark the physical spaces for each caste group in the temple in the name of Agamic approval for the ritualistic worship. The demarcation of physical spaces in the temple for the various caste groups is also in a sense point to the differential allocation of social spaces for the caste groups. The differential allocation of social spaces does not remain as a mere 'difference' in social relations and identities inside the temple but largely operates as a system of caste

hierarchy. The caste hierarchy and exclusionary practices in the temples had forced the social reformers to start the temple entry struggles initially and then the struggles to enter the Sanctum Sanctorum of the temples.

Periyar E. V. Ramasamy had started the struggles for entering the *Sanctum Sanctorum* (*Karuvarai Nuzhaivu Porattam*) of the Hindu temples of Tamil Nadu in 1970. Though all the temples were thrown open to all caste groups in the Madras Presidency after the passage of legislation in 1947 called The Tamil Nadu Temple Entry Authorization Act, 1947, and an amendment to it in 1949 is formally categorised as The Tamil Nadu Temple Entry Authorization (Amendment) Act, 1949, and The Untouchability (Offences) Act, 1955, the practices of untouchability continued to exist in various public places. He found that the Temple Entry Act could not really destabilise the ideological hold of the Brahmins over the temples and their ritual practices. The legal intervention of the Temple Entry Act had only opened the temples for all caste groups to enter but stand outside the Sanctum Sanctorum and worship the deities. Periyar felt that the exclusion of all non-Brahmin caste groups from the Sanctum Sanctorum could create an impression that Brahmins are still 'superior' and 'purer' than the other caste groups. As it becomes so clear to him that the Brahmin priests in the temples were making sure that the temple as a religious institution continued to function as an ideological instrument to maintain and reproduce the caste hierarchy, this had forced him to call for the abolition of the exclusive rights enjoyed by the Brahmins as temple priests to perform the rituals in the innermost space of the Hindu temples. He demanded that all Hindus irrespective of their caste status be allowed to enter the Sanctum Sanctorum to worship (Vallavan 2007).

In 1970, Periyar E. V. Ramasamy chose a few major temples to enter their Sanctum Sanctorum and even announced the date (January 26, 1970) of entry. However, the then Chief Minister of Tamil Nadu, M. Karunanidhi, promised Periyar that his government would pass legislation in the assembly to abolish the hereditary succession of priesthood in the temples under the control of the Hindu Religious and Charitable Endowments (HRCE) Department of the Tamil Nadu government, thereby creating the legal space for the legitimate entry of the non-hereditary and non-Brahmin priests inside the Sanctum Sanctorum. He requested Periyar to postpone

the announced struggles, and the latter agreed. Karunanidhi had fulfilled his promise by passing the *Archaka* legislation in 1970 in the legislative assembly as an amendment act to the HRCE Act of 1959. Three important Sections, 55, 56, and 116, of the principal HRCE Act of 1959 were amended to achieve the objectives of the abolition of hereditary succession of priesthood, the formalisation of the appointment of temple priests through a selection of candidates with requisite formal educational qualification and training in the Agama Shastras, and the categorisation of the temple priests as *Ulturai* (internal) servants of the temple governed by uniform rules of the government department, thereby removing all the special privileges hitherto enjoyed by the priests. This legal intervention of M. Karunanidhi was not a mere legal symbolism in terms of socioreligious reforms, which had originated from the struggles of the non-Brahmin movement but a foundation for a structural change in the Hindu caste hierarchy. The legal abolition of the traditional practice of hereditary succession of priesthood would not only have transferred priesthood from Brahmins to non-Brahmin communities but would also have established social equality in the impenetrable exclusionary religious space that was used for centuries by the Brahmins to sustain and justify the caste hierarchy. It would have facilitated legally not just the entry into the Sanctum Sanctorum. It could have also been a secular promise to non-Brahmin priests to dwell in the spaces of nondiscriminatory religiosity and faith.

This legislative intervention of the Dravida Munnetra Kazhagam (DMK) government was challenged (*Seshammal and Others, Etc. Etc. v. State of Tamil Nadu*) under Articles 25 and 26 of the Indian Constitution in the Supreme Court of India in 1971 by the Brahmin temple priests and the religious heads of the various Vaishnavaite and Saivaite religious Mutts. They made a claim that the new amendment act of 1970 violates their freedom of religion that is protected under Articles 25 and 26. The Supreme Court in its final verdict on the dispute in 1972 gave an ambiguous judgement that the appointment of priests was within the powers of the secular administration and stated that a priest to be appointed in the temples should have all the qualifications stipulated by the Agama. As long as this requirement is met, the appointment of someone other than the heir of an incumbent priest is not a violation of the priest's freedom of religion. It stated further that hereditary succession is not mandatory and any qualified candidate in Agamas

can be considered for the priesthood in temples even if they come from outside the hereditary lineage families. At the same time, it observed that any appointment of a candidate outside a particular denomination would necessarily defile the image of the deity inside the Sanctum Sanctorum. Despite the ambiguities, the judgement was very insistent on the strict adherence to the prescription of Agamas in appointing priests from within the specific denominations that are scripturally attached to the temples. This judgement of the Supreme Court had set the precedents for the other two important legal cases on the same issue of the appointment of non-hereditary and non-Brahmin priests in the temples in Tamil Nadu. Though the judicial decisions on this dispute for the last five decades had claimed that they had protected the freedom of religion under Articles 25 and 26, in my view, they had played a major role in upholding the Brahminical notions of ritual worship and religious practices of the temples rather than paving the way for social equality and justice in the temple worship in Tamil Nadu. They helped only the Brahminical forces to convert their notions of religious 'rites' into the secular notions of the 'rights' of religious denominations. In some sense, by taking an insight from Comaroff (2009), it can be argued that the contemporary Brahminism is interpellating itself through juridical reasonings into the law, in doing so, into the governance of religious life of Hindus and paving the way for the expansion of faith-based sovereignty in India.

The Archaka Legislation of 1970 and Legal Contestations

Since the analysis of the Archaka legislation 1970 (Tamil Nadu Act No. 2, 1971) is the central concern of this paper, it is necessary to provide here the basic details about the amendments made to the Tamil Nadu HRCE (TNHRCE) Act, 1959:

> **Unamended Principal Act, 1959, under Section 55:** Appointment of office-holders and servants in religious institutions
>
> (1) Vacancies, whether permanent or temporary, among the office-holders or servants of a religious institution shall be filled up by the trustee in cases **where the office or service is not hereditary.**
>
> **Amended Section 55:** Appointment of office-holders and servants in religious institutions

(1) Vacancies, whether permanent or temporary, among the office-holders or servants of a religious institution shall be filled up by **the trustee in all cases.**
Explanation: The expression '**office-holders' or servants shall include Archakas and Poojaris.**

As seen above, when it was amended, the words 'in cases where the office or service is not hereditary' were removed and were substituted by 'in all cases.' Now, it becomes very clear that the trustees, according to the principal Act, could not have appointed the candidates to the services that were hereditary in the customary practice like *Archakas*, whereas the amendment authorised the trustees to make appointments 'in all cases' including the *Archakas* and *Poojaris*.

(2) Of the **unamended Act of 1959, Section 55:** In cases where the office or service is hereditary, the person next in line of succession shall be entitled to succeed.
(2) Of the **amended Act, Section 55:** No person shall be entitled to appointment to any vacancy referred to in subsection (1) merely on the ground that he is next in the line of succession to the last holder of office.

The amendment Act made it very clear that the appointment of *Archakas* and *Poojaris* is an act of secular decision of the legal authority not dictated by any religious customary practices that demand hereditary succession.

(3) Of the **unamended Act of 1959, Section 55:** Where, however, there is a dispute respecting the right of succession, or where such vacancy cannot be filled up immediately, or where the person entitled to succeed is a minor without guardian fit and willing to act as such or there is dispute respecting the person who is entitled to act as guardian, or —
Where the hereditary office-holder or servant is on account of incapacity illness or otherwise unable to perform the service or is suspended from his office under subsection (1) of section 58, the trustee may appoint a fit person to perform the functions of the office or perform the service until the disability of the office-holder or servant ceases or another person succeeds to the office or service, as the case may be.
Explanation: In making any appointment under this subsection, the trustee shall have due regard to claims of members of the family, if any, entitled to the succession.
(3) Of the **amended Act, Section 55:** Omitted.

Since the amended Act, 1970, legally abolished the hereditary succession of priesthood, the entire subsection (3) of Section 55 of the unamended Act lost its legal validity, which logically leads to the

complete omission of the same in the newly amended Act of *Archaka* legislation.

> **Unamended Act of 1959, Section 56:** Punishment of office-holders and servants in religious institutions
>
> (1) All office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee, and the trustee may after following the prescribed procedure if any, fine, suspend, remove, or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct, or other sufficient cause.
> (2) Any office-holder or servant punished by a trustee under subsection (1) may, within one month from the date of receipt of the order by him, appeal against the order to the Deputy Commissioner.
> (3) A hereditary office-holder or servant may, within one month from the date of the receipt by him of the order of the Deputy Commissioner under subsection (2), prefer an appeal to the commissioner against such order.
>
> **Amended Act of 1971, Section 56:** Punishment of office-holders and servants in religious institutions
>
> (1) All office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall be controlled by the trustee, and the trustee may after following the prescribed procedure if any, fine, suspend, remove, or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct, or other sufficient cause.
> (2) Any office-holder or servant punished by a trustee under subsection (1) may, within one month from the date of receipt of the order by him, appeal against the order to the Deputy Commissioner.
> (3) Subsection: Omitted.

The punishment Section 56 under the amended act of 1970 had removed not only the phrase 'whether the office or service is hereditary or not' from the principal act of 1959 but also removed the legal privilege given to the hereditary office-holders to appeal to the commissioner.

> **Unamended Act of 1959, Section 116(xxiii)**
>
> (1) The government may, by notification, make rules to carry out the purposes of this act.
> (2) Without prejudice to the generality of the foregoing power, such rules may provide for —
>
> Of clause (xxiii): The qualifications to be possessed by the officers and servants for appointment to non-hereditary offices in religious institutions, the qualifications to be by hereditary servants for succession to office, and the conditions of service of all such officers and servants.

Amended Act of 1959, Section 116(xxiii)

> Of clause (xxiii): The qualifications to be possessed by the officers and servants for appointment to offices in religious institution and the conditions of service of all such officers and servants.

The Amendment Act of 1970 under Section 116(xxiii) has rejected the differential provisions of the service conditions and qualifications for hereditary and non-hereditary offices and services and thereby closed any possibility of making different rules both for deciding qualification for the appointment of hereditary priesthood and different service conditions for the temple priests.

Thus, it is abundantly clear from the amended Act that it removed the powers of the hereditary succession of priesthood and opened up the temple priesthood to all Hindus irrespective of caste differences within Hinduism, but the Brahmin priests saw this move as a deliberate assault both on the beliefs and practices of their denominations and on Hindu temple religious practices that had been followed for many centuries in Tamil Nadu.

Hereditary priests and the *Madathipathis* (heads of the religious orders who are associated with the temples) filed twelve writ petitions in the Supreme Court under Article 32 of the Constitution challenging the constitutional validity of the amendment Act (Archaka legislation) of 1970. All these 12 petitioners claimed that this amendment act of 1970 fundamentally violated their freedom of religion secured to them under Articles 25 and 26 of the Constitution. Writ Petitions 70, 83, 437, 438, 439, 440, 441, 442, 443, and 444 of 1971 were filed by the Archakas, and Writ Petitions 13 and 14 of 1971 were filed by the *Madathipathis* to whose Maths some temples were attached. As all these petitions posed common questions, the Supreme Court identified two writ petitions, 13 of 1971 and 442 of 1971, and decided to engage with the arguments that were addressed principally in those two petitions. This case is formally referred to as *Seshammal and Others, Etc. Etc. v. State of Tamil Nadu* (hereinafter *Seshammal* case) in legal practice and research. I discuss briefly here the basic issues brought before the court and the final decision of the court on the dispute in 1972 and two other important cases[2] that are directly connected to the issues

[2] Adi Saiva Sivachariyargal Nala Sangam and Ors. vs the Government of Tamil Nadu and Ors and All India Adi Saiva Sivachariyargal Seva Sangam and State of Tamil Nadu

of the appointment of non-Brahmin priests in the temple, which came to the Supreme Court from the High Court of Madras.

There were two interrelated questions brought before the Supreme Court in the *Seshammal* case: whether the secular authority in the temple administration has the power to make decisions in religious matters like appointment of *Archakas* or not and whether the legal abolition of hereditary succession of priesthood is violative of religious freedom of priestly communities or not. The final verdict answered both questions but left the second question ambiguous. It answered the first question unambiguously that the appointment of priests was within the powers of the secular administration. Regarding the second question, it stated that a priest to be appointed in the temples should have all the qualifications stipulated by the Agama. As long as this requirement is met, the appointment of someone other than the heir of an incumbent priest is not a violation of the priest's freedom of religion. On the one hand, it says that hereditary succession is not mandatory and any qualified candidate in Agamas can be considered for the priesthood in temples even if they come from outside the hereditary lineage families. On the other hand, it observes that any appointment of a candidate outside a particular denomination would necessarily defile the image of the deity inside the Sanctum sanctorum. It opened and shut the door at the same time. The court had accepted the claims of the Appellants that both the temples and the temple priests belong to a particular denomination and follow the particular Agama. It also accepted that the Agamas mandate the priesthood only from the lineage families of the followers of a particular denomination. The lineage families are very local and attached to a specific temple. The abolition of hereditary priesthood may affect only these lineage families of priests, not the entire denomination because the denominations also include other Vedic *Smartha* Brahmins and non-Brahmin caste followers of *Pancharatra agama* and *Saiva Agama* traditions.

In 2006, almost after 34 years, the government led by M. Karunanidhi revived the social reformative measures again to appoint the temple priests from all caste groups and issued the G.O. No. 118, dated May 23, 2006. This decision to issue an executive order instead of filing a review petition challenging some of the earlier decisions of the *Seshammal* case, the government took the lead from its own interpretation and understanding of the

judgement of the same case. As the Supreme Court in the *Seshammal* case had stated, the appointment of priests to the temples was a secular act, and also, it approved the appointment of priests from non-hereditary background but with the specific condition of meeting the requirement of Agama, i.e., specifically the requirement of formal training in Agama Shastra, and the government's point of view was that the appointment of such persons was not a violation of the priest's freedom of religion. Therefore, the said G.O. had stated, 'Any person who is a Hindu and possessing the requisite qualification and training can be appointed as an Archaka in Hindu temples.' An Ordinance (No. 5/2006) followed the G.O. in the same year with the intention of further amending Section 55(2) of the amendment act of 1970 of TNHRCE Act, 1959. The ordinance was replaced by the Tamil Nadu Act No. 15 of 2006, but the said Act of 2006 did not contain the amendment to Section 55(2). To further the cause of opening up the temple priesthood to all caste groups, the government started formal schools in various temple towns in Tamil Nadu to train the non-Brahmin students in Saiva and Vaishnava agamas. In protest, the Brahmins filed a batch of Public Interest Litigation (PIL) against the G.O. and the ordinance on the grounds claiming that the G.O. had violated their freedom of religious practices that was guaranteed by Articles 25 and 26 of the Constitution. These cases are referred to formally as *Adi Saiva Sivachariyargal Nala Sangam & Ors v. The Government of Tamil Nadu* (hereinafter *Adi Saiva* case) and were filed much before the ordinance took the form of the amendment Act 15 of 2006, which had the potential to open up the priesthood to all caste groups within the Hindu fold. Since the amendment Act 15 of 2006 did not bring any amendment to Section 55(2) to replace the ordinance, the validity of the ordinance had lapsed, but the Appellants maintained their petitions in the Supreme Court against the impugned G.O. and the final judgement came almost after nine long years in 2015.

In a significant way, the judgement of the *Adi Saiva* case was very similar to the judgement of the *Seshammal* case. Both completely relied on the scriptural texts of Agama in their juridical reasoning to decide on the right to the freedom of religion under Articles 25 and 26 of the Constitution. The Bench comprising Justices Ranjan Gogoi and N. V. Ramana, to balance the claims and counterclaims of the appellants and the respondent, observed that the legality of the impugned G.O. dated May 23, 2006, would

depend on the facts of each case in the appointment of Archakas. The Court mandated that appointments of Archakas will have to be made in accordance with the Agamas but not in contravention with the constitutional commitment to the principles of equality and freedom. The Court also held that exclusion of qualified persons solely on the basis of caste is not permissible under Articles 25 and 26, but it argued that the exclusion based on the faiths of religious denomination is justifiable because Article 16(5) itself allowed a positive discrimination based on denomination, and therefore, it should not be interpreted as a caste exclusion or as a practice of untouchability. At the same time, it stated that the constitutional legitimacy must supersede all beliefs or practices. Finally, it did not provide any clear decision on the main issue of the constitutionality of the impugned G.O. issued by the government of Tamil Nadu in 2006.

When M. K. Stalin, who led DMK, came to power again in 2021, following the legacy of his father, M. Karunanidhi, he issued several advertisements, dated July 6, 2021, calling for applications to fill up certain posts of Archakas and *Odhuvars* (Chanters in Saivite temples of Tamil Bhakti Poetry of *Panniru Thirumurai)* to the temples of Tamil Nadu. The advertisements were published by the commissioner, HRCE, Government of Tamil Nadu, to appoint qualified priests. The required qualification for the posts was the completion of a one-year certificate course in Agamas, which was offered by the *Agama Patashalas* that were established by the state government. This move of the HRCE Department of Tamil Nadu again forced the community of Brahmin priests and other individuals and organisations that are interested in maintaining the status quo of the temple practices to file a batch of writ petitions in the High Court of Madras under Article 226, praying for issuance of a Writ of Certiorari to call for the records pertaining to the order passed by the third respondent (the Executive Officer/Joint Commissioner, Arulmigu Sree Subramaniya Swamy Temple, Tiruchendur), vide his proceeding in Na.Ka.No. 4361/2020/A2, dated July 7, 2021, and quash the same as illegal, incompetent, and ultra-vires. This is formally referred to as *All India Adi Sivachariyargal Seva Sangam v. State of Tamil Nadu* (hereinafter *All India Adi Saiva*)**.** This time, the writ petitions were filed not against any legislation or an ordinance or a G.O. but against the advertisements of the government of Tamil Nadu issued from the Office of Executive Officer/Joint Commissioner of the Tiruchendur

temple. The decision mentioned in the impugned advertisements of appointing Archakas by those holding certificates after the completion of a one-year certificate course in Agamas from the Agama schools run by the government was objected to by the petitioners on the ground that the secularised religious education undermines the religious significance of the Agamas and the role of Archakas in temple worship in terms of maintaining the customs associated with the ritual worship. They demanded that the appointment of the temple priests should be governed by the customary practices of each temple, as recognised by the Supreme Court in the cases related to the appointment of Archakas. The High Court of Madras gave its verdict on August 22, 2022; the court observed that the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020, regarding the qualifications of servants would not be applicable to the offices of Archakas and Poojaris of the temples that are constructed as per agamas. The Court held that the validity of the impugned rules would depend on the specific facts of each case concerning the appointment of Archakas. The Court acknowledged the right of religious denominations to manage their affairs under Articles 25 and 26 but emphasised that such rights are subject to constitutional limitations. The Court ultimately disposed of the writ petitions with directions to adhere to the principles established in the previous Supreme Court judgements, particularly regarding the identification of temples governed by Agama practices. When this particular case reached the Supreme Court on appeal, it consistently passed orders to the Government of Tamil Nadu to maintain the status quo and not to proceed with the appointment of the priests from the non-Brahmin and non-hereditary background. In the recent order, the court asked the state government to identify the Agamic temples and non-Agamic temples. Once they are identified, the court would not have any objections if the government appointed newly trained non-Brahmin and non-hereditary priests in the non-Agamic temples. In a sense, this affirms the views of the Brahmin priests. This position defeats the very reformative initiatives of the state government because it approves a caste closure created by the Brahmins in the name of freedom of religion to practice one's own denominational faith and belief. The case is still pending before the court. The priests working in the non-Agamic folk tradition temples are largely non-Brahmins. The priests from *Valluva Pandaram* caste, a subcaste of the Paraiyar community,

are serving in the 'Little Tradition[3]' temples of Tamil Nadu even today. Any judicial orders in this context to appoint the newly trained non-hereditary and non-Brahmin priests in the temples of little tradition would certainly reinforce the Brahmanical position that only Brahmins from a particular denomination can be appointed in the Agama-specific temples on the one hand and would end up imposing agamic ritual practices in the non-Agamic temples on the other hand. The gods and goddesses residing in these temples of non-Agamic little tradition do not understand Sanskrit *Mantras* and *Mudras*. In the same vein, the Court can also raise questions about the presence of the Brahmin priests in the non-Agamic temples of little tradition to prevent the Sanskritisation of folk deities and their temple rituals. A case was filed by two Brahmin priests from the Kumaravayalur Subramanya Swamy Temple in Trichy in the Madurai Bench of the High Court of Madras in 2022 seeking either removal or transfer of two non-Brahmin priests in the same temple in 2021. The High Court, in its orders passed on February 24, 2023, in the abovementioned case quashed the appointment of the two non-Brahmin priests in the temple based on the reasoning that the appointments were not made in accordance with Agama.

It becomes very clear from the above discussion from the *Seshammal* case of 1972 to the recent Vayalur Temple dispute of 2023 that the petitioners from the Brahmin communities are forcibly arguing two things: 1) that the appointment of priests to the temples from non-hereditary background is a clear violation of their freedom of religion under Articles 25 and 26 of the Constitution because the impugned formal appointments were and are going against the practices of their religious denominations, which are determined by the *Agama Shastras*; and 2) the secular authority of the state government should not interfere in the matters of religious belief and practices of Hinduism. Ironically, both the Supreme Court and the High Court of Madras have been consistently affirming and reinforcing such claims and formulations of the Brahmin communities through various judgements and court orders on these two very same elements with slight variations. They assert, on the one hand, that the state government has the power to make appointments to various offices and services but, on the other

[3] Folk religious traditions largely revolve around the worship of village guardian deities. Religious practices are not derived from any Sanskritic texts.

hand, insist that the appointments should not go against the constitutionally protected freedom of religion under Articles 25 and 26 that invoke the denominational rights that are defined and determined by the Agamas. The Brahmin community claims that no Agama Shastras approve the priesthood to non-hereditary Brahmins and non-Brahmins. The appointment of a priest in accordance with the Agama here means only the appointment of hereditary Brahmin priests or priests from the same denomination. Therefore, this is not a practice of untouchability because the temple priesthood is denied to the other Brahmins also. Thus, the exclusion of the other Brahmins can be taken to justify the exclusion of the other caste groups. We find, in recent time, in the courts, a weird legal reasoning that goes against the entire sociological knowledge production. A Dalit humiliating another Dalit in public should not be taken as a caste atrocity within the law. Similarly, exclusionary practices within the Brahmin community are taken as a compensatory balance to justify caste discrimination against the other non-Brahmins and Dalits.

Judicial Interpretations on the Religious Essence of Agama and the Hereditary Temple Priesthood

The legal protection to religious freedom under Articles 25 and 26 of the Indian Constitution is a constitutional secularist response not only to determine the boundaries of religious freedom but also to limit its own secularistic legalism. As the Indian constitution has neither defined 'religion' nor 'secular,' the constitutional benches of the Supreme Court are forced to define them in their interpretations in the context of hard cases of religious disputes. These interpretations have often brought more ambiguities in defining religion and secular than the required clarity to settle the disputes. Largely, in the secularised Western societies, the voices for protection of religious freedom became prominent to prevent the secular state from desacralising the sacred beliefs and practices, but the constitutional protection for religious freedom in India came into existence not in response to the secular excess of the state but emerged out of the claimed moral responsibility of the nation state to protect the rights of the religious minorities as part of the nation-building project. The political assertions for the protection of religious freedom have come not only from the religious minorities but also from various sections and divisions of the Hindu Society. The Brahmin priests who went to the Supreme Court against the

amendment to the HRCE Act of 1959 in Tamil Nadu in 1970 felt and perceived it as a deliberate attempt of the secular state government to interfere in the religious matters of the temples and was a violation of their freedom of religion. This legal dispute brought out the ambiguities in the constitution of India on 'religion' and 'secular' in the public domain. The Supreme Court in its verdict in 1972 on this dispute gave a problematic solution: It stated that the very act of appointing eligible candidates to the services in the temple is secular and the state government has the power and authority to appoint, but the appointment of priests should be done in accordance with Agamic prescriptions. Any legal moves of the state government to appoint priests against the Agama rules would be a violation of religious freedom protected under Articles 25 and 26 of the Constitution. The judgement had defeated the social justice initiatives of the government on the one hand and disappointed the Brahmin priests by approving the amendment act of 1970, which states that the secular authority has the power to appoint people to offices and services on the other hand. The judgement had certainly protected the Brahmin priests' freedom to practice their religious practices under the provisions of denominational rights to rites that are supposedly approved by the Agamas. The freedom of religion is assured by the court based on the protection of their denominational rights without really questioning the claims of their religious denominational social groupings. As the constitution has no definitions both of religion and secular, the judicial pronouncements become significant, but they lack clarity on the nature of denominational distinctions and their applicability in understanding the religious divisions among the Hindus. The higher judiciary in this context has no intellectual resources to understand the politico-ideological calculations of the claims of freedom of religion. The real legal protection of freedom of religion is a possibility only when it defines the religion. As the Constitution lacks a clear definition, the Supreme Court has evolved a doctrine called the 'Essential Practices of Religion' to decide on religious disputes, but instead of finding out objectively 'what is essentially religious,' it ended up in the prescriptive mode of inquiry of 'what is essential in religion' (Kaul, 2021) by focusing on making scriptures and supporting the idea that their approval is essential to understand the 'essence' of religion and religious practices. It had assumed the authority to define and decide on the essence of religion from the 1963 case of *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, and the same authority revives and reproduces

itself continuously whenever major religious disputes knock the doors of the courts, but the doctrine of 'essential religious practices' was evolved much earlier in 1954 in the context of the dispute between the head of Hindu religious order and the Hindu religious endowment department of Madras state, called *Commissioner of Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, Shirur*. One of the methods followed by the Judiciary to reach the essence of a religion is by extracting it from its scriptures. The religious scriptures are taken as the most important sources of authority to decide on the essence of religion, and their approvals are mandatory for the proper validation of religious essence. As correctly pointed out by Sen (2019), this text-dependent legal reasoning is a colonial legal legacy that can be traced back to the legal culture of the colonial courts. By following Rudolph and Rudolph (2010), I would go one step further and say that it could be the result of a continuous reproduction of a hybrid legal culture evolved by the colonial judges in collaboration with the Brahmin pandits:

> The British raj, sometimes by design but more often by inadvertence, advanced the written, more uniform, and professionally interpreted law of the twice-born castes (*dharmasastra*) at the expense of the parochial, diverse, and orally transmitted customary law of villagers even as Anglicization began to supersede Indian legal conceptions and social arrangements. (p. 254)

I try to problematise this kind of 'text-dependent legal reasoning' found in the three major legal cases that were filed against the three legal and policy interventions of the Government of Tamil Nadu led by DMK: *Archaka* legislation of 1970 and subsequent G.O. of 2006 and the later notification of 2021 for the training in Agamas for all caste groups and the appointment of temple priests based on the formal training irrespective caste affiliations. Let me start with the old one first, the *Seshammal* case (1972) because the judgement in this case set the precedent for the judgements in the subsequent cases delivered on the same dispute by both the Supreme Court and the High Court of Madras.

Seshammal Case: The amendment Act of 1970 was mainly challenged on the ground that the legal abolition of the hereditary succession of the priesthood was a clear violation of their freedom of religion guaranteed under Articles 25 and 26 of the Constitution. Since I have no access to the original records of the court, I tried to get the views of the petitioners from the arguments of their counsels

as mentioned in the judgement. Nani Palkhivala in his argument against the amendment Act of 1970 in the Supreme Court asserted that 'the appointment of a person to a religious office in accordance with the hereditary principle is itself a religious usage and amounted to a vital religious practice, and, hence falls within Articles 25 and 26.' Palkhivala further argued that the selection of priests is the right of the religious denomination and the state government even under the pretext of social reform cannot interfere in the religious matters:

> ...the State cannot reform a religion out of existence and if any denomination has accepted the hereditary principle for choosing its priests that would be a religious practice vital to the religious faith and cannot be changed on the ground, that it leads to social reform. Mere substitution of one method of appointment of the priest by another was, in his submission, no social reform. (as summarised by Justice D. G. Palekar in his Judgement in *Seshammal* case)

but Justice Palekar dismissed the arguments of Palkhivala and observed in his judgement that the Archakas are temple servants. Whether they are hereditary or non-hereditary priests, they come under the control of the trustee. According to the principal Act of 1959 and its unamended Section 56, 'all office-holders and servants attached to a religious institution or in receipt of any emolument or perquisite therefrom shall, whether the office or service is hereditary or not, be controlled by the trustee and the trustee may after following the prescribed procedure, if any, fine, suspend, remove, or dismiss any of them for breach of trust, incapacity, disobedience of orders, neglect of duty, misconduct or other sufficient cause.' Based on this provision, Justice Palekar took the following decision: 'That being the position of Archaka, the act of his appointment by the trustee is essentially secular.' According to his legal reasoning that even under the legal provisions of the unamended principal Act of 1959, the Archakas are servants of the temple along with the other non-priestly servants who are expected to work under the administration of the trustee. It is not fair to claim that the amendment Act of 1970 makes the appointment of a temple priest secular and then object to the 'secular' interference in the 'religious' matter. They are already governed by the secular authority of the trustee and other secular service rules of the government. At the same time, Justice Palekar agreed with the claims of the petitioners and the opinion of the experts that the appointment of a candidate as a priest outside the denomination irrespective of caste, even if he has the formal qualification and training in Agamas, would necessarily defile the image of the god. Therefore, it is important to

appoint the qualified candidate as a priest from the same denomination following a particular Agama in accordance with Agamic rules, not necessarily appointing priests by following the practices of hereditary succession of priests from the families of incumbent priests. Thus, the legal usage of the agamic texts had assumed a centrality in defining the religious essence, particularly in the religious practices of the denominations. Though the judges in this case had insisted on the Agamic approval to the appointment of the priests in the temples that were identified by the Brahmin priests and the exponents of Agamas as denominational temples, none of them referred to any primary texts of Agamas (28 main Saivagamas and some 197 subsidiary Agamas and two Vaishnavaite agamas) to fix the denominational religious practices. The impracticality of accessing the primary agamic texts had perhaps forced the Judiciary to depend on the secondary sources of Agama references in the early judgements in cases such as *Sri Venkataramana Devaru v. The State of Mysore (1951), His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Varlu v. Prathivathi Bhayankaram Venkatacharlu and others (1939), and Mohan Lalji and Anr. v. Gordhan Lalji Maharaj (1913)* to decide on the denominational religious practices associated with temples. Apart from these case laws, the courts quoted from P. V. Kane's works on *Brahma Purana* with specific reference to certain conditions that defile the Images or Icons of God and the affidavit of R. Parthasarathy Bhattacharya (expert on Agama literature) to stress the denominational exclusivity of the Vaikhanasa community from Vaikhanasa Samhitas. His affidavit was used only to say that the priests belonging to Vaikhanasa are not allowed to perform rituals in the temples of Pancaratra and vice versa. It shows very clearly that the courts had used only the secondary sources to decide on the essential religious practices of denominations. These secondary sources on *shastras* and *Agamas* have their own limitations of selective usages of verses from the Agamas and the distortions of conceptual meanings in the translations. Without examining the claims and the sources of their claims of these authors and experts of those secondary texts, the juridical rationality could lead to biased conclusions. Nevertheless, the judges in this case went ahead and mandated the Agama approval for the appointment of priests in the denomination-specific temples because the Agama-based rituals, in their view, define the denominational religious practices.

If the Agamas are taken to define the essence of denominational religious practices, then, obviously, the courts are justifying the practices of caste inequality in the so-called denominations. The denominational religious practices are not completely free from the hierarchical caste position of the devotees. The ritual sections of both Saivagamas and Pancaratra privilege the Brahmins of certain hereditary lineage origins or clans with certain ritual rights like priesthood in the temple, approval for chanting and performing certain *Mantras* and rituals for other Brahmins, and authorisation of certain other rituals and *Mantras* for non-Brahmin caste groups.

In Saivism, according to Saiva Agamas, particularly Saiva Siddhanta philosophy, the initiation (*Diksha*) ritual is decided based on the individual's spiritual strength and capacity, but the ritual prescriptions of Agamas restrict the initiation ritual for the priesthood to caste, based on birth, decided by the lineage of an endogamous subcaste of the Brahmins, called '*Adi Saivas*' claimed to be the descendants of the five sages who were initiated by the five faces of the lord *Sadasiva* himself. The descendants of the five sages (Kausika, Kasyapa, Bharadvaja, Gautama, and Agastya) are *Sivas* on earth and are expected to be proficient not only in the Agamic texts but also in the Vedas. The initiation that is fixed for this 'special class of people' does not require any formal initiations. They are the only Saivaites (Adi Saivas) who are authorised to be the official priests inside the Sanctum Sanctorum and masters in all rituals and ceremonies connected with temples and granted restricted access to perform certain rituals to other twice-born caste groups (Rao, 2005).

In Vaishnavism, particularly in Srivaishnavism, the *Pancaratra* Samhitas and practices admit even a *sudra* as an initiate provided that he is dedicated to Visnu. Men of all classes, including sudras and even women, should worship God with devotion and every devout *Pancaratrin*, whether he belongs to the higher classes or is an outcaste, a sinner, deformed, or a member of a despised tribe, is entitled to a place in Visnu's heaven. Although theoretically there should not be social distinctions among the members of the community of Vaishnavaites because all of them are dependent on Visnu's grace, the texts discussing the matters of religious practices and rituals vary in their attitude toward class and caste, some of them even taking a strictly hierarchical stand. Even when he is initiated (*diksita*), a *sudra* is not authorised to read or hear the holy

scriptures. For him, tantric mantras are prescribed to consecrate the rites, not Vedic texts. So-called *pratiloma sudras* (those whose mother was of a higher social class than their father) were excluded from most religious activities (Gonda, 1977).

The Panchamas or Dalits are nowhere in the picture of Agamas' ritual hierarchy because they are not considered Hindus and thus not within the fourfold Hindu social order of the *Varnashrama dharma*. The ritual hierarchy found and justified in Saivagamas and Pancaratra Samhitas ends with *Sudras* by allocating them certain rituals that are considered to be 'low' and have to deal with 'impurities.' These practices of caste hierarchy in the ritual allocation are completely absent in the Vaikhanasa Samhitas, not because they teach equality and openness but because of their exclusivity. It is a caste closure of only Vaikhanasa Brahmins, but the irony of our apex courts is that they still believe that laws against untouchability and caste discrimination cannot be used or applied against these 'denominations' for two reasons: Firstly, the ritual practices even if they are discriminatory in nature they have agamic approvals; secondly, the Agamas are also discriminatory against certain class of Brahmins. Therefore, it should not be taken to mean that the discrimination is against only *Sudras* and *Panchamas*. This is a weird legal sociology that assumes that the discriminatory practices within one's own caste should not be treated as caste discrimination. Such reasoning is based on the flawed empirical assumptions that all the members of a caste group are ritually equal. On top of all these things, our judges understand religions in India, particularly Hinduism, without its important constituent, the Caste. These two (religion and caste) are inseparable entities in the religions of India. One of the observations in the judgement in the case of *Adi Saiva Sivachariyargal Nala Sangam & Ors. v. The Government of Tamil Nadu* is the best example for the weird legal sociology of the courts that I mentioned above:

> The issue of untouchability raised on the anvil of Article 17 of the Constitution stands at the extreme opposite end of the pendulum. Article 17 of the Constitution strikes at caste-based practices built on superstitions and beliefs that have no rationale or logic. The exposition of the Agamas made a Century back by the Madras High Court in Gopala Moopnar (supra) that exclusion from the sanctum sanctorum and duties of performance of poojas extends even to Brahmins is significant. The prescription with regard to the exclusion of even Brahmins in Gopala Moopnar (supra) has been echoed in the opinion of Sri Parthasarthy Bhattacharya as noted by the Constitution Bench in Seshammal (supra).

> Such exclusion is not on the basis of caste, birth or pedigree. The provisions of Article 17 and the Protection of Civil Rights Act, 1955, therefore, would not be of much significance for the present case. (Para. 40)

The exclusion of certain groups of Brahmins is taken by the judge as a rational neutraliser to justify the exclusion of the non-Brahmin communities. What constitutes 'Untouchability' here is merely a practice of caste Hindus 'untouching' the *Panchamas*, that too if it happens outside the religious denominational practices. Thus, the religious denominational exclusion should not be construed as caste discrimination because Article 16 itself permits discrimination based on denomination:

> 16(5) - Nothing in this Article shall affect the operation of any law which provides that an incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

The judge further justified the demands of the petitioners that the appointment of priests should be from the particular denomination:

> A plain reading of the aforesaid provision i.e. Article 16(5), fortified by the debates that had taken place in the Constituent Assembly, according to us, protects the appointment of Archakas from a particular denomination, if so required to be made, by the Agamas holding the field. The debates in the Constituent Assembly referred to discloses that the suggestion that the operation of Article 16(5) should be restricted to appointment in offices connected with administration of a religious institution was negatived. The exception in Article 16(5), therefore, would cover an office in a temple which also requires performance of religious functions. In fact, the above though not expressly stated could be one of the basis for the views expressed by the Constitution Bench in Seshammal (supra). (Para. 38)

By taking the provisions of Article 16(5) on the one hand and insisting on the approval of Agama texts on the other hand to protect the religious freedom to practice the denominational rites and other ritual practices, the Supreme Court accepted or approved the claims of the Brahmin priests that their denominational religious practices can only be determined in accordance with Agama rules. Thus, the court has no problem in reducing the religious practices of both the Hindu religion and the denominations to mere textual dictum and the performances in the temples. It never tried to go beyond such texts to understand the denominations and their religious practices to grant religious freedom. The religious category of 'denomination' used in the Indian constitution originated in the Semitic religious

life of Judaism and Christianity, but the religious experiences that are conceptualised into denomination in Christianity in the west may not be helpful to understand the religious traditions (*Sampradaya*) and divisions in Hinduism. The western category of denomination has a long history of conflicts within the church and then the emergence of conflicts between the church and sects and then a synthesis of the church and sects into the organisation of denomination. Sociologists who studied and theorised the religious organisations of Church, Sect, and Denomination in the west found it difficult to define and demarcate the differences between them. D. A. Martin's observations are relevant here:

> In attempting to circumscribe the meaning of the term denomination not every feature mentioned will be unique. Some features will mark it off from the sect; other features will mark it off from the church. It is the character of the combination which will be unique. Admittedly, any particular group which one might care to name would present a unique combination of churchly and sectarian characteristics, but in view of the fact that this particular combination is historically so important and in view of the fact that contained within it are unique *differentiae* of the first degree, it seems reasonable to argue that it constitutes a further class apart both from church and from sect. (Martin, 1962, p. 4)

However, denomination is defined 'un'ambiguously in the Supreme Court judgement in *Commissioner of Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, Shirur* in the following way:

> ...a collection of individuals, classed together under the same name, now almost always specifically, specially a religious sect or body having a common faith and organisation and designated by a distinctive name.

Arvind Datar (2018) has questioned the applicability of this definition in the Indian legal context because the definition was taken from the Oxford University English Dictionary at that time. The dictionary has seen many revisions after that for the same term and may see many more revisions in the future also. Should we go after the dictionary definitions to understand the social realities in India to settle the disputes? Justice B. K. Mukherjea's definition of denomination in the Shirur mutt case was not based on any empirical or theoretical studies on the religious divisions and their subdivisions within the Hindu religion. When the Indian judiciary defines Hinduism as 'a way of life,' it becomes even more difficult to define denomination because 'a way of life' definition makes religion, what Talal Asad (1993) would call, a 'transhistorical and

transcultural phenomenon' (p. 28). Denominations cannot be defined in a transhistorical and transcultural fashion because the emergence of denominations has specific histories and cultural contexts. The strict adherence to Agama texts to define denominational essence and also making it basic eligibility for the priesthood will not only result in transhistorical and transcultural reproduction of denominational claims of the Brahmins but also help them to conceal and perpetuate their hierarchical caste practices both within the denominations and outside.

When the government of Tamil Nadu gave the job recruitment advertisements on July 6, 2021, and followed by an order dated August 5, 2021, for various offices and services in the temples under the control of HRCE Department, All India Adi Saiva Sivacharyargal Seva Sangam, represented by its General Secretary, had filed a writ petition of Certiorarified Mandamus on July 30, 2021, under Article 226 in the High court of Judicature at Madras seeking for the records of the respondents regarding the abovementioned job recruitment advertisement and quash the same and seeking further a direction from the court to the respondent to adhere strictly to the Agamas while appointing Archakas as held by two earlier judgements of the Supreme Court on the same issue of the appointment of Archakas. In response to this petition, the court issued an order and direction to the respondent to maintain *status quo* after the receipt of applications until further orders, but the petitioner Sangam represented by its General Secretary again filed another writ petition Certiorarified Mandamus on August 19, 2021, in the same high court seeking the records of the respondents pertaining to Rules 2(c)[4], 7(b) (including Annexure II Group B Category XXXIV and Annexure VII Group B Category III) and Rule 9[5] of the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020, issued in pursuance of G.O. Ms. No. 114,

[4] Rule 2(c) of the Rules of 2020 defines the term 'appointing authority.' The appointing authority is not only a trustee, but even a fit person.

[5] Rules 7 and 9 of the Rules of 2020 stipulate eligibility, qualification, and age even for the appointment of Archakas. The qualification of one-year certificate course has been prescribed for Archaka and thereby even if an Archaka is performing pooja for the last many years and has gained experience, he would be ineligible for appointment in the absence of the requisite qualification. It also stipulates awarding of marks toward experience, but once a person does not have the requisite qualification of one-year certificate course, there would be no question of marks for experience (rules as quoted in the Judgement of the Madras High Court delivered on August 22, 2022).

Tourism, Culture and Religious Endowments Department, dated September 3, 2020, and quash the same and consequently refraining the respondents from appointing or selecting Archakas and other Agama-related personnel in temples in contravention of the agamas, as held by the Supreme Court in the decision in *Adi Saiva Sivachariyargal Nala Sangam v. State of Tamil Nadu and another*. Fourteen other writ petitions were filed with the same prayer in the same high court in the same year in the next three months. These petitions include the petition of the Vaikhanasa division of Vaishnavism represented by the secretary of the South Indian Vaikhanasa Archakas Association, Madras, and Srirangam *Koil Miras Kainkaryaparagal Matrum Athanai Sarntha Koilgalin Mirasikainkaryaparagalin Nalasangam*, represented by its President, to represent a Pancaratra agama temple and a few other petitions from individuals in their independent capacity and also individuals representing organisations such as Temple Worshippers Society and Sri Koonampatti Kalyanapuri Adheenam represented by its 57th Pontiff. Some of these petitions were filed as PIL. The legal grievances of the petitioners this time went beyond the insistence on protecting their religious freedom under articles 16(5), 25, and 26 and strict adherence to the directions of two earlier judgements of the Supreme Court on the appointment of Archakas. The legal rationality of the petitioners comes from the deeply rooted Western dichotomous understanding of the 'sacred and profane' and 'religion and secular.' They asserted that Agama education should not be a part of any formal secular institutions and its culmination in receiving any formal certificate. Agama education is possible only within the traditional systems of schooling. The move to formalise Agama education outside of the traditional systems of education is itself a violation of Articles 19(g) and 29(1) of the Constitution:

> The impugned Rule by its Annexure II makes a mockery of this qualification. It prescribes a philistine prescription of Agama and Vedic training aimed at making even pedestrians 'qualified' in this intrinsic system of knowledge. (W.P. No. 21906 of 2021, p. 28)

> Prescription of Agamic and Vedic training under any agama school or Veda School run by any 'religious' or by government institution and for a short period that is humanly impossible to be qualified in the True Agamas and Vedic education has been made in Annexure II of the impugned rules. This is a nefarious stratagem by the respondents herein to divest the only avocation of the traditional priestly communities who enter upon the service of their deity of faith with devotion and dedication. This is a clear violation of Articles 19(g) and 29(1) of the constitution of India and betrayal of the Hindu devotees who have faith and devotion in the

> traditional pooja rituals and methods practiced in the temples. (W.P. No. 21906 of 2021, pp. 28–29).

Another petitioner stated the following:

> It is submitted that the state cannot be in-charge for the running of institutions to train Archakas, as the said office of an Archaka is a religious office, and the same can be administered only by the said religious institutions. The imparting of religious knowledge and training itself being a religious practice, it cannot be performed by the state. The proposition of state running institutions providing religious instructions is against of the secular fabric of the country and is also violates Articles 26 and Article 28. The state cannot also ascertain the fitness of persons in their religious training or their beliefs as the same is matter for the religious denomination alone... (W.P. No. 25711 of 2021 p. 9)

> The eligibility to be appointed as an Archaka being fixed based on a certificate to be issued by the State-run Archaka Training institute is deeply violative of Article 26 of the constitution as it interferes with the management of religious affairs and also the actual worship conducted in temples. (W.P. No. 25711 of 2021 p. 10)

One thing becomes very clear from all these writ petitions quoted above that they do not want the Secular state to interfere in the religious matters of Agama temples, denominational practices through a formalisation of Agama learning under secular systems of education. Some of the petitioners even claimed that the Archakas of the hereditary line are very proficient in their agamic texts and in ritual performances. Some of them claim that learning the Agamas from an early age under the Guru as Disciples is the true learning and obtaining a certificate in one-year course in Agamas in the government-run schools is very farcical. Thereby, these petitioners question the formal qualification and the eligibility conditions of the government for the positions of Archakas in the temples:

> Thus, Agamas is an extensive subject that involves years of intense training to obtain proficiency. Even if a small mistake takes place in the manner of performance of *Poojas* or installation of deities, it is believed that the consequences will be serious... (W.P. No. 17802 of 2021, p. 2)

> ...those who are experienced in Agamas do not undergo any certificate course. Instead, they obtain *Diksha* (initiation) from their Guru (of their sect) at a very early age and undergo rigorous vedic education for a minimum period of three years. Thereafter, they are groomed to perform *Poojas* and *Homams* of another three to five years before taking over as Archakas. (W.P. No. 17802 of 2021, p. 2)

Quite contrary to the claims of some of the petitioners, a large number of serving Brahmin priests who came through the

hereditary succession are not knowledgeable and proficient in the Agamic rituals. When the same came to the notice of the government, it started refresher courses for them in various temples. This is well recorded in the most significant study of C. J. Fuller on the Brahmin priests of Madurai Meenakshi temple:

> As I noted at the end of the previous chapter, the public stance of the Tamilnadu government and HRCE Department is that they have inherited the king's role as protector of the temples, and one of their duties is thus to try to ensure that rituals are correctly conducted. But the principal barrier to this, their representatives aver, is not themselves; it is the officiants in the temples, particularly the priests, who are alleged to be ignorant, incompetent and incapable of performing rituals properly. The solution is not less intervention in the temples, but more directed at all those priests who do not even know how to do their duty according to Agamic rules. The first step to be taken is better training for the priests, who should only be allowed to take up their posts after being certified as competent. (Fuller, 1984, pp. 135–136)

> Most priests are reluctant to talk about their Agamic knowledge, or lack of it, and I usually found them rather vague when details were asked for. One or two stated flatly that hardly any of their colleagues had undertaken any proper training and they were sarcastic about claims to proficiency made by or on behalf of some of the Temple's priests. But whatever may be the precise facts, it is undoubtedly true that at least two-thirds of the priests now working in the Minaksi Temple have had no training of any kind. In most temples, the evidence suggests, the proportion of trained priests is no higher and in many it is probably lower. (Fuller, 1984, p. 139)

One can understand and agree with the petitioners that a one-year course in Agama as required and promoted by the government may not be sufficient to learn the vast literature of Agama but how does one understand the resistance to the formalisation of Agama education? The resistance to the formalisation of Agama education might come from the fear that it will do away with the Brahmin's monopolisation of scriptural learning when it is opened to all interested Hindu students irrespective of caste differences. The petitioners did not see the government's efforts to start Agama schools and the formalisation of the same as the re-sacralisation of temple worship. Rather, they viewed it as the de-sacralisation of the sacred by the government. Apart from this, there is no such clear-cut dichotomous religious thinking and practices of the 'sacred' and 'profane' in Hinduism. Inden and Nicholas (1977) have rejected the dichotomy and found little relevance in the Hindu context because they are not antithetical in Hindu belief and ritual and argued further that the sacred in Hindu religious practices impinge so

deeply on the profane like worshipping *Sri Mahalakshmi* as a goddess of wealth.

The High Court of Madras in its judgement on August 22, 2022, on this case had turned down the demands of the petitioners to quash the changes made in the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020, and the conditionalities and requirements stated in the job advertisement completely. It does not mean that this judgement went against the decisions of two earlier Supreme Court judgements of *Seshammal* of 1972 and *Adi Saiva* of 2015 on the issues of the appointment of Archakas. On the contrary, the judgement of the Madras High Court has quoted extensively from both the judgements of the Supreme Court to insist that the appointments of Archakas should not be made in contravention of the law that is established in those two Supreme Court judgements. All these three judgements had unanimously asserted that appointment of priests should be done in accordance with the rules of Agamas and stated that any moves in any form to deviate from them will be violative of the constitutional guarantee of religious freedom under articles 16(5), 25, and 26. Though the judgement of the Madras High Court had addressed many legal challenges that emerged in response to the changes made in the Tamil Nadu Hindu Religious Institutions Employees (Conditions of Service) Rules, 2020, it took a principled stand on two important aspects: 1) ruled out the stipulated eligibility, qualification, and age limit for the appointment of Archakas. It stated clearly that the prescription of a one-year certificate course as a qualification for certain other jobs will not be applicable to the position of Archakas because it amounts to the violation of Agama rules and practices. The candidates trained in the traditional systems of agama schooling will get only Diksha (initiation) after the completion of learning in Agamas, not any certificates; 2) disapproved the rule of transferring Archakas from one temple to another because the transfer will go against the agama practices of denominational temples that were constructed according to the prescription of specific agama and thereby following specific agamic rituals by them in the specified temple is inevitable. Thus, the centrality of the Agama text in legal reasoning looks very prominent and convincing beyond doubt and the Agamas are the only source of authority to decide the denominational religious practices and thereby ensuring the protection of religious freedom.

Conclusion

The enormous importance given to the Agama prescriptions by the higher judiciary in determining the essential religious practices of denominations within Saivism and Vaishnavism to protect their freedom of religion under Articles 25 and 26 made the textual religious traditions, and their practices are the only way available to determine the 'essence' of a religion and the scripturally approved religious practices are the only valid religious practices. The juridical reasonings that went into the direction of legal justification for the claimed denominational religious practices have completely overlooked the sociological fact of 'caste closure' that is built into the claims of denominational exclusivity.

The higher judiciary in its legal rationalisation of Agama in determining the essential religious practices of the Hindu denominations has transformed into explicit prescriptions what had been the latent preconditions for the Brahmanical formulations of priesthood. In practice, this has resulted in a hypertrophic expansion of the legal intervention of the court in the religious spheres to the extent of making it impossible to realise the social justice initiative of the government of Tamil Nadu to achieve caste equality within the Hindu religion. By converting the Brahaminical notions of religious 'rites' into the secular notions of the 'rights' of religious denominations, the higher judiciary in India is not only imposing particular religious theology of the Brahmins—that we ought to be vexing ourselves with—but also imposing legal theology.

References

Asad, T. (1993). The construction of religion as an anthropological category. In *Genealogies of Religion: Discipline and Reasons of power in Christianity and Islam*. Johns Hopkins University Press.

Comaroff, J. (2009). Reflections on the rise of legal theology: Law and religion in the twenty-first century. *Social Analysis*, *53*(1).

Datar, A. P. (2018, November 21). *The Irish origins of "religious denomination" in Article 26*. Bar and Bench.

Fuller, C. J. (1984). *Servants of the Goddess: The priests of a south Indian temple*. Cambridge University Press.

Gonda, J. (1977). *Medieval religious literature in Sanskrit*. Otto Harrassowitz.

Inden, R. B., & Nicholas, R. W. (1977). *Kinship in Bengali culture*. University of Chicago Press.

Kaul, D. K. (2021). The 'essential practices' doctrine. *International Journal on Minority and Group Rights*, *29*(2), 350–393.

Rao, S. K. R. (2005). *The Agama encyclopaedia* (Vol. I). Sri Satguru Publications.

Rudolph, L. I., & Rudolph, S. H. (2010). *The modernity of tradition: Political Development in India*. Orient Blackswan.

Sen, R. (2019). *Articles of faith: Religion, secularism, and the Indian Supreme Court*. Oxford University Press.

Vallavan, V. (2007). *Koil nuzhaivu pooratangalil Dravidar eyankkanklin pankalippu*. Tamil Kudiarasu Pathipakam.

Madras Institute of Development Studies (MIDS) was founded in 1971 by Malcolm S. Adiseshiah. It studies development problems of India, with a special focus on Tamilnadu. Since 1977, MIDS is a national institute funded jointly by the Indian Council of Social Science Research (ICSSR) and the Government of Tamilnadu.

Madras Institute of Development Studies

79, Second Main Road, Gandhi Nagar
Adyar, Chennai 600020, India
Phone: 044-2441 1574 / 2589 / 9771
pub@mids.ac.in | www.mids.ac.in