MIDS WORKING PAPER 251

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IN TAMIL NADU

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MIDS Working Paper #251
May 2026

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MIDS Working Paper No. 251

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

Religious Texts, Judicial Interpretations, and the Eclipse of Social Justice Initiatives in Tamil Nadu

T Kannan[1]

ABSTRACT

Weberian theorisation on law and legitimacy asserts that the legal institutions and officials strictly follow the formal rules and rationalised procedures in administering law and allow no space for political and moral bias in rule of law governance. The rationality of rules and procedures followed by the legal system are to a greater extent 'instrumental' in nature. Since, for Weber, reason or rationality is at most instrumental, it cannot select between normative values within the formal rational law. As a result, it subjects the choice of working with normative values to power politics not within but outside the legal system. Though the processes of judicial decision-making are not only rational but also instrumental in resolving the disputes, the instrumental rationality in judicial decision-making in hard cases of religious disputes, like the one that this paper attempts to engage, forces it to enter into power politics of upholding certain normative values by reproducing the Brahmanical ideological notions in the religious life. Quite contrary to the Weberian theorisation on the nature of modern formal rational law, the juridical reproduction of Brahmanical ideological notions by mandating the prescriptions of Agamas in the appointment of temple priests, the formal rational law is weakened to absorb what Savelsberg (1992) calls 'legal substantivation' of interpretatively adopting of Brahmanical notions to uphold the legal principles.

From the analysis of the three legal cases on the dispute of appointment of temple priests and the patterns of judicial reasoning in the other cases of religious disputes, it becomes clear that the

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legal search for authority reasons merges with the authority reasons of the Brahmin petitioners who are deeply entrenched in the textual practices and in the authority assertions of the scriptures. The repeated judicial assertions on the appointment of temple priests in accordance with Agama to protect the religious freedom of the Hindu 'denominations' not only made the textual traditions important in the temple worship but also granted legal recognition to them to the extent of approving them as the only source of determining the essence of Hindu religion. Thereby, they indirectly upheld the Brahmanical claims of the superiority of Brahmin priesthood, and their ideologies of 'Purity' and 'Pollution' to justify the practices of caste exclusions in the temple priesthood.

The proper understanding of the particular procedural rationality of the legal order, expressed in the justification for extracting 'essential practices of religion' from the scriptural texts of Agamas to resolve the dispute over the appointment of non-hereditary and non-Brahmin priests, explains that the law is not merely an instrument of politics, but is, rather constitutive of politics. It is constitutive of politics in a way its legality produces its own legitimacy.

INTRODUCTION

The legitimacy of law and legal system, according to Weber (1978), would not arise out of any moral content inherent in legal order but out of the particular kind of rationality inherent in legal order. There is no morality beyond the law by which it can be judged and grant legitimacy, and a *de facto* legal order itself is legitimate on its own legality. To exist, a legal order on the one hand must be more rationally effective to the extent of rationally convincing the people to subject to it and manifest their acceptance of the order by complying with its rules and procedures, and there must exist a specialised staff of legal officials such as judges who must accept that it is their duty to interpret and apply the law in accordance with the formal, procedural criteria prescribed by the fundamental rules and regulations of that same legal order on the other hand. According to Weberian theorisation on law and legitimacy, the legal institutions and officials strictly follow the formal rules and rationalised procedures in administering law, and there is no space for political and moral bias in the rule of law governance. The rationality of rules and procedures followed by the legal system is to a greater extent 'instrumental' in nature. As for Weber, reason or rationality is at most instrumental; it cannot select between normative values within the formal rational law. As a result, it subjects the choice of working with normative values to power politics not within but outside the legal system. Though the processes of judicial decision-making are not only rational but also instrumental in resolving the disputes, the instrumental rationality in judicial decision-making in hard cases of religious disputes, like the one that this paper attempts to engage, forces it to enter into power politics of upholding certain normative values by reproducing the Brahmanical ideological notions in the religious life. Quite contrary to the Weberian theorisation on the nature of modern formal rational law, the juridical reproduction of Brahmanical ideological notions by mandating the prescriptions of Agamas in the appointment of temple priests, the formal rational law is weakened to absorb what Savelsberg (1992) calls 'legal substantivation' of interpretatively adopting of Brahmanical notions to uphold the legal principles.

The paper tries to argue that the juridical reasoning in deciding on certain specific legal disputes that come from the Hindu religious practices that nurture the caste inequalities shows that it is not only an instrument of politics of dominant forces but also constitutive of the very same dominant ideological politics. To establish such politics of juridical reasoning in the legal disputes on the appointment of non-hereditary and non-Brahmin priests in the Hindu temples of great tradition[2], I have analysed three important legal cases in this paper.

LEGAL DISPUTES ON THE APPOINTMENT OF TEMPLE PRIESTS AND THE JUDICIAL DECISIONS

The *Archaka* legislation in 1970 was passed in the legislative assembly as an amendment act to the Hindu Religious Charitable and Endowment Department of Tamil Nadu (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 educational qualification, 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 was not a mere legal symbolism in terms of socio-religious 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 also would 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 was a legal move not just to get the entry for the non-Brahmin priests into the Sanctum Sanctorum, but it was a significant

[2] Refers to the religious tradition of the Brahmins in India. Religious practices under this tradition are approved by the Vedic texts. It is more ritualistic than the folk religious tradition. It contains mythologies on pan-India deities.

secular-legal promise to non-Brahmin priests to dwell in the spaces of non-discriminatory religiosity and faith.

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 *Matathipathis* (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. This case is formally referred to as *Seshammal and Others, Etc. Etc. vs. State of Tamil Nadu* (1972) (hereinafter *Seshammal* case) in the legal practice and research. The basic issues brought before the court and the final decision of the court on the dispute in 1972 and two other important cases[3] that are directly connected to the issues of the appointment of non-hereditary and 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 such as 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 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

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

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 state government of Tamil Nadu kept the amendment act in abeyance and temporarily withdrew from any policy initiatives after the Supreme Court judgment.

In 2006, almost after 34 years, the Dravida Munnetra Kazhagam (DMK) government led by M. Karunanidhi revived the social reformative measures again to appoint the temple priests from all caste groups and issued the Government Order (G.O.) No. 118, dated 23 May 2006. The G.O. 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 amending further Section 55(2) of the amendment act of 1970 of the Tamil Nadu Hindu Religious and Charitable Endowments (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 (PILs) against the G.O. and the ordinance on the grounds claiming that the G.O. had violated their freedom to religious practices that were guaranteed by Articles 25 and 26 of the Constitution. These cases are referred to formally as *Adi Saiva Sivachariyargal Nala Sangam & Ors. vs. The Government of Tamil Nadu* (2016) (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 judgment came almost after nine long years in 2015.

In a significant way, the judgment of the *Adi Saiva* case was very similar to the judgment 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 counter-claims of the appellants and the respondent, observed that the legality of the impugned G.O. dated 23 May 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 of 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. The state government again kept itself away from taking any formal legal initiatives to appoint the priests from the non-Brahmin communities.

When M. K. Stalin led DMK came to power in 2021, following the legacy of his father M. Karunanidhi, he revived the same social justice initiative by issuing several advertisements, dated 6 July 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, Thiruchendur), vide his proceeding in Na. Ka. No. 4361/2020/A2, dated 7 July 2021, and quash the same as illegal, incompetent, and ultra-vires. This is formally referred to as *All India Adi Sivachariyargal Seva Sangam vs. State of Tamil Nadu* (2022) (hereinafter *All India Adi Saiva* case). 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 the executive officer/joint commissioner of 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 as well as 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 22 August 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 judgments, 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.

Since 1970, the social justice initiatives of the government of Tamil Nadu to appoint the priests from all the caste groups have been continuously stalled by the community of Brahmin priests in the name of protecting their religious freedom to the essential religious practices of the denominations by filing several cases in the Supreme Court of India and in the High Court of Madras. The courts have been continuously approving the demands of the community of Brahmin temple priests that only they should be appointed as temple priests according to Agamic rules to avoid the violation of the constitutional protection of freedom of religion guaranteed under Articles 25 and 26. The continuous and consistent legal approval for the Agama prescriptions in the appointment of temple priests in the temples of HRCE by the courts to protect the freedom of religion should not be taken simplistically as the consequence of the precedence given to freedom of conscience over social equality; rather, it should be viewed as one of the possible results of legal rationalisation of juridical reasonings that tries to evolve a standard/fixed universal doctrine to resolve the most complex and particularistic religious disputes that are related to varying and ever-changing religious practices in India. One of the most important legal doctrines to evolve from the judgments delivered on religious disputes in post-independent India is the 'Essential Practices of Religion.' This doctrine and the judgments on many specific cases came under severe criticisms both from legal scholars and from a few anthropologists (Baird, 2005a; Fuller, 1988; Kaul; 2021; Sen, 2019; Tarabout 2018). The critics challenged the legal ideas and methods adopted, the sources of religious authority consulted, and

the constitutional legal provisions applied for the juridical interpretations. As Fuller has argued, the Indian judiciary, in its secular commitment to protect the constitutional right to freedom of religion, particularly the religious belief and practices under Articles 25 and 26 of the Constitution, was forced to identify the 'religious essence' in the absence of the definition of religion in the Constitution. Thus, it may not be completely wrong to assume that the legal doctrinal thinking, in addition to the privileging of the written texts of law, while aiming at evolving a more coherent and uniform legal interpretation has forced the judiciary to arrive at the doctrine of 'essential religious practices' that are drawn from religious scriptures and ritual texts such as *Veda*, *Purana*, *Agama*, *Bhagavad Gita*, the Koran, and the Bible. The juridical reasoning of extracting the 'religious essence' from the 'religious texts' has provided legitimacy to the religious texts as authoritative sources to rely upon to decide on all the religious disputes. Moreover, juridical reasoning has also developed a legal rationality that dismisses non-textual religious practices as superstitions. Particularly, folk religious faiths and practices of major religions have no texts and therefore no text interpreters (Fuller, 1988; Ramanujan, 1973). The legal rationalisation towards finding religious essence from the scriptures and other ritual texts finally resulted in the centrality of 'texts' in imagining the religions legally. Such a production of religion fails to recognise the ideological content of the texts. 'A text is always a social text, written from a certain point of view which pertains to certain social group' (Van der Veer, 2005), but the textual imaginations of religion adopted by the higher judiciary in India often ignore the fact that most Hindu religious ritual texts were written not only to justify the pre-eminence of Brahmins in the Hindu religious life but also to reproduce their high ritual status in the caste hierarchy. In the judgments related to the legal disputes regarding temple entry in post-independent India, the judiciary had shown its reformist thinking towards equality and social justice and opened the temples to all Hindus without any caste or gender restrictions, but its reformism was not and is absent when it comes to social justice intervention for the abolition of hereditary succession of priesthood in the Hindu temples. Otherwise, it would have opened up the priesthood to all caste groups and would have

also formally allowed the entry of the qualified priests from all the caste groups inside the *Sanctum Sanctorum* of the temples.

THE POLITICS OF JURIDICAL REASONING

The centrality to the approval of Agama rules in deciding the religious essence of denominations is the result of legal rational thinking of what Summers (1978) call 'authority reasons,' which are essentially textual in character, that looks for the source of some text about law or legal rights or obligations to make it binding or persuasive in respect of the decision-making process. The juridical reasoning in this sense ends up privileging certain texts or textual interpretations as more important than the other sources of knowledge that emerge out of real practices of the texts, social practices that might present a different picture quite contrary to the claims of the privileged written texts. From the analysis of the three legal cases on the dispute of the appointment of the temple priests and the patterns of judicial reasoning in the other cases of religious disputes, it becomes clear that the possibility of the Indian judiciary moving away from the inherited legacy of textual authorisation is doubtful. In a significant way, the legal search for authority reasons merges with the authority reasons of the Brahmin petitioners who are deeply entrenched in the textual practices and in the authority assertions of the scriptures. By following the conceptual footsteps of Max Weber, I would not hesitate to call this interconnectedness based on the textual authorisation between the courts and the Brahmin's 'Textive-Affinity' similar to Weber's 'Elective- Affinity.' When two systems of thought overlap with one another or contain ideas that are similar or which resonate together, they are said to have an elective affinity. In one of his seminal books on religion, *The Protestant Ethic and Spirit of Capitalism*, Weber (1950) found that there is a connection between the Protestant Ethic of Individualism both in the hard work to know God's calling and in its asceticism in renouncing material living as sin, which are the qualities implicitly valued in capitalist practice. The systems of thought that constituted Protestantism and capitalism had an 'elective affinity,' which, in turn, contributed to the emergence of capitalism in protestant countries. Something similar to the elective affinity found in

protestant countries by Weber, I find a 'textive affinity' in India in the reproduction of Brahmanical Hinduism by legitimising it as the only monolithic Hinduism to be followed. When the Brahmin intellectualism of textual high culture found its natural ally in the 'text-dependent legal thinking' of the courts, 'textive affinity' is at work. There are four different streams in the legal reasoning of the Indian judiciary in reading the religious texts to settle the religious disputes: the first one quotes certain specific religious scriptures to shut the door to social reforms that use the law as an instrument for social change[4]; the second one opens the door widely by interpreting the sacred texts and Vedantic Indian philosophy to allow the law to bring social change[5]; the third one quotes extensively from the scriptures but subject them to the reformist readings of the law[6]; and the fourth one indulges in the expansionist reading of Hinduism to the extent of glorifying it by tracing its past to the Vedic religion, thereby stating its unwillingness to define or redefine Hinduism within any legal reformist frame[7]. What I find in all these streams of legal reasoning is that the inevitable presence of scriptural texts to decide the law and its application also advertently or inadvertently helps to reproduce Brahmanical Hinduism in different forms, but the content remains the same. The following passages from the judgments of the *Seshammal* case and *Adi Saiva Sivachariyargal* case are testaments to this reality:

> The Agamas have also rules with regard to the Archakas. In Saivite temples only a devotee of Siva, and there too, one belonging to a particular denomination or group or sub-group is entitled to be the Archaka. If he is a Saivite, he cannot possibly be an Archaka in a Vaishnavite Agama temple to whatever caste he may belong and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple. Indeed, there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or vice versa. What the Agamas prohibit is his appointment as an Archaka in a temple of a different denomination.

[4] *Sankaralinga Nadan vs. Rajeswara Dorai*; *Gopala Moopanar and Others vs. Subramania Iyer and Others*; *Seshammal and Others, Etc. Etc. vs. State of Tamil Nadu*; *Sri Krishna Singh vs. Mathura Ahir and Ors.*; *Kalyan Dass vs. State of Tamil Nadu.*
[5] *Shastri Yagnapurushdasji vs. Muldas Bhudardas Vaishya*
[6] *Sri Venkataramana Devaru and Others vs. State of Mysore and Others*
[7] *Adi Saiva Sivachariyargal Nala Sangam & Ors. vs. The Government of Tamil Nadu*

Shri R. Parthasarathy Bhattacharya, whose authority on Agama literature is unquestioned, has filed his affidavit in Writ Petition No. 442 of 1971 and stated in his affidavit, with special reference to the Vaikhanasa Sutra to which he belongs, that according to the texts of the Vaikhanasa Shastra (Agama), persons who are the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vishnavites. They only can touch the idols and perform the ceremonies and rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the Garbha Griha. Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. It is, therefore, manifest that the Archaka of such a temple besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any circumstances, the Archaka undoubtedly occupies an important place in the matter of temple worship. Any State action which permits the defilement or pollution of the image by the touch of an Archaka authorised by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be prima facie invalid under Article 25(1) of the Constitution.

It has been recognised for a long time that where the ritual in a temple cannot be performed except by a person belonging to a denomination, the purpose of worship will be, defeated: See Mohan Lalji v. Gordhan Lalji Maharaj (l). In that case the claimants to the temple and its worship were Brahmins and the daughter's sons of the founder and his nearest heirs under the Hindu law. But their claim was rejected on the ground that the temple was dedicated to the sect following the principles of Vallabh Acharya in whose temples only the Gossains of that sect could perform the rituals and ceremonies and, therefore, the claimants had no right either to the temple or to perform the worship. In view of the Amendment Act, and its avowed object there was nothing, in the petitioners' submission, to prevent the Government from prescribing a standardized ritual in all temples ignoring the Agamic requirements, and Archakas being forced on temples from denominations unauthorised by the Agamas. Since such a departure, as already shown, would inevitably lead to the defilement of the image, the powers thus taken by the Government under the

Amendment Act would lead to interference with religious freedom guaranteed under Articles 25 and 26 of the Constitution.

The above quotations from the judgment of the *Seshammal* case have clearly stated that the strict adherence to Agamas is inevitable to protect the religious freedom of denominations that are guaranteed under Articles 25 and 26 of the Constitution, and the rituals and *poojas* in a particular denominational temple should be performed by the priests who are coming from the same denomination as the denomination of the temple. If that does not happen, it will lead to the defilement of the idols of the Gods or Goddesses installed inside the Sanctum Sanctorum of the temple. Thus, Hinduism is understood here only in terms of Saivism and Vaishnavism of the great traditions of the Brahmins, which have sacred texts and the ritual performances as prescribed by the texts. As the scriptural texts are taken to determine the essence of Hindu religion, the other folk tradition religious practices may not find their place in the legal production of Hinduism because they have no philosophical, ritual texts, no temples built on the prescriptions of any agama, no textual approval for gods and goddesses to accept animal sacrifice, and some gods even demand arrack and cigars as offers (Fuller, 1992; Masilamani-Meyer, 2004; Valk & Lourdusamy, 2007). Our courts might find them to be superstitious practices not as religious beliefs because no texts are available to them to claim religious freedom and fix any essence. This being so, it is important to ask a legal methodological question here: Does the 'interpretational reasoning' dissolve itself or disappear in the 'Authority Reasons' in these cases of religious disputes? I invoke Summers' conceptualisations again here to make my argument clear. For him, the interpretational reason (concerns the proper approach to interpreting a text which has authority in relation to a context of decision) is a sub-set of the legal reasoning in judicial decision-making. He insists on engaging with the 'substantive reasons' (that derive justificatory force from a moral, economic, political, institutional, or other social consideration) in the common law systems of decision-making instead of giving importance only to authoritative texts. I find a contrasting legal reality in the context of judicial decision-making with regard to the legal disputes on the appointment of priests in the temple. The interpretational reasons

often in these cases are subjugated to the authority reasons by ignoring the substantive reason that paves the way for social equality in a caste-ridden society. The judges certainly would come to defend their decisions by saying that they had defended a substantive value or normative idea of freedom of religion, but they did it at the cost of subverting the constitutional commitment to social equality by reading down Article 16(2) in favour of 16(5) and Article 25(2b) in favour of Article 26 of the Indian Constitution. No outsider has any access to the subjective rationalisations of the judges in their act of 'weighing' or 'balancing of reasons' that they engage, with a view to establishing which decision or course of action is best supported by the strongest reasons. In the *Seshammal* case, one can find the judges' act of balancing of reasons clearly, but the final decision turned out to be ambiguous. The act of balancing of reasons in decision-making in hard cases should result in a final decision that is translatable for a practical implementation, if not 'justice.' The interpretational reasons that are operating in such acts of balancing or weighing may not be completely immune to the political moralities:

> Interpretation is inherently a subjective matter. For every person there is a different interpretation. If two people look at the same painting or look at the same play or go to the same performance of a Noh drama, they will see different things. Because interpretation is not objective but subjective. So, if I am right that law is essentially a matter not of discovery of historical events but of the interpretation of these events, then law becomes, according to this objection, subjective rather than objective. (Dworkin, 2003, p. 8)

According to Dworkin, the interpretation is always a subjective act because the objective of interpretation is to improve the object of interpretation, not to describe the object of interpretation as it really is or describe it accurately. For him, law is deeply connected with political morality; therefore, the interpretation of it cannot be completely objective. Any objectivity that law may have been founded according to him is on the objective nature of the basic truths of political morality, as perceived by the participants. To quote him again here:

> I said that when the writers were writing the chain novel, each was trying to make the continuing novel as good a novel as it could be. I say that when judges decide a hard case, each should be trying to continue the story so as to make it the best story from the standpoint of political justice. (Dworkin, 2003, p. 7)

This is what exactly happened in the judgment of the *Adi Saiva* case, and the judge who wrote the judgment continued the story of the *Seshammal* case in protecting the religious freedom of the Brahmin priests by insisting on the agama approval for essential religious practices of denominations. Though the judgment insisted on the importance of Agamas in determining the essence of denominational religious practices, it recognises the limitations in using Agamas to settle the temple-related disputes, 'Moreover, there is some amount of uncertainty with regard to the prescription contained in the Agamas' (para. 42). The uncertainty in Agama texts referred to by the judge is about the proscription of certain caste groups from being appointed as Archakas. If the Agamas are exclusionary on caste lines, then Article 17 may be invoked to deny the religious freedom to denominational practices.

> Surely, if the Agamas in question do not proscribe any group of citizens from being appointed as Archakas on the basis of caste or class the sanctity of Article 17 or any other provision of Part III of the Constitution or even the Protection of Civil Rights Act, 1955 will not be violated. (para. 41)

Agamas in actual practice are caste discriminatory. The denominational religious practices that claim to follow Agamas 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 sub-caste 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, 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 Vaishnavites because all of them are dependent on Visnu's grace, the texts discussing the matters of religious practices and rituals vary in their attitude towards 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). Thus, the exclusions in the religious denominations are caste exclusions and are approved by the Agamas, but the judiciary has shown its indifference to the Agamic approval for the practices of caste hierarchy in the temple ritual performances.

It could be probable to avoid the possibility of invoking Article 17 to claim that the exclusions of the non-Brahmin caste groups from the priesthood are a form of untouchability, and the judge (in the *Adi Saiva* case) might have invoked Article 16(5) and argued that denominational exclusion should not be taken as caste exclusion or untouchability:

> In this regard it will be necessary to re-emphasise what has been already stated with regard to the purport and effect of Article 16(5) of the Constitution, namely, that the exclusion of some and inclusion of a particular segment or denomination for appointment as Archakas would not violate Article 14 so long such inclusion/exclusion is not based on the criteria of caste, birth or any other constitutionally unacceptable parameter. (para. 43)

The judgment also observed:

> 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. (para. 40)

Dworkin's chain novel analogy for interpretational improvements in legal interpretations is very true because the story of the *Adi Saiva* case is certainly a better effort in writing a best story compared to the story of the *Seshammal* case for two reasons: firstly, for its proud discovery of the provisions of Article 16(5) to determine the religious freedom of denominational practices:

> Article 16(5) which has virtually gone unnoticed till date and, therefore, may now be seen is in the following terms:
>
> 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.
>
> 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.

Secondly, for recognising the limitations of the Agamas in explaining the caste elements in the ritual component of the texts whether they supported the caste exclusion in ritual practices or not, the judge's effort in writing the best story on Hinduism had turned out be a problematic story because the narrated story of Hinduism is merely a story of Brahmanical Hinduism, which either ignores the folk religious traditions of the non-Brahmin caste groups and Dalits in its narration of Hindu religion or plays down the caste discriminations and conflicts in the religious domain either by giving an expansive reading of Vedic past or by setting up a narrative that is based on the Vedantic philosophy, especially from the writings of *Sri Sankara* of the modern period, Prof. Sarvepalli Radhakrishnan.

> Religion incorporates the particular belief(s) that a group of people subscribe to. Hinduism, as a religion, incorporates all forms of belief without mandating the selection or elimination of any one single belief. It is a religion that has no single founder; no single scripture and no single set of teachings. It has been described as Sanatan Dharma, namely, eternal faith, as it is the collective wisdom and inspiration of the centuries that Hinduism seeks to preach and propagate. (para. 1)

The following quotations are taken from some other report (for which there is a reference given in the judgment) which the judge quotes extensively in his judgment:

> When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma; it does not believe in any one philosophic concept; it does not follow any one set of religious rites or performances; in fact, it does not appear to satisfy the narrow traditional features of any religion or creed. It may broadly be described as a way of life...

The reason for the judgment to quote this from a report, in my view, is to say that Hinduism is a great religion and, in the name of social reforms, it should not be get disturbed by changing some of the religious practices that have been followed for centuries. It

should not be fragmented due to caste politics and secular legal interventions.

> What is sought to be emphasized is that all the above would show the wide expanse of beliefs, thoughts and forms of worship that Hinduism encompasses without any divergence or friction within itself or amongst its adherents. (para. 29)

These subjective beliefs and perceptions might have led the judge to decide in favour of the continuation of old religious practices rather than giving reformist interpretations to the scriptural texts in such a way that it breaks the rigid Brahmanical religious traditions that sustain and reproduce the caste system. I would not say, at the same time, the court in this case has completely given up its constitutional duties of upholding the constitutional morality and commitments. Here again, the 'weighing' or 'balancing of reasons' could not come out with a clear verdict. The judgment in the end made an attempt to strike a balance between granting religious freedom to denominations by upholding the Agamic rules and the constitutional commitment to equality by stating that the validity of the impugned G.O. of 2006 should be determined by reconciling the two opposing political and moral positions, but no clear answers were given to the procedures to be followed to reconcile them and validate the G.O. Instead, it came out with the problematic 'case-to-case' adjudicatory rationality.

Nothing much to interpret on the judgment of the High Court of Madras on the *All India Adi Saiva* case because the judges have decided this case largely based on the two earlier judgments of the Supreme Court on the same issues of the appointment of *Archakas*. They have quoted extensively from those two cases to justify their decisions on the inevitability of following Agama prescriptions in appointing *Archakas*, thereby protecting the religious essence of the denominations to ensure the constitutional guarantee of religious freedom of the Brahmin priests who are already serving in the temple and other individual petitioners. Like in the other two earlier cases, in this case also judges did not make any attempt to refer to the primary sources of Agamas to resolve the disputes, but repeated and reiterated so many times to adhere to the Agamas in the appointment of priests and instructed the government to exempt

them from the required qualification of one-year certificate course as a basic eligibility for the post of a priest. It also prevented the government from transferring the priests from one temple to another for the reason that the transfers would go against the practices of Agama.

The judicial attitude of holding on to Agama texts strongly as the 'only authorised pure' source to determine the essential religious practices of denominations is a serious intellectual blunder for two reasons: firstly, it invisibilises the community involved in the temple ritual that changed the usages of Agama texts over a period of time; secondly, it fails to understand the philosophical assertion that the changing nature of an element cannot be taken to decide and define the immutable element called the 'essence.' The very notion of 'essence' is 'transhistorical,' and sometimes, it could be 'transcultural' also. The search for 'essence' will only result in the fixity and rigidity in the determination of social realities. Van der Veer (2005) went one step further and stated that the dependency on classical texts to interpret the Hindu society can result in a serious misunderstanding of Indian social realities as frozen entities. The only way to come out of this classical textual tradition is to engage with the texts that came after the classical period. In his view, they showed and recorded changes in the belief and practices, ideological disagreements, and debates. He has implied that the nature of texts is changing in response to the changing social realities, and thus, the engagement with the religious texts should be more critical to the extent of engaging with the interpretations and the ideological debates on changes in the belief and practices that these latter texts refer to:

> To adopt the 'emic' view that there is unchanging, scriptural source for all actual practices in Hinduism is a methodological fallacy. (Van der Veer, 2005, p. 155)

The bitter truth is that the Indian judiciary has been unhesitatingly subscribing to what anthropologists would call 'emic' view by literally accepting the claims of the Brahmin priests that the Agamas are the only source available to understand and fix the essential religious practices of the Hindu denominations for all time. Apart from this, the Indian judiciary has endorsed the

Brahminical notions of purity and pollution by accepting the argument of the Brahmins that the appointment of priests in violation of Agamic prescription will lead to the defilement of the idol inside the Sanctum Sanctorum. The defilement of God is attributed to the appointment of priests from outside the denominations other than the denomination of the temple and the non-Brahmin caste background. Brahmanical notions of pure and impure or purity and pollution are invoked to talk about the defilement of God. The entry of non-denominational and non-Brahmin priests into the Sanctum Sanctorum and their touch of the idols are interpreted by the Brahmins as impurity and defilement. Although there are references in the Agamas to the exclusive rights and authority granted to the Brahmin to perform certain rituals in the temple, no clarity exists on whether the references to Brahmin denote the hereditary Brahmin or the ethical Brahmin.

> And yet the literature from the Brahmana period also contains a number of terms which indicate that these various aspects and meanings were being distinguished from one another. For example, we find the brahmin who was characterized as such solely as a result of his ancestry or his fulfilment of purely formal functions (*jatibrahmana*; *brahmabandhu*) being contrasted with the brahmin who was distinguished by his adequate knowledge and action and who had realized the full sense of his being a brahmin in this manner. In other words, a distinction was made between the ethical and the hereditary aspects, which were conceptually juxtaposed and occasionally contrasted. What is more, the significance of hereditary legitimation occasionally appears to have been secondary, although it would be going too far to see such scattered and often ambivalent passages as evidence of any far-reaching mobility or a predominantly ethical and characterological understanding of the caste system—as the Neo-Vedanta frequently does. (Halbfass, 1992, p. 354)

Wilhelm Halbfass, an important Western scholar who worked on the Indian philosophical traditions, made it clear in the above quotation that no clarity existed in the period of the Brahmanas as to whether the term 'Brahmin' denoted a Brahmin by birth or a Brahmin by ethical life. Halbfass has documented the ambiguities and ambivalence that prevailed on the distinctions between *Varna* and *Jati, Varna* Brahmin *and Jati* Brahmin, and hereditary Brahmin

and ethical Brahmin in the entire classical period. In this context, it is important to ask a question of whether the Brahmin referred in Agama texts had referred to hereditary Brahmin (by birth) or ethical Brahmin (by spiritual realisations), but the claim of the Brahmin priests who are also petitioners in these cases is that the Agamic reference to Brahmin is only to Brahmin by birth not to Brahmin by ethical attitude and spiritual realisations. It looks like the Indian courts took/take seriously the versions of the Brahmins on the Agamic pronouncements on the qualifications for the priests. Their unwillingness to question the claims of the Brahmin priests on this issue shows their unwillingness to interpret the Agamas within the reformist framework of the Constitution. Also, the uncritical acceptance of such claims of the Brahmin priests in the legal reasoning on the 'essence' of religion prevents the courts from understanding the religious practices outside the textual prescriptions. In fact, some of them predate the agamic texts. Not only that, but they also fail to question the practicality of following the Agamas strictly in the Agama temples. Fuller, in his famous study (1984) on the priests of Meenakshi Temple of Madurai, made two important observations on Agama: 1) the strict adherence to Agamic prescriptions is not practically and theoretically possible in the everyday ritual practices of the temple; 2) neither the Agama nor other ritual manuals have any explicit liturgical instructions to the priests and worshippers to follow. To quote him:

> My summary of the manuals' instructions does not in itself show why exact adherence to them is, in any objective sense, infeasible. The first reason is practical; it is plain that the preliminary rituals prescribed would, if carried out fully, take several hours. Most of the priests, though unfamiliar with the Agamic manuals, are aware that proper preparation would take a long time. Worship in the Minaksi Temple normally begins at five in the morning. The priests performing the daily worship would certainly have to rise by two or three o'clock were they to do all the preliminary rituals, and it is scarcely surprising that none of them do. The second reason is theoretical and more fundamental, and has to do with the fact that, according to the texts, much of the ritual, including almost all its key parts, is accomplished mentally, exclusively or in part, and involves the transformation of immaterial substances and entities.

> More critically, though, because the rituals involve immaterial transformations, mainly achieved through mental means, it would evidently be impossible for an external observer to decide whether the rituals had been done in accordance with textual direction. (Fuller, 1984, p. 141)

To adhere to Agamas in the strict sense, the practitioners should follow the prescriptions of *Jnana* and *Yoga* also in their everyday religious practices, not merely performing the rituals prescribed in the *Carya* component of the Agamas. Fuller is probably referring here to the practice of *Jnana* and *Yoga* components because they are related to immaterial substances and entities. According to him, the priests were not following even the ritual performances properly because the Agama texts were not written exclusively for the Meenakshi Temple. As I have stated earlier, the agama texts were not written for a particular temple located in a particular town or village. The decision to practice a particular agama in a particular temple was purely a decision of the practicing priests of that specific temple in the past.

> The problem, rather, is the claims that are made with reference to ritual details. For example, in the case of the daily worship inside the Minaksi Temple, the priests and other officiants responsible for it believe that it is important that worship is performed before the correct images in the correct order at each respective period of worship; that the right liquids for the bathing ritual, the right clothes for the decoration ritual, the right foods and the right lamps are all used; that the proper mantras, songs, music and bells are heard, and so on. Those who work inside the Temple commonly assert that all these multifarious details can be found in the Agamic manuals. In general, however, this is untrue and many details insisted upon by Temple officiants cannot be found in Agamic texts. *Given that the texts treated as authoritative in the Minaksi Temple were not written for it alone*, this is, of course, to be expected. It is possible that many details in the Temple's ritual tradition did originally derive from particular Agamas or manuals. But if this is so, those putative original texts are no longer recalled and it seems more likely that the ritual pattern of the Minaksi Temple today has been built up over many centuries, and that the details have for long been stored, not in books, but in the memories of the Temple's officiants. (Fuller, 1984, p. 143)

The second observation from his book points to the lack of liturgical instructions in the Agamas and other ritual manuals, which the priests claim to follow in the temple rituals:

> There are, however, further and ultimately even more intractable problems than those discussed so far. These stem from the fact that neither the Agamas nor the ritual manuals actually contain the kind of explicit liturgical instructions that priests and others commonly suppose them to contain. (Fuller, 1984, pp. 139–140).

To substantiate his above claim, Fuller discusses two ritual manuals (*Somasambhu* and *Aghorasiva*) claimed to be followed in the Meenakshi Temple, which are the rituals prescribed for private worship not for public worship in the temples. Though there are claims about the existence of Agama texts in hundreds and verses in many thousands, the available texts that are published are very few in number, and of them, only very few are put into practice. This being so, how then should we understand the legal rationality that justifies the practice of Agamas in determining the essential religious practices of denominations? If the practices of Agamas are the determining factor in fixing the religious essence of denominations, then the essence of denomination cannot be understood in the absence of its caste affiliations because the Agamic prescriptions are caste-specific. The judgment of the *Adi Saiva Sivachariyargal* case had completely ignored this fact of caste-specific prescriptions in the Agamas and interpreted that the exclusionary practices in the denominations are not caste exclusions, thereby protecting the so-called denominations in the name of religious freedom and pre-emptively preventing any legal interventions based on Articles 14 and 17 of the Constitution and the Protection of Civil Rights Act, 1955.

So far, I have discussed the mutual influence between the Brahmanical claims of scriptural texts and denominational identity for their religious practices and the juridical reasoning that takes the textual approval for the essential religious practices for the denominations. It became so clear from the above discussion that we can find the perfect synchrony between them in understanding Hindu religion, textual approval for religious practices, and the determination on the constituents of denominations without caste

as one of the elements of denomination. It is politically incorrect to assume that the synchrony is either an accidental correlation or a natural outcome of the process of judicial reasoning. It cannot be free from certain political and moral rationalisations. I am not alone in saying this. Robert D. Baird (2005), Marc Galanter (1971), C. J. Fuller (1988), and Ronojoy Sen (2019) in their respective works brought out political and moral reasons and cultural politics behind the judicial reasoning in defining Hinduism, particularly on the legal category of Hinduism, on the doctrine of essential practices of religion, on the tension between Hinduism and secularism, and on various other religious disputes that arose from various religious groups in India. All these legal scholars have made a significant contribution through their analysis of various case laws on religious disputes to understand the problems and the politics in the judicial reasoning on the matters of religion and the secular, but they restricted themselves by making some generalisations based on empirical materials from the courts and the judicial decisions. They did not show any inclination to theorise those empirical materials that they had collected and commented upon, but it is important to at least make some theoretical comments on the case law materials that I am concerned with in this paper to unravel the deeper political formations behind the judicial pronouncements on the issues of appointment of the non-hereditary and non-Brahmin priests in the temples. Michel Foucault (1972) might call these deeper political formations behind the judicial pronouncements as discursive formations. Though Foucault had moved away from his early archaeological method and structuralist tendencies, I found his analysis of discursive formations from his early work, particularly *Archaeology of Knowledge* useful to interpret the pattern maintenance in the judicial pronouncements or statements on the definition of Hinduism, on the textual importance in the determination of essential religious practices of the so-called denominations. Though these judicial pronouncements as 'serious speech acts' were/are made in the institutional context of courts, they are not completely unrelated to 'serious speech acts' of the Brahmins and the experts in the scriptural literatures, but the court decisions or formal judgments (the most important 'serious speech acts' in the Foucauldian sense) appear to be divorced from the local assertions of Brahmin petitioners and other Hindu religious

organisations so as to constitute a relatively autonomous space, but they are not autonomous because they are connected to a network of other serious speech acts of Brahmins, Agama experts, and the judicial precedents. I wish to quote an observation from the judgment of the *Seshammal* case, on the content of the affidavit filed by Parthasarathy Bhattacharya, an expert in Agamas in the Supreme Court to show the connection that exists between the demands of the petitioners and the court approval of the same:

> Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. It is, therefore, manifest that the Archaka of such a temple besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any circumstances, the Archaka undoubtedly occupies an important place in the matter of temple worship.

From the above quote from the judgment, it becomes clear that the Agama expert as well as the petitioner had represented the Brahmanical views of the temple priests that the temple priests should be selected from the specific denominations and the emphasis on the Agamic disapproval for crossover of denominations in the priesthood. The judge who wrote the judgment reflected the affidavit filed by Parthasarathy Bhattacharya:

> The Agamas have also rules with regard to the Archakas. In Saivite temples only a devotee of Siva, and there too, one belonging to a particular denomination or group or sub-group is entitled to be the Archaka. If he is a Saivite, he cannot possibly be an Archaka in a Vaishnavite Agama temple to whatever caste he may belong and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple. Indeed, there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or vice versa. What the Agamas prohibit is his appointment as an Archaka in a temple of a different denomination.

> Any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorised by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be *prima facie* invalid under Article 25(1) of the Constitution.

These judicial decisions or serious speech acts to grant the protection of freedom of religion to the essential religious practices of the denominations have come out of indirect approval of the interpretation of denomination by the Brahmins in the *Seshammal* case earlier and in the *Adi Saiva Sivachariyargal* case later:

> A reading of the judgment of the Constitution Bench in Seshammal (supra) shows that the Bench considered the expanse of the Agamas both in Saivite and Vaishnavite temples to hold that the said treatises restricted the appointment of Archakas to a particular religious denomination(s) and further that worship of the deity by persons who do not belong to the particular denomination(s) may have the effect of even defiling the idol requiring purification ceremonies to be performed. The Constitution Bench further held that while the appointment of Archakas on the principle of next in line is a secular act the particular denomination from which Archakas are required to be appointed as per the Agamas embody a long standing belief that has come to be firmly embedded in the practices immediately surrounding the worship of the image and therefore such beliefs/practice constitute an essential part of the religious practice which under Section 28 of the Act (extracted above) the trustee is bound to follow. (para. 24)

> So long as the prescription(s) under a particular Agama or Agamas is not contrary to any constitutional mandate as discussed above, the impugned G.O. dated 23.05.2006 by its blanket fiat to the effect that, 'Any person who is a Hindu and possessing the requisite qualification and training can be appointed as a Archaka in Hindu temples' has the potential of falling foul of the dictum laid down in Seshammal (supra). (para. 43).

When these types of serious speech acts exhibit regularities and inter-relatedness with the speech acts of the same and other types, Foucault calls them 'Discursive Formations.' Judicial decisions as serious speech acts have to undergo some sort of procedural tests of the institution of the court as a body governed by rules and norms

by subjecting itself to legal arguments between the appellants and the respondents, empirical confirmation of evidence, and the approval of other authoritative texts. These serious speech acts become knowledge in the field of law and the sociology of religion when they are made into objects to be studied, repeated, and passed on to others. What Foucault observed about the statements becoming serious speech acts is profoundly true in the contexts of judicial pronouncements becoming serious speech acts:

> Statements are not, like the air we breathe, an infinite transparency; but things that are transmitted and preserved, that have value, and which one tries to appropriate; ...things that are duplicated not only by copy or translation, but by exegesis, commentary and the internal proliferation of meaning. (Foucault, 1972, p. 120)

The judicial statements on Hinduism, Denomination, essential practices of religion, and Agamas are the proofs for the above observation of Foucault. In the common law tradition, the precedence in judicial decision-making is a remarkably important one. The courts are expected to follow the established precedent judgments if they encounter disputes of a similar nature in deciding the cases. This tradition of precedence cannot happen without the transmission and preservation of certain elements such as legal doctrines, the method of ascertaining truth from the texts, and obtaining the facts of the case. If we closely examine the judgments of the three case laws that are taken for the analysis of the religious disputes over the appointment of non-Brahmin priests, the judgments that were delivered in the colonial period and in the early years of Indian independence such as *Sankaralinga Nadan vs. Raja Rajeswara Dorai* (*1908*), *Gopala Moopanar vs. Dharmakarta Subramaniya Iyer* (1914), *His Holiness Peria Kovil Kelvi Appan Thiruvenkata Ramanuja Pedda Jiyyangarlu Valu vs. Prathivathi Bhayankaram Venkatacharlu and others* (1939), and *Sri Venkataramana Devaru vs. The State of Mysore* (1951) were often quoted extensively in the judgments of the *Seshammal* case (1972) and *Adi Saiva Sivachariyargal* case (2015). All these cases mentioned above were about the temple entry issues and the rights of temple worship. In all these cases, the judges had quoted from religious scriptures either to allow the entry or deny the entry, but judges

mostly referred to the secondary sources of Agamas not the primary ones. Despite this, the later judgments have no problem in accepting and approving the Agama rules mentioned in the precedent judgments by commenting on them positively to the extent of finding more relevance and newer meanings in them. The judgments in the later cases not only transmitted the idea of Agama approval but also preserved it faithfully. The *Agamas* in Saivism and the *Samhitas* in Vaishnavism got enormous importance in the judicial discourse to the extent of determining the religious essence of the denominations.

It would be extremely difficult to call these major religious divisions of Hinduism either as denomination or as sect because the Western sociological categorisations of sect and denomination may not be very appropriate to understand the religious experience of the Hindus. Most of the Western sociologists who studied the religious organisations in Christianity had always analysed them by finding the differences and resemblances between the church and sects, church and denominations, and sects and denominations because both sects and denominations had emerged to some extent in their critical responses to or serious disagreements with the structure and functions of the church as the centralised religious authority in the Christian world. Some sects and denominations evolved into various churches later, and thereby, they brought out the complexities of religious life in the practices of the Christian faith. Eschmann (2005), in her study on Hindu *Sampradaya,* found that the categorisations of Troeltsch are not very useful to explain the complexities of the religious practices of the Hindu religion. She found that the practices of these *Sampradayas* are very different and a total contrast to the conceptual scheme developed by Troeltsch from the study of Christian religious organisation. What Eschmann stated about the irrelevance of the category of sect to understand the Sampradaya holds good to apply to the category of denomination to *Sampradayas* like *Adi Saivam*, *Pancratra*, and *Vaikhanasa*. It becomes clear that we can neither use nor apply the category of church nor use the category of sect to understand those three Sampradayas that are in dispute with the government of Tamil Nadu because the complex practices of religious divisions in Hinduism can hardly be captured within the categories that are developed from the Christian religious tradition in the West.

The religious organisation called denomination has no explanatory value in Hindu religious experience because its meaning and the institutional characteristics cannot be simply transplanted from Christianity to understand and determine the denomination in the religious practices of Hinduism. In the process of inventing or in the production of a legal category of denomination, the judicial discourse followed the same model as its earlier methods of defining Hinduism as a legal category. Before I enter into the analysis on the legal category of denomination, I discuss briefly the legal measures that resulted in the legal category of Hindu.

The legal category of Hindu is not only different from the anthropological and sociological conceptions of Hindu but also completely untouched by them. When the anthropologists and sociologists found it difficult to use the definition of religion that was developed from the Judeo-Christian religious experience to define Hinduism, both the lawmakers and the adjudicators had no problem in defining it legally. To substantiate my claims, I start with the quote of Louis Renou here, 'there is no Hindu term corresponding to what we [in the West] call religion' (Renou, 1963). Wilfred Cantwell Smith even went one step further and disputed the usage of the term Hinduism to understand the religious experiences of 'Hindus' in his influential work *The Meaning and the End of Religion* and has this to say:

> The term 'Hinduism' is, in my judgement, a particularly false conceptualization, one that is, conspicuously incompatible with any adequate understanding of the religious outlook of Hindus. Even the term 'Hindu' was unknown to the classical Hindus. 'Hinduism' as a concept certainly they did not have. (W. C. Smith, 1967, p. 63)

This being so, how did then the law evolve the legal categories of 'Hindu' and 'Hinduism' when they were absent as a single unified entity in social reality? The legal rationality that is deeply rooted in the objectification of the positivist philosophy that demands the universalisation of legal categories to apply to the particular issues might have forced it to adopt such categorisations. The universalisation of legal categories is a pragmatic compulsion of judicial decision-making, which often uses the rationality of

simultaneous exclusions and inclusions in its categorisations to make certain social realities governable and thereby subject them to objectification. Foucault claimed that the discursive formation produces the object about which they speak. The formation of objects in the discursive formation points to something that can be said about or can be described about it, what elements can be introduced into it to objectify it. The following discussion on the legal category of Hindu from the important paper of Baird helps us to understand how the objectification of the 'Hindu' led to the formation of the legal category of Hindu. For him, the legal category of Hindu came as a result of certain legal rationalisations of the identities of the religious communities in India. According to Baird, Explanation II of Article 25[2] (b) of the Constitution admits that 'Hinduism' as a religious category is different from the 'Hindu' as a legal category. 'The Hindus in Article 25[2] (b) is to be taken to include persons professing the Sikh, Buddhist and Jains religion suggests that as religions these are distinguishable from Hinduism as a religion' (Baird, 2005b, pp. 69–70), but for the purpose of legal governance they are to be included within the category of Hindu. Apart from this, in the same paper, Baird had brought out the legal rationality of approving simultaneity of inclusion and exclusion in the Hindu Code Bills passed in the years 1955 and 1956. He quotes the Hindu Succession Act of 1956 in the following ways:

> (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat, or a follower of the Brahmo, Prarthana, or Arya Samaj;
> (b) to any person who is Buddhist, Jain or Sikh by religion; and,
> (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is provided that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed. (Baird, 2005b, p. 70)

Baird had stated that the other three major acts, the Hindu Marriage Act of 1955, the Hindu Adoptions and Maintenance Act of 1956, and the Hindu Minority and Guardianship Act of 1956, use almost identical language. One can understand from these legislations that the legal category of Hindu emerges from the

manipulative interpretations of the religious traditions, which conveniently ignore the multiple religious traditions among the Hindus to construct a monolithic Hinduism and Hindu as a unified religious community. It brought in the heterodox religions such as Buddhism and Jainism under Hinduism by a complete indifference to the critical voices of those two religions against Brahmanical Hinduism. They constructed the Hindu identity out of presence–absence dichotomy, and the absence of 'Muslim' defines the presence of 'Hindu.' In other words, the 'Hindu' in the legal definition is the one who is not a Muslim, not a Christian, and not a Parsi or not a Jew by religion. He also argued that this legal category of Hindu includes atheists and people who reject the caste laws and Vedas and Sastras. Baird explains finally how the judicial decisions have played an important role in expanding the net of legal category of Hindu by rejecting the non-Hindu identity claims of the religious collectives such as *Virashaivas*, *Lingayats*, Brahmo Samaj, Prarthana Samaj, and the Arya Samaj. The legal category of Hindu is an objectified Hindu because it is a rationalised entity and a category evolved in law to resolve certain religious disputes. It is an object about which law speaks, pointing to something that allows to describe a Hindu for a practical purpose. It acts as a grid of specification and provides the criteria for recognising and classifying the religious communities to identify the Hindu.

The formulation of the legal category of denomination had almost followed the same path as it was followed in the evolvement of legal category of Hindu. Though there are references to the denominational rights and privileges guaranteed under Articles 16(5), 26, and 27, no definition of Hindu is available in the Indian Constitution. This absence of definition had forced the judiciary to define it. Justice B. K. Mukherjea in his landmark judgment in the case of *Commissioner of Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar, Shirur* defined the denomination in the following terms:

> ...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.

This judgment came under severe criticism for two reasons: one is for using the definition of denomination from the *Oxford University English Dictionary* to understand the disputes regarding the denominational rights and another for its uncritical acceptance of the concept of denomination from the Judeo-Christian religious experience to understand and to determine the Hindu religious practices (Datar, 2018). The sects and denominations are distinctly two different religious organisations in the Christian world, but the above-mentioned judgment seems to use them interchangeably. The judgments that protected the freedom of religion to practice the denominational religious practices in the cases of *Seshammal* and *Adi Saiva Sivachariyargal* made no attempts either to define denominations or identify the elements of denomination in the Agamic religious practices. They had repeatedly stated only one thing that the priests should be appointed only from the specific denominations in accordance with the prescriptions of the concerned Agamas. Thus, for the courts, the Agamic texts and their prescriptions of ritual worship are the only elements that constitute the religious essence of the denominations. As the courts have determined the 'essential practices of religion' from scriptural prescriptions for the legal recognition of certain specific religious practices, they have rationalised the exclusion of certain other religious practices that fall outside the textual prescriptions as superstitions. All these serious speech acts at the level of judicial statement imply that one can define the general set of rules like determining the essential practices of denomination by the scriptural validation that governs their objects. In other words, the general rules that are evolving out of judicial statements or decisions themselves can govern the objects. For instance, the general rule of applying the doctrine of 'essential practices of religion' to grant legal recognition to certain religious practices itself is objectified to govern its own object like essential practices of particular denominations, by creating the discourse on the religious divisions, sacred texts, purity of the deity, and the priests. The discursive formation in the fields of 'law-making' and 'law-adjudication,' and the legal statements like judicial decisions make their own rules and norms to be objectified to govern their own objects. The legal objectification of religious entities such as denomination helps the legal system to govern and to manipulate

such legal objects. Thus, the legal category or the object of denomination in the Indian law does not emerge from the 'actual' Hindu religious practices of certain religious collectives of Saivism and Vaishnavism but from the legal rationalisation of 'claimed' religious divisions or groupings.

CONCLUSIONS

The judicial interventions to protect the freedom of religion to the beliefs and practices of the Hindu religious 'denominations' have resulted only in the legal authorisation of Brahmanical claims of the Hindu religiosity entrenched in the ritualistic worship as prescribed by the scriptures, in the superiority of Brahmin priesthood, and in the ideologies of 'purity' and 'pollution' to justify the practices of caste exclusions. They have shown utter indifference to the legal justice initiatives of the state government of Tamil Nadu towards social equality of granting temple priesthood to all caste groups instead of continuing with the traditional privileges given to the Brahmins. The repeated judicial assertions on the appointment of temple priests in accordance with Agama not only made the textual traditions important in the temple worship but also granted legal recognition to them to the extent of approving them as the only source of determining the essence of religion. Agamas are not immutable texts and have been subjected to so many changes and modifications in response to the changing conditions of the temples, priests, and changing demands of the state patronage in the past. As I discussed earlier, Fuller proved from his ethnographic study on the priests of Meenakshi Temple in Madurai that strict adherence to Agamic rituals is impossible both in the practical and theoretical sense. There are reports on the widespread violations of Agamic rituals in the Agama temples by the Brahmins. It is, in this context, blaming it entirely on the state government initiatives to appoint priests from the non-hereditary and non-Brahmin caste groups as a violation of Agama rule, which is a deliberate attempt to mislead the court in deciding the essential practices of the temples. The continuous and repeated insistence on the approval of Agamic texts to determine the essential practices of religion or denomination in

this case by the courts will result in a new religious dogmatism in Hinduism.

In the absence of actual denominations in the social anthropological sense, the legal construction of denomination can produce not only the transcultural category of religious collectivism but also the reproduction of caste hierarchy because denominations cannot be without caste in India. The religious traditions or *Sampradayas* in Saivism and Vaishnavism cannot be considered denominations for various sociological reasons, which are already discussed in the preceding section of the paper. If the courts are positively considering various *Sampradayas* as denominations, then they cannot address them without addressing the practices of caste hierarchy in the *Sampradayas*. The *Sampradayas* have more similarities with the Christian churches than with their sects and denominations. Brahmin priests have used the legal category of denomination as a stick to beat the others who have tried to question the monopoly of the Brahmin priesthood. *Adi Saivas* and *Vaikhanasas* are more of endogamous caste units than denominations. In a sense, the legality of denomination only helps to legitimise the practices of caste hierarchy in Hinduism.

The proper understanding of the particular procedural rationality of the legal order, expressed in the justification for extracting 'essential practices of religion' from the scriptural texts of Agamas to resolve the dispute over the appointment of non-hereditary and non-Brahmin priests, explains that the law is not merely an instrument of politics but is rather constitutive of politics. It is constitutive of politics in a way that its legality produces its own legitimacy. This positivisation of law makes the judiciary impervious to moral argumentation to reflect on social equality and justice in a society that is deeply rooted in caste hierarchy and discrimination.

The soul of the Indian Constitution is trapped within its own legal rationality and categories. Law can no longer claim in this situation that it is an instrument of social change. So long as it protects the caste interests in the name of protecting religious freedom to denominational religious practices, no social justice initiatives can succeed by any organ of the modern state.

REFERENCES

Baird, R. D. (2005a). Religion and law in India: Adjusting to the sacred and secular. In R. D. Baird (Ed.), *Religion and law in independent India*. Manohar.

Baird, R. D. (2005b). On defining "Hinduism" as a religious and legal category. In R. D. Baird (Ed.), *Religion and law in independent India*. Manohar.

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

Dworkin, R. (2003). Law, philosophy and interpretation. In F. Atria & D. N. MacCormick, (Eds.), *Law and legal interpretation*. Ashgate/Dartmouth.

Eschmann, A. (2005). Religion, reaction and change: The role of sects in Hinduism. In G.-D. Sontheimer & H Kulke (Eds.), *Hinduism reconsidered*. Manohar.

Foucault, M. (1972). *The archaeology of knowledge*. Harper Colophon.

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

Fuller, C. J. (1988). Hinduism and scriptural authority in modern Indian law. *Comparative Studies in Society and History*, *30*(2).

Fuller, C. J. (1992). *The camphor flame: Popular Hinduism and society in India*. Viking.

Galanter, M. (1971). Hinduism, secularism and the Indian judiciary. *Philosophy East and West*, *21*(October).

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

Halbfass, W. (1992). *Tradition and reflection: Explorations in Indian thought*. Sri Satguru Publications.

Kaul, D. K. (2021). The 'essential practices' doctrine. *International Journal on Minority and Group Rights*, *29*, 2022.

Masilamani-Meyer, E. (2004). Guardians of Tamil Nadu: Folk deities, folk religion, Hindu themes. *Neue Hallesche Berichte. Quellen und Studien zur Geschichte und Gegenwart Süidindiens*, *Band 5*. Verlag der Franckeschen Stiftungen zu Halle.

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

Ramanujan, A. K. (1973). *Speaking of Siva*. Penguin Books.

Renou, L. (1963). Introduction to Hinduism. In Renou (Ed.), *Hinduism*. Washington Square Press.

Savelsberg, J. J. (1992). Law that does not fit society: Sentencing guidelines as a neoclassical reaction to the dilemmas of substantivized law. *American Journal of Sociology*, *97*(5), 1346–1381.

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

Smith, W. C. (1967). *The meaning and end of religion*. The Macmillan Company.
Summers, R. S. (1978). Two types of substantive reasons: The core of a theory of common-law justification. *Cornell Law Review*, *63*, 707.
Tarabout, G. (2018). Ruling on rituals: Courts of law and religious practices in contemporary Hinduism. *South Asia Multidisciplinary Journal*, *17*.
Valk, U., & Lourdusamy, S. (2007). Village deities of Tamil Nadu in myths and legends: The narrated experience. *Asian Folklore Studies*, *66*(1/2), *Narratives and Rituals in Asian Folk Religion and Culture*.
Van der Veer, P. (2005). The concept of the ideal Brahman as an indological construct. In G.-D. Sontheimer & H. Kulke (Eds.), *Hinduism reconsidered*. Manohar.
Weber, M. (1950). *The protestant ethic and the spirit of capitalism*. George Allen & Unwin.
Weber, M. (1978). *Economy and society: An outline of interpretive sociology* (G. Roth & C. Wittich [Eds.]). University of California Press.

CASES CITED

Adi Saiva Sivachariyargal Nala Sangam vs. State of Tamil Nadu (2016) 2 SCC 725
All India Adi Saiva Sivacharyargal Seva Sangam v. State of Tamil Nadu (2022 Supreme Court (Madras) 2608)
Seshammal and Ors. vs. State of Tamil Nadu (1972) MANU/SC/0631/1972

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.

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