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[Chapter 1]

### *Birth vs Merit. Kerala Temple Priests and the Courts*

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In recent years, men born into various non-Brahmanical castes, including former ‘untouchables’, have been appointed as priests at Brahmanical public temples in Kerala. The constitutionality of such appointments has been challenged and was eventually upheld by the Supreme Court in 2002. This decision, I suggest, has to be seen as the outcome of developments by which the courts came to define priesthood in terms of technical procedures performed by expert, but ‘secular’ persons, i.e. employees selected solely on merit. Such a legal understanding, however, conflicts with widely held expectations about priesthood in terms of birth qualifications. Birth equality for temple priestly services, I argue, has now become a possible legal claim as a result of the progressive administrative ‘rationalization’ of Hindu religious institutions through State action, and because it also meets for various reasons with political consensus.

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To allow those persons who are not born Brahmans to become priests at Brahmanical temples requires that judges address a wide range of religious issues. They have relied on previous cases in which courts established themselves as paramount arbitrators of what ‘true’ religion is, and, at times, as active reformers of Hindu practices (Galanter 1971; Fuller 1988; Sen 2010). This role, for which there were precedents during the colonial period, is legitimated by the vision of secularism projected by the Constitution. Religious freedom guaranteed by Articles 25 and 26 is subject to various limitations: the respect of ‘public order, morality, and health’ (Art. 25(1)) (a recurrent consideration justifying the action of the courts in religious matters—Derrett 1999: 495, 512; Bhagwati 2005: 45); or the duty of the State to regulate and restrict ‘any economic, financial, political or other secular activity which may be associated with religious practice’ (Art 25 (2)(a)). While the Constitution concedes more

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autonomy to so-called ‘religious denominations’ (Art. 26), a category left for the courts to define, it gives the State a general mandate for providing social welfare and reform, and for eradicating social evils such as untouchability. There is therefore an inbuilt tension in the Constitution between ‘non interference’ in religious matters and the State’s duty to introduce social reform (Baird 2005: 18, 33), with the latter assuming preeminence: in Tahir Mahmood’s words (2006: 756), ‘in India, the law of the land determines the scope of religion in society; it is not religion that determines the scope of the law; [...] but any “wall of separation” between religion and state exists neither in law nor in practice.’

This has led to greater State control of the main temples in India, a process by which religious endowments are sometimes described as being ‘nationalized’ (Dhavan 2001: 315)—though this process is actually more extensive in the southern states than in the north of India.<sup>1</sup> /p.5/ The development of a modern judicial order has been decisive in this takeover of temples in the name of a better administration (Reiniche 1989: 166). The history of this process, which started in the early 19th century, has been studied in detail, particularly in Tamil Nadu (Mudaliar 1974; Breckenridge 1977; Appadurai 1981; Presler 1987; Reiniche 1989; Fuller 1991, 2003; Frykenberg 2001; Chatterjee 2011). Here scholars have shown that the British administrative machinery penetrated ‘deeply and systematically’ into the regulation of religious institutions (Presler 1987). From 1801, revenue authorities could exercise control over temple servants and staff: ‘unwittingly, perhaps, revenue and judicial authorities, therefore, came to determine who qualified for what in the temple’ (Breckenridge 1977: 97). This had far-reaching effects since the Government in Madras was in charge of some 7,600 Hindu shrines in 1833 (Chatterjee 2011: 61). The subsequent will of the British Government not to appear to participate in the management of Hindu temple activities, following Christian protests in Great Britain, led to confer on the courts a preponderant role, so much so that, by the end of the nineteenth century, they had become ‘the state’s central agency in temple matters’ (Presler 1987: 25). This in return prompted new criticism, leading to the constitution of a Hindu Religious Endowment Board in 1926 in Tamil Nadu, a model that influenced the constitution of similar Boards that are now to be found throughout India.

While administrative bodies and the courts may have diverging notions of the temple, or temple ‘theories’ (Presler 1987: 59),<sup>2</sup> they have all developed an idealist and elitist view of religion as a ‘spiritual’ realm set apart from everyday life and turmoil (Bhagwati 2005: 41; /p. 6/ Presler 1987: 53, 111ff.). They all concur in the view that a ‘religious atmosphere’ is to be achieved by the correct performance of rituals, informed by textual evidence, by competent priests (a ‘Weberian rationalization’—Fuller 2003: 159). Considerable attention has thus been given to the qualification of temple priests, and their formal religious education is an increasingly important criterion regarding their employability (Fuller 1997, 2003; Presler 1987: 46ff.).

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<sup>1</sup> This has met with some resistance, even in the southern states, as borne out by the long-standing dispute between the Podu Dikshitaras, in charge of the famous Nataraja temple in Chidambaram, and the Tamil Nadu Government—for recent developments, see A. Srivathsan (2014); Venkatesan (2014); *Arulmigu Vaithianathaswamy... vs The Government Of Tamil Nadu*, W.P.No.9594 of 2014 and M.P.No.1 of 2014, Madras High Court, 11 April 2014.

<sup>2</sup> I rely on Presler’s discussion (1987: 37ff.) about the notion of ‘theory conflict’, where ‘theory’ is understood as a ‘cluster of ideas and sentiments’ which functions as an ‘operative ideal’, a formulation introduced by Samuel H. Beer in his analysis of political representations in British society: ‘Over the past two hundred years in Britain, the representation of interests has taken several forms. Each of the principal forms has been associated with a cluster of ideas and sentiments toward government and society in general and toward representation in particular. Such a cluster we may call a theory providing we understand by “theory” not necessarily the product of a political philosopher, but rather an operative ideal of people in politics.’ (Beer 1957: 613-14)

This emphasis on qualification based on education is at odds with the former logic of appointing priests from specific families or castes. Using court cases, the present paper will illustrate how this issue recently developed in Kerala. Judicial decisions have run counter to the very idea of birth qualification for priesthood, which is a radical departure from widespread Hindu conceptions of personhood. This departure is in fact in keeping with the Constitution (Coward 2005) and the courts have implemented the constitutional mandate step by step with the support of most political parties, including Hindu nationalists.

In this contribution, I set out to discuss documents available on the internet, mostly from Kerala High Court (hereafter KHC). As will soon become clear, these judgments do not merely have local consequences, they also confirm extensive changes at the national level that have already been identified by scholars.

The chapter is divided into three parts according to a logical, and not chronological order. I begin by underlining the contractual dimension of priesthood and the ‘secular’ nature of priests-as-persons as exemplified in a KHC case decided in 2008. In a second part, I come back to earlier decisions that illustrate various aspects of an ‘employer–employee’ relationship as exemplified in the recruitment of priests by State institutions. I then analyze the 2002 Supreme Court case mentioned at the opening of this chapter, in which the recruitment on merit of a priest directly challenged the caste-based logic of priestly appointments. I conclude by discussing the social and political context of this change.

### **The Case of the Cigarette Butt**

On 11 October 2008, a devotee of the Sree Krishna temple at Guruvayur (central Kerala) complained to the administration that he /p. 7/ had found a cigarette butt in an *appam* which he had bought at the temple—*appam* is a special kind of pancake prepared at the temple and served to the god before being distributed to devotees as a divine blessing, *prasādam*.<sup>3</sup> The Guruvayur temple is a famous pilgrimage centre, home to many miraculous stories celebrated in Malayalam devotional poetry since the sixteenth century, and probably the second richest in India with monthly donations estimated at more than two crores Rupees (Buzzintown 2011). It projects an image of extreme care in ensuring absolute purity.<sup>4</sup> The discovery of a cigarette stub in an offering was not good news.

This story soon made its way into the Indian press, with a mention in *The Times of India*, the *Hindustan Times*, *The Hindu*, the *Ahmedabad Mirror*, etc. Purificatory ceremonies were immediately ordered for three days by the *tantri* (‘thanthri’ in some English renderings), the temple’s chief ritual authority—a function associated with a specific *Namṣūtiri* House.<sup>5</sup> However, the administrative body in charge of the management of the temple, the Devaswom Managing Committee,<sup>6</sup> thought it necessary to adopt additional disciplinary measures. After a preliminary enquiry and pending further investigation into the matter, it suspended the licence

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<sup>3</sup> Transliteration in italics follows the scholarly usage for *malayālam*, unless otherwise specified. It may differ from popular transcriptions in English, in the Roman alphabet, as found, for instance, in quotations from judgments.

<sup>4</sup> For instance, recent litigation questioned the possibility of women entering temple precincts wearing a churidar instead of a sari (*K. Mohandas vs State of Kerala and Anr.*, 23 August 2007, AIR 2007 Ker289, 2007(3) KLJ186); or of allowing entry to K.J. Yesudas, a famous singer of Hindu devotional songs, who was born a Christian (*Lalitha Vasudevan vs Guruvayoor Devaswom*, 31 March 2010, 2010(2) KLT607).

<sup>5</sup> *Namṣūtiri* (Namboothiri) Brahmins are considered to enjoy the highest religious status in Kerala. For the notion of ‘House’, which is more adapted to this context than ‘family’ or ‘lineage’, see Moore (1985), Tarabout (1986, 1991).

<sup>6</sup> A Devaswom (*dēvasvām*, ‘what belongs to a god’) is the entire property of a god or a goddess and is managed by a Committee or a Board. The Guruvayur Devaswom Managing Committee was created by the Guruvayoor Devaswom Act of 1978.

of the people who had provided the raw material for the *appam* and placed a suspension order on four /p. 8/ assistant Namputiri priests (*kīlsanti* or keezhsanthis), who were on duty to prepare this offering on the fateful day.

The four priests appealed to the KHC, challenging this suspension order. The Court announced its decision in November of the same year in *Kodakkattu Cheriya Krishnan Namboothiri*.<sup>7</sup> The priests' main contentions were threefold. According to them, since the charge of keezhsanthis was hereditarily shared between 13 Namboothiri Houses, the order of suspension was 'beyond the jurisdiction of the administrative authorities'. Moreover, the preparation of *nivedyam* (offering of food to a god or a goddess), here an *appam*, being 'religious in character and not secular', only religious reparation was required on the *tantri*'s decision, not an administrative sanction. Lastly, they pointed out that since the choice of the person officiating as keezhsanthis was made by the 13 Namboothiri Houses, nobody was appointed by the Board; furthermore, keezhsanthis were not paid a salary but only received 'customary considerations'; according to them, there was 'no employer-employee relationship between them and the management' and therefore the order of suspension lacked any jurisdiction.

These three issues were discussed in the judgement by relying extensively on case law as the decisions to be taken involved interpreting the constitutional distinction between 'religious' and 'secular' — which are admittedly 'inextricably mixed up'.<sup>8</sup> I will briefly sum up the discussion on each point.

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*Can a priest whose position is inherited be subjected to administrative control?*

A similar question had already been put to the Supreme Court as part of the *Seshammal* judgment more than three decades earlier.<sup>9</sup> The latter case arose when, in 1970, the Tamil Nadu Government, run at the time by the DMK<sup>10</sup> (a party heir to the Anti-Brahman movement), passed an Act abolishing all hereditary offices in public religious institutions. This was presented as a way of throwing open the doors to priesthood to qualified persons irrespective of their caste. As the 'Statement of Objects and Reasons' for the Act underlined, this was in response to a 1969 report by the (Tamil Nadu) Committee on Untouchability, Economic and Educational Development of the Scheduled Castes which suggested 'that the hereditary priesthood in the Hindu Society should be abolished, that the system can be replaced by an ecclesiastical Organisation of men possessing the requisite educational qualifications who may be trained in recognised institutions in priesthood and that the line should be open to all candidates irrespective of caste, creed or race.' While the decision in *Seshammal* by Justice Palekar upheld the abolition of the rule of 'next-in-line' succession within a family, it restricted the appointments to the religious 'denomination' concerned (here

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<sup>7</sup> *Kodakkattu Cheriya Krishnan Namboothiri vs The Guruvayoor Devaswom*, decided on 25 November 25 2008, by Justice P.R.Raman and Justice T.R.Ramachandran Nair, WP(C). No. 30846 of 2008(V).

<sup>8</sup> See the regularly quoted *Tilkayat Shri Govindlalji ... vs The State Of Rajasthan And Others*, 21 January 21 1963, 1963 AIR 1638, 1964 SCR (1) 561. As Justice Gajendragadkar wrote in this judgment, 'It is true that the decision regarding the question as to whether a certain practice is a religious practice or not, as well as the question as to whether an affair in question is an affair in matters of religion or not, may present difficulties because sometimes practices, religious and secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because as is well known, under the provisions of ancient Smritis, all human actions from birth to death and most of the individual actions from day to day are regarded as religious in character. [...] Though the task of disengaging the secular from the religious may not be easy, it must nevertheless be attempted in dealing with the claims for protection under Arts. 25 (1) and 26(b).' (p.622).

<sup>9</sup> *Seshammal & Ors, etc. etc vs State Of Tamil Nadu*, on 14 March 1972, AIR 1972 SC 1586, (1972) 2 SCC 11, [1972] 3 SCR 815.

<sup>10</sup> Dravida Munnetra Kazhagam ('Dravidian Progress Federation').

Vaikhānasas), a disposition that, in practice, rendered inoperative the move planned by the DMK. An important question of law was nevertheless reaffirmed: a priest is a servant at a temple and his appointment is secular (*Seshammal*, p.832).<sup>11</sup> As such, hereditary positions are a matter of convenience and therefore liable to government legislation.

In the present Guruvayur case, however, the KHC chose not to rely directly on this decision but quoted other Supreme Court judgments: the so-called *Shirur Mutt* case,<sup>12</sup> which established a distinction /p. 10/ between ‘essential’ aspects of religion, protected by Art. 25 and 26 of the Constitution, and non-essential aspects, legitimately subjected to State action; the *Shri Govindalalji* case,<sup>13</sup> which asserted the Courts’ authority for disentangling the ‘secular’ from the ‘religious’; and the *Narayana Deekshitulu* case,<sup>14</sup> upholding the abolition of hereditary rights of priests in Andhra Pradesh.

The latter judgment, written by Justice K. Ramaswamy,<sup>15</sup> quoted the earlier ruling in *Seshammal* and went a step further. The bulk of K. Ramaswamy’s judgment relies on philosophical and theological considerations about what he saw as the fundamentals of religion and of Hinduism, with extensive quotes from Swami Vivekananda, Shri Aurobindo and former President of India Sarvepalli Radhakrishnan, among others. This situated ‘religion’ in a rather spiritualist and reformist perspective, a trend that had also been established in previous judgments; for instance, Justice K. Ramaswamy used a formula taken from *Ratilal* (decision by Bombay High Court in 1952):<sup>16</sup>

‘whatever binds a man to his own conscience and whatever moral or ethical principle regulate the lives of men believing in that theistic, conscience or religious belief that alone can constitute religion as understood in the Constitution.’ (*Narayana Deekshitulu*, §86).<sup>17</sup>

The *Narayana Deekshitulu* judgment concluded that the appointment of priests is a secular matter, as had already been affirmed in *Seshammal*, but this time with no limitation in terms of religious ‘denomination’. Justice K. Ramaswamy argued in favour of /p. 11/ broadening the possibilities of recruiting priests because there could otherwise be a shortage of them since youngsters were increasingly turning to other, more profitable careers. According to the Court, what was relevant was to be:

‘an accomplished person in Agama rules having faith and devotion in that form of worship and also proficiency to perform rituals and rites, ceremonial rituals appropriate to the temple according to its customs, usages, Sampradayams etc. [...] One who fulfils those pre-conditions is eligible to be considered and appointed to the office of archaka or other similar offices. The regulation of this secular activity, therefore, does not offend any faith or belief in the performance of those duties by a person other than one hailing from the family, sect/sub-sect or denomination hitherto performing the same.’ (*Narayana Deekshitulu*, §125).

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<sup>11</sup> For a discussion see Baird (2005), Fuller (1991: 107, 128ff.), Fuller (2003: 162), Presler (1987: 134ff., 150ff.), Reiniche (1989: 34ff.).

<sup>12</sup> *The Commissioner, Hindu Religious Endowments v. Sree Lakshmindra Tirtha Swaminar of Sri Shirur Mutt*, 16 April 1954, AIR 1954 SC 282. As Justice Bhagwati (2005: 43) explained, ‘the secular State had to perform this historic function of confining religion to its essential sphere’. See also Mudaliar (1974: 164ff.), Fuller (1988), Baird (2005: 25), Mahmood (2006: 773).

<sup>13</sup> *Tilkayat Shri Govindalalji v. State of Rajasthan*, 21 January 1963, AIR 1963 SC 1638.

<sup>14</sup> *Shri A.S. Narayana Deekshitulu v. State of Andhra Pradesh*, 19 March 1996, 1996 III AD (SC)135, AIR 1996 SC 1765, JT 1996 (3) SC 482, 1996 (2) SCALE 911, (1996) 9 SCC 548, [1996] 3 SCR 543.

<sup>15</sup> The Bench comprised Justice K. Ramaswamy and Justice B.L. Hansaria.

<sup>16</sup> *Ratilal Panachand Gandhi vs State of Bombay*, 12 September 1952, AIR 1953 Bom242, (1953) 55 BOM LR86, ILR 1953 Bom1187.

<sup>17</sup> The original formula in *Ratilal* (§4) is : « whatever binds a man to his own conscience and whatever moral and ethiocal principles regulate the lives of men, that alone can constitute religion as understood in the Constitution.’

The *Narayana Deekshitulu* judgment also established an important principle on which the KHC relied in the Guruvayur case:

‘There is a distinction between religious service and the person who performs the service; performance of the religious service [...] is an integral part of the religious faith and belief [...]. But the service of the priest (archaka) is a secular part. [...] Though performance of the ritual ceremonies is an integral part of the religion, the person who performs it or associates himself with performance of ritual ceremonies, is not.’ (*Narayana Deekshitulu*, §118).

By a seemingly innocuous shift from considering the *appointment* of a priest as secular (as had so far been the case) to considering that the *service* of the priest and his *person* are also secular, Justice K. Ramaswamy clearly dissociated the (religious) act and the (secular) person. In the Guruvayur case,<sup>18</sup> the KHC established its decision by quoting these conclusions and was satisfied that:

‘the above decision [*Narayana Deekshitulu*] squarely answers the point that even if a person has got a hereditary right to hold the office of Keezhsanthe, his service is still secular in character and such hereditary right can even be taken away by a legislation. It is true that the integral part of the work of the Keezhsanthe or a Santhe [pujari] may be religious, but his service as a Santhe of the temple is secular. [...] In other words, his manner of performance of a religious character cannot /p. 12/ be interfered with but the conduct of the person during and in the course of such performance is not beyond check and control by the authorities. He is still a holder of an office in the Devaswom and he is not beyond the disciplinary power of the authorities as prescribed by law. [...] The duties performed as a Keezhsanthe may include religious and secular or both. But his right to perform the duties merely because it is hereditary does not mean that he is not part of the establishment.’ (*Kodakkattu*, §25, 26).

Regarding the last point, however, the ruling reaffirmed an established legal view instead of breaking new ground. As early as 1911, a decision by Madras High Court,<sup>19</sup> also quoted in *Seshammal*, had stressed ‘that even the position of the hereditary Archaka [priest] of a temple is that of a servant subject to the disciplinary power of the trustee.’ (also Reiniche 1989: 40; Good 1989; Selvam 1997: 41).

*Is the preparation of the food items offered to the deity secular or religious?*

On this question, the KHC referred to the *S.A.P. Srinivasamurthy* case decided in 1971,<sup>20</sup> in which the High Court of Andhra Pradesh, on the basis of *Shirur Mutt*, ruled that the preparation of food offerings is indeed a religious process:

‘the mere fact that offerings of food involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partakings [sic] of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b) [of the Constitution]’ (*S.A.P. Srinivasamurthy*, §33).

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<sup>18</sup> *Kodakkattu Cheriya Krishnan Namboothiri vs The Guruvayoor Devaswom*, 2009 (1) KLT 506.

<sup>19</sup> *K. Seshadri Aiyangar and two Ors. vs Ranga Bhattar*, 7 April 1911, (1912) ILR35Mad631.

<sup>20</sup> *Sri Archakam Peddinti Srinivasamurthy Dikshitulu vs The Commissioner, Charitable and Hindu Religious Institutions and Endowments in Andhra Pradesh at Hyderabad and Anr.*, 8 September 1971, AIR 1973 AP 325.

However, the KHC went further and attributed full importance to the disjunction that K. Ramaswamy, in *Narayana Deekshitulu*, had previously established between the religious act and the person performing it:

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‘according to us, the conduct of the person has nothing to do with the religious faith attached to such duties. If in the performance of any such act, a person misconduct [sic] himself, that is certainly a secular matter and as has been held by the apex court, the fact that a person happens to offer his service based on his hereditary right will not absolve him from being proceeded with any disciplinary action in case he misconduct himself in the performance of such duties. [...] In other words, person [sic] in charge of the preparation of prasadam is by his own act affecting the purity from the point of view of religious faith must be liable to be corrected since the conduct of the person is something in which spiritual remedy may not be quite sufficient or appropriate. One may perform any purificatory act as to preserve the spiritual power of the deity or to ward off any evil consequence. This by itself will not in any way curtail the action being pursued on the administrative side if the facts and circumstances do warrant the same.’ (*Kodakkattu*, §29).

And to further clarify the matter, the Court underlined that ‘even though the preparation of the Nivedyam [food offered to the deity] is considered to be religious it cannot, however, be said that the conduct of the person engaged while and during the course of such preparation is in any way religious.’ (*ibid.*: §31).

*Can priests holding a hereditary charge be said to be in an employee–employer relationship with the temple administration?*

This third question echoes the first one with a slight twist: the focus is now on the word ‘employee’. The KHC observed that in similar cases it had been held that ‘even a person engaged as per custom, hereditary or otherwise can still be called appointees “otherwise made” though not in writing by any order of appointment’ (*Kodakkattu*, §32). Therefore, ‘hereditary employees are also employees under the disciplinary control of the administration.’ (*ibid.*, §32) The Court evoked a similar earlier case (suspension of hereditary servants of the Guruvayur temple after a theft)<sup>21</sup> in which it had held that:

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‘though it may be true that the petitioners therein cannot be termed as full-fledged employees of the Devaswom as it is a hereditary right of the families to perform the religious duties in the temple, at the same time, [...] even assuming that they are not full-fledged employees, still it was held that they are amenable to the control of the general administration.’ (*ibid.*, §32)

A key argument taken into consideration by the Court was that the petitioners were given remuneration both in kind and in cash:

‘Though they may not be receiving a fixed amount by way of salary in any particular scale of pay, the averments clearly show that they are in receipt of various benefits from the Devaswom. Their performance of work is in a regulated manner. Their work is connected with the temple affairs. In these circumstances, though the manner of their engagement in the temple may be by virtue of any such custom or any hereditary right, it cannot be said that there is no employer employee relationship at all.’ (*ibid.*, §32)

The court eventually upheld the suspension order.

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<sup>21</sup> KHC, judgment rendered in O.P. 529/1988 (I was unable to find more references).



This judgment is one of many that are trying to disentangle what is ‘essential’ to religion and what is not, what is ‘secular’ and what is not: in the present case, hereditary rights are not essential to religion; the personal behaviour of somebody engaged in a religious activity is secular; religious acts are performed by secular persons, etc. As a consequence, priests officiating at a public temple are mere employees, whether ‘full-fledged’ or not, even if they claim a hereditary charge.

This marks a turning point. Twenty years earlier, the KHC had dismissed the petition made by a priest working at a family temple, who was asking for arrears of pay.<sup>22</sup> The judge could not resist making rather disparaging comments about the supposed lack of ethics the petitioner displayed in making such a ‘materialistic’ demand, and dismissed his plea:

‘It is unnecessary in this case to consider whether other employees of a Devaswom will adequately satisfy the requirements of the relevant definition of “employee” or “workman”. A poojary or a priest stands away /p. 15/ from the general queue, with his distinctive dress, decorum, discipline and devotion, and with his distinct duties and subtle service. There is all the difference between a mahout, cook or clerk, active in the precincts of the temple or its corridors and office rooms, and priest placed in the sanctum sanctorum and silently saying his prayers.’ (A. Keshava Bhatt, §19).

Therefore, the judge concluded, it is impossible to equate a priest to ‘a mere wage earner’ and to consider him as a ‘workman’, as defined in the Industrial Disputes Act, 1947. (A. Kesava Bhatt, §20). Some years later, priests might still not be covered by the Industrial Disputes Act but they are certainly treated as employees and their demand for an increase in salary no longer appears unacceptable – even though, as with many such demands, it may not necessarily be granted.<sup>23</sup> The next section details some aspects of this employer-employee relationship.

## **Priests as employees**

Writing in 1984 about temples in Tamil Nadu, Fuller (1991: 32) remarked that ‘in all major temples in South India, priestly rights are de facto hereditary.’ The same cannot be said for public temples in the southern half of Kerala, which corresponds to the former princely states of Travancore and Cochin. Here, the Rajas have been engaged in a centralization process since the middle of the eighteenth century, which included extensive control of temples. At the beginning of the nineteenth century, for instance, the Raja of Travancore used to supervise more than 1,500 temples of which 400 were sirkar (Government) temples. After Colonel John Munro was nominated British Resident in Cochin and in Travancore in 1810 (soon after he also assumed the charge of Diwan in both States), government control over these temples became tighter, incorporating the revenue of sirkar temples directly into the State’s general revenue (Yesudas 1977). It assumed their direct administration to the tiniest detail,<sup>24</sup> initially through each State’s /p. 16/ Board of Revenue, then by a specific department, the Travancore Devaswom Board (TDB) and the Cochin Devaswom Board (CDB). At the time the two States merged into the State of Travancore-Cochin in 1949, prior

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<sup>22</sup> A. Kesava Bhatt vs Sree Ram Ambalam Trust and Anr., Kerala High Court, 23 September 1988, 1989 (59) FLR 379, (1990) 1 LLJ 192 Ker. The case was an appeal following an unfavorable decision by the Labour Court at first instance (Appeal No. O.P. No. 7451/1988-K).

<sup>23</sup> N. Govindan Namboothiri vs Travancore Devaswom Board and Others, 10 January 2013, WP(C).No. 11293 of 2009 (F).

<sup>24</sup> The *Travancore Devaswom Manual* of 1935 is replete with precise regulations concerning all aspects of temple life.

to the constitution of Kerala on a linguistic basis in 1956, their respective Devaswom Boards were regulated by a common Act, the Travancore-Cochin Hindu Religious Institutions Act—1950, which is still in force today (with amendments).<sup>25</sup>

Thus, in the southern half of Kerala, the management of the main temples (numbering about 2,000) has been under State administration for more than two centuries. Indeed, the Government does not interfere directly: it appoints Devaswom officials who supervise the administration of temples according to standard guidelines. This influence has extended to an ever growing number of temples because the administration of private ones—except for family temples—can be taken over by the Boards at the request of their trustees or in the event of averted mismanagement (a regular argument in the past for assuming control).<sup>26</sup> Similar developments took place throughout India during the twentieth century (Dhavan 2001: 315; Sen 2010: 40, 61).

The posting of a priest in these temples is often temporary. In the case of the TDB, a statutory distinction exists between employees (including priests) who possess a *kārāṇma* right (a hereditary service for which land was originally given in return) and those who do not. The latter are appointed directly by the board according to a selection process. Current rules mention that:

‘such selection is made after /p. 17/ inviting applications from eligible Hindu candidates [...]. A rank list is prepared after interviewing the eligible candidates on the basis of the marks secured by each of them. (A panel consisting of the President and members of the Board, the Devaswom Commissioner and a competent Thanthri would interview the candidates).’  
(*N.Adithayan* 1995, §6)<sup>27</sup>

The standard length of time during which the position of headpriest (*mēlsanti* or *melsanthi*) is held in TDB-controlled temples is 3 years according to guidelines established in 1956,<sup>28</sup> but may vary for a particular temple (for example, one year for the famous pilgrimage centre of Sabarimala); in other non TDB temples, the duration of office for such a position may vary, from six months (as in Guruvayur) to a longer period of time, but always for a limited duration.

As a result, there is a regular turnover of officiating priests and head priests at the main public temples, and thus a job market for priests has emerged. In a case decided by the KHC, concerning the appointment to the annual position of *mēlsanti* at Sabarimala, an applicant mentioned that over the past 45 years he had worked in eight different temples and had been *mēlsanti* in seven of them (twice in Guruvayur).<sup>29</sup> Such mobility may result either from being

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<sup>25</sup> Other more recent public (Kerala State) Devaswoms Boards are the Guruvayur Devaswom Board (1978) and the Malabar Devaswom Board (2008).

<sup>26</sup> *Travancore-Cochin Hindu Religious Institutions Act*, 1950, Chapter 5. This disposition reconfirms a previous Travancore Regulation dated April 1904. Regular court cases come before KHC which contests the taking over of private temples. Among recent cases, see *M.Gangadharan nair vs The Commissioner*, 22 July 2013, W.P.(C) No. 22507 of 2011); or *K.S. Vasudevan Namboothiri v. The Cochin Devaswom Board*, Rfa.No. 158 Of 2010 (D), 28 March 2012. One such case concerns the temple of Sri Padmanabhaswamy in Thiruvananthapuram, the ‘patron’ God of the former state of Travancore, after the discovery of treasures in its vaults – see *Uthradam Thirunal Marthanda ... vs Union of India* on 31 January 2011, WP(C).No. 4256 of 2010(O).

<sup>27</sup> *N. Adithayan vs The Travancore Devaswom Board And ...* on 4 December 1995, AIR 1996 Ker 169.

<sup>28</sup> *Travancore Devaswom Board Manual*, 1956.

<sup>29</sup> *M.D. Venu Namboodiri vs The Travancore Devaswom Board* on 1 October 2009, WP(C).No. 25699 of 2009(F).

selected for vacancies or from a simple administrative transfer from one temple to another, either by special decision or on a routine basis.<sup>30</sup>

The selection process is crucial in this overall administrative machinery. It leads to regular litigations, especially where wealthier temples are concerned. This is the case for the Sabarimala temple run by the TDB which, of all the temples in Travancore, draws the highest income during the pilgrimage season. In this competitive market, the recruiting administration tries its best to adopt a selection process that is framed by ‘rational’ guidelines. Applicants have to include in their application a certificate of ritual expertise signed by a *tantri* and /p. 18/ to have achieved a certain standard of general education as well as some proficiency in Sanskrit.

In the year 2000, for instance, a total of 52 applications were received for the position of melsanthi at Sabarimala, out of which 50 applicants were called up for an interview. Forty-eight showed up and five were short-listed. The final selection was made, as is customary for appointments to this particular position, by drawing lots in front of the god’s *sanctum* (*Mohandas Embranthiri*, §6).<sup>31</sup> However, a petition was filed before KHC contesting the results of the interview. According to the petitioner, when summoned for the interview, he answered all the questions ‘perfectly well’ but, contrary to his expectations, was not shortlisted. In effect, he was contesting the competence of the members of the selection committee. The counter affidavit filed by the respondents provided some details of the guidelines that, they said, had been followed during the interview:

‘The procedure adopted was by asking questions on three topics. [...] Question on item (a) carried a maximum mark of 15, on item (b) 10 marks and that on item (c) 15 marks. For personality, a maximum of 10 marks was to be allotted under item (d). Thus the total works out to 50 marks. A minimum of 5 marks is to be obtained on each item at the hands of every one of the Interview Board members. Then alone the candidates get qualified for selection by drawing lots. The average of the marks given by all the members was separately tabulated. [...] It is further stated that the questions put were objective types within the purview of the items indicated in the format. The Thanthri being an authority on all religious rites often led the interview.’ (*Mohandas Embranthiri*, §6).

Thus, the TDB claimed, ‘the method of assessment was rational.’ (ibid.: §7).

In order to prepare candidates for these exams, schools of ritual have been created in various places, alongside traditional education in the family or with a personal tutor. Fuller (1996; 1997; 2003) analyzed similar changes from a traditional to a school-based learning process in Tamil Nadu. He mentions a school that opened in that State as early as 1963. Similar developments seem to be slightly /p. 19/ more recent in Kerala. Derrett (1999: 501) mentions the existence of an education scheme for future priests in Kerala in 1968, which may be the one that was launched in 1969 by the TDB and managed by the Ramakrishna Mission:

‘Ten Hindu students irrespective of their caste were selected for imparting training as Santhikars [priests]. Later the number of trainees was increased to 11 for the purpose of including a Harijan also. On successful completion of the training, those trainees were permitted to wear “sacred thread” for which a ceremony of “Upanayanam” was performed.’ (*N. Adithayan* 1995, §7).

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<sup>30</sup> *K.V.Padmanabhan Nambuthiri vs The Cochin Devaswom Board* on 21 January 2013, W.P.(C)No.28047 of 2012; also *Muraleedhara Bhatt vs Travancore Devaswom Board* on 25 February 2014, WP(C).No. 3099 of 2014 (J).

<sup>31</sup> *Mohandas Embranthiri vs Travancore Devaswom Board* dated 10 November 2000.

I will come back to the question of caste in the next section. It is worth noting for now that from its very inception, the education scheme for priests, which was sponsored by the State in Kerala, aimed at establishing a priesthood free of caste distinctions, and that the realization of this project was entrusted to a reformist Hindu organization founded by Swami Vivekananda. This organization also issues certificates of conversion to Hinduism after performing rituals deemed appropriate: in a way, the transformation of priests from different castes into ‘new’ Brahmans (as suggested by wearing the sacred thread and by performing an initiation ceremony) partakes of a logic of transformation of the person through rituals and recalls the ‘purification’ ceremony developed by another reformist organization, the Arya Samaj, for ‘reconverting’ Muslims or Christians to Hinduism or for upgrading the status of low-caste Hindus (Clémentin-Ojha 1994).

Since then similar schools have flourished. One of these is the Tanthra Vidya Peedhom which was founded in 1972 in Guruvayur and is now based in Alwaye. It came into being thanks to strong support from a militant RSS<sup>32</sup> member, P. Madhavan (Madhavan 1988) and, as in the case of the Ramakrishna-TDB school, it called on Kerala’s chief ritual Brahmanical authorities (*tantri*) to teach there; schooling was open to all castes. Another school is the Sri Narayana Tantrika Research Vidyalyayam, founded by an Ezhava-born *tantri*, Paravur Sreedharan Tantri (1925-2011). Educated in ritual texts and performances by personal tutors, including a Brahman, he was hailed as the first non-Brahman *tantri* (Ezhavas formerly borne the stigma /p. 20/ of ‘untouchability’).<sup>33</sup> His school of temple rituals is open to all castes, and has the support of the SNDP Yogam,<sup>34</sup> the Ezhava community’s organization.

Yet another school, Puthumana Tantra Vidyalaya, was founded in 2001 by a Brahman *tantri* for the ‘common people’; it now has nine branches in Kerala and is run by his descendants.<sup>35</sup> His son, Maheswaran, who has successfully completed the Tantra Vidhya Peedhom curriculum, claims to have ‘over 1,500 students learning pooja vidhi [puja procedures] from him at his tantra school, where anyone can join without caste bar.’ The school’s web page is explicit:

‘These course [sic] can be attended by anyone who has keen interest in studying mantra and tantra. No caste bar. Kindly call us for more details, book in advance to avoid last minute rush.’<sup>36</sup>

These changes have received the support of some ritual authorities in Kerala. In 1987, a meeting of Brahman ritualists backed by Hindu nationalists adopted a common declaration (the so-called ‘Paliyam Declaration’) proclaiming that anyone can attain Brahmanhood through his actions, even if they have not been born a Brahman, and can therefore become a priest (Mukundan 2001)—a probable influence of Arya Samaj (with antecedents in the Upanishads). The movement has gained such momentum that a strong, rather conservative organization such as the Nayar Service Society (NSS, organizing the Nayar community) also opened a school of rituals for Nayar students (ritually classified as sudras) in 2010, after having first opposed the idea that non-Brahmans could become priests (*The Hindu* 2010; *The*

<sup>32</sup> Rashtriya Swayamsevak Sangh, the structuring organization at the core of the constellation of Hindu activists’ movements.

<sup>33</sup> See for instance ‘Brahmasree Paravoor Sreedharan Thanthri (1925-2011) at <http://vaikhari.org/sreedharanthanthri.html>; ‘Sreedharan Tantra received Amrita Keerti’ at <http://www.amritapuri.org/835/tantri.aum>; ‘Paravoor Sreedharan Tantri passes away’ at <http://www.haindavaxeralam.com/HKPage.aspx?PageID=14318> (all accessed 12 May 2014).

<sup>34</sup> Shri Narayana Dharma Paripalana Yogam.

<sup>35</sup> <http://puthumanaganapathy.com/index.php/tantra-vidyalay-eng.html> (accessed 13 May 2014).

<sup>36</sup> <http://puthumanaganapathy.com/index.php/coursedetails.html> (accessed 13 May 2014).

*Times of India* 2013. These facts starkly contrast with the situation in Tamil Nadu where, according to Fuller, the (aborted) plans to open an Institute of Vedic Sciences

**/p.21/**

‘were always unworkable because no government-run college open to non-Brahmans and subject to the reservation policy could operate [...] teaching Vedic and Agamic texts. [...] As every knowledgeable Brahman with whom I discussed the matter agreed, the Academy could never have recruited enough competent teachers or willing students.’ (Fuller 2003: 123ff.).

In Kerala, students from castes that were formerly considered to be of low ritual status have enrolled in such institutions managed by high-ranking Brahman ritual specialists, with both the support of the secular State, as well as of caste organizations, Hindu reformists, and Hindu nationalists.<sup>37</sup> Nothing in the law prevents these priests from applying for positions in Brahmanical temples run by public Boards in Kerala, where officiating priests have so far always been so-called Malayali Brahmans (Nambutiris, Embrantiris, Pottis).

### **Merit, not birthright**

Of course, priests of all castes do officiate in all kinds of Hindu shrines at their own respective level. What is new here is the possibility for a priest who has not been born a Brahman to officiate in ‘orthodox’ Brahmanical temples that are patronized by the higher castes.

In the 1950s and the 1960s, a great deal of litigation was concerned with the opening of public temples to all castes, in conformity with Arts. 15, 17 and 25 of the Constitution. While court rulings confirmed the right of entry irrespective of a person’s caste, they maintained existing exclusionary practices regarding the possibility of officiating in the *sanctum*.<sup>38</sup> Even the DMK’s proclaimed determination in 1970 to appoint Harijans as priests in Brahmanical temples in Tamil Nadu led to the already mentioned *Seshammal* judgment<sup>39</sup> which, though abolishing hereditary rights concerning priesthood, maintained that **/p. 22/** the latter should be preserved within the religious ‘denominations’ concerned.

A marked change characterized the late 1990s as evidenced by a few Supreme Court rulings which confirmed the right of State governments to legislate in matters of priestly succession and advocating educational and technical expertise as a requirement for the selected candidates.<sup>40</sup> The Kerala case to which we will now turn is an even more radical move towards appointing priests of any caste to any (non denominational) public temple.

The controversy was sparked off when, in 1993, the TDB appointed as priest (here *śantikāraṇ*) in a small Brahmanical Siva temple, a person born into the Ezhava caste. A petition demanding that this nomination be withdrawn was immediately filed by a Brahman

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<sup>37</sup> See for instance “‘Dalit’ priests lead Hindu resurgence’, [http://www.hindunet.org/srh\\_home/1997\\_5/0052.html](http://www.hindunet.org/srh_home/1997_5/0052.html) (accessed 11 May 2014); also ‘Puja training irrespective of caste’, <http://rajeev2004.blogspot.fr/2007/10/pujari-training-irrespective-of-caste.html> (accessed 11 May 2014).

<sup>38</sup> For instance *Sri Venkataramana Devaruand ... vs The State Of Mysore And ...* on 8 November 1957, 1958 AIR 255, 1958 SCR 895; *Sastri Yagnapurushadji And ... vs Muldas Brudardas Vaishya And ...* on 14 January 1966, 1966 AIR 1119, 1966 SCR (3) 242.

<sup>39</sup> *Seshammal and Others v. State of Tamil Nadu*, AIR 1972 SC 1586; (1972) 2 SCC 11; (1972) 3 SCR 815.

<sup>40</sup> *A.S. Narayana Deekshitulu vs State of Andhra Pradesh*, 19 March 1996, 1996IIIAD(SC)135, AIR1996SC1765, JT1996(3)SC482, 1996(2)SCALE911, (1996)9SCC548, [1996]3SCR543; *Bhuri Nath and Ors. Vs. State of J&K and Ors.*, 10 January 1997, AIR1997SC1711, JT1997(1)SC546, (1997)2SCC745, [1997]1SCR138; *Sri Adi Visheshwara Of Kashi Vishwanath Temple, Varanasi And Ors. vs State Of U.P. And Ors.* on 14 March 1997, JT 1997 (4) SC 124, 1997 (3) SCALE 1, (1997) 4 SCC 606.

devotee (*N.Adithayan* 1995).<sup>41</sup> A full bench at KHC confirmed the appointment in 1995. On appeal, the Supreme Court upheld this judgment in 2002 (*N.Adithayan* 2002).<sup>42</sup> The national press regarded this ruling as ‘administering a crushing-blow to the age-old custom and tradition of bestowing priesthood of Hindu temples exclusively on Brahmins’ (*Deccan Herald*, 6.10.2002).

The priest who had been nominated, K.S. Rakesh, had successfully passed the selection process organized by the TDB in 1992 to fill various positions in its temples and had ranked 31st ‘among the 54 selected out of 234 interviewed from out of 299 applicants’ (*N. Adithayan* 2002, p.2). His father was Paravur Sreedharan Tantri, the founder of the school in rituals Sri Narayana Tantrika Research Vidyalayam, situated not far from the Siva temple where his son was appointed.

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The nomination of K.S. Rakesh was contested before KHC on the grounds that ‘a non-Brahman is not expected to perform Pooja rituals in the sanctum sanctorum of temple in Kerala as per the recognised usage’ (*N. Adithayan* 1995, §3). For its part, the TDB affirmed that for the past ten years this had been standard practice in the temples it managed (*ibid.*: §7).

The KHC’s judgment (*N. Adithayan* 1995) developed successive points. It examined the possibility that the appointment might run counter to existing usage and held that

‘the word “usage” generally denotes a habit or a mode of conduct or a course of action. Though such behaviour may generally be linked with human actions it is not the identity of the person vis-a-vis his caste which matters in discerning the contours of any “usage”.’ (*ibid.*: §9)

Furthermore, it affirmed: ‘nor can we affix legal approval to any usage by which persons belonging to one particular caste alone are employed in any office, be it priest-hood or even above it’ (*ibid.*: §12), because, according to the Court, this would amount to a form of discrimination condemned by the Constitution. Indeed, the Court added, the protection of the freedom of religion is a Constitutional right, but only as far as a given practice is recognized to be an ‘integral’ part of that religion:

‘petitioner has no case that practice of a Malayala Brahmin performing poojas and rituals in the sanctum sanctorum of a temple is an essential and integral part of Hindu religion. Even otherwise, the right under Article 25 of the Constitution is placed only subject to the other fundamental rights enumerated in Part III of the Constitution. No religious right can, therefore, be claimed in contravention of the other fundamental rights.’ (*ibid.*: §16).

The counsel for SNDP Yogam, in favour of the appointment, put forward the argument that the present case was directly appertained to Article 17 (Abolition of untouchability) of the Constitution. An act of discrimination against a Harijan, whatever the position for which he stands candidate, even a priest, would violate this Article and the dispositions of the *The Protection of Civil Rights Act* (Act 22 of 1955), which specifically sanctions punishment for

‘whoever on the ground of “untouchability” prevents any person [...] from worshipping or offering prayers or performing any religious service in any place of public worship [...] in the same manner and to the same extent as is permissible to other **/p. 24/** persons professing or any section thereof, as such the same religion’ (*Protection of Civil Rights Act*, Section 3(b)).

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<sup>41</sup> *N. Adithayan vs The Travancore Devaswom Board And ...* on 4 December 1995, AIR 1996 Ker 169.

<sup>42</sup> *N. Adithayan vs The Travancore Devaswom Board & Ors.* on 3 October 2002, AIR2002SC3538, 2003(1)ALD28(SC), 2002(4)ALLMR(SC)843, 95(2003)CLT504(SC), JT2002(8)SC51, 2002(3)KLT615(SC), (2002)8SCC106, [2002]SUPP3SCR76.

Therefore, the Court concluded:

‘the legislative message intended to be conveyed thereby is explicit and crisp. If a person belongs to one section or caste in the Hindu religion can perform “any religious service” in a temple, such right cannot be denied to another person belonging to a different caste of Hindu religion on the ground of his caste.’ (*N. Adithayan* 1995, §17).

The Supreme Court in 2002 upheld the judgment by following a similar line of reasoning. It relied on other cases that had been settled in the meantime (*Narayana Deekshitulu*;<sup>43</sup> *Bhuri Nath*;<sup>44</sup> *Kashi Vishwanath*<sup>45</sup>) and added a few supplementary considerations. In denigrating ‘irrational considerations’ (such as casteism), it reaffirmed that ‘law is a tool of social engineering and an instrument of social change evolved by a gradual and continuous process’ (*N. Adithayan* 2002, §28). This mission of social reform—according to the judges—is both founded in Hindu scriptures and is at the very root of the Nation:

‘in view of the categorical revelations made in Gita and the dream of the Father of the Nation Mahatma Gandhi that all distinctions based on castes and creed must be abolished and man must be known and recognized by his actions, irrespective of the caste to which he may on account of his birth belong, a positive step has been taken to achieve this in the Constitution and, in our view, the message conveyed thereby got engrafted in the form of Articles 14 to 17 and 21 of the Constitution of India, and paved way for the enactment of the Protection of Civil Rights Act, 1955’ (*N. Adithayan* 2002, p.12).

In a spectacular (and somewhat self-contradictory) ‘historical’ reconstruction, the Court was of the opinion that caste specialization has been the result of mere contingencies:  
**/p. 25/**

‘If traditionally or conventionally, in any Temple, all along a Brahman alone was conducting poojas or performing the job of Santhikaran, it may not be because a person other than the Brahman is prohibited from doing so because he is not a Brahman, but those others were not in a position and, as a matter of fact, were prohibited from learning, reciting or mastering Vedic literature, rites or performance of rituals and wearing sacred thread by getting initiated into the order and thereby acquire the right to perform homa and ritualistic forms of worship in public or private Temples.’ (*ibid.*: p.13)

Therefore, the Court concluded, it is impossible to contend ‘that even persons duly qualified can be prohibited on the ground that such person is not a Brahman by birth or pedigree.’ (*ibid.*: p.14).

The appeal was dismissed.

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Writing in the 1960s about the reforms that had been introduced concerning the management of religious endowments, Derrett concluded (1999: 508–9):

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<sup>43</sup> *A.S. Narayana Deekshitulu vs State of Andhra Pradesh*, 19 March 1996, 1996IIIAD(SC)135, AIR1996SC1765, JT1996(3)SC482, 1996(2)SCALE911, (1996)9SCC548, [1996]3SCR543.

<sup>44</sup> *Bhuri Nath and Ors. Vs. State of J&K and Ors.*, 10 January 1997, AIR1997SC1711, JT1997(1)SC546, (1997)2SCC745, [1997]1SCR138.

<sup>45</sup> *Sri Adi Visheshwara Of Kashi Vishwanath Temple, Varanasi And Ors. vs State Of U.P. And Ors.* on 14 March 1997, JT 1997 (4) SC 124, 1997 (3) SCALE 1, (1997) 4 SCC 606.

‘What effect has this on religion? The writer would submit that it has little if any. [...] The improved modern Indian versions of state control will “purify” or “refine” the image which public religious behaviour presents to observers, but can hardly affect the notion of religion held by the mass of the people.’

This understanding is based on the assumption of ongoing continuity between the former regalian jurisdiction of the king over temples and actions taken by the modern State (Presler 1987: 163; Fuller 2003: 156). As Reiniche (1989: 167) already pointed out, such perceived continuity might result from a juristic, ‘abstract’ point of view. It appears to be somewhat at variance with the changes that have actually taken place: the introduction of the notion of public good; the reversal of the position of former princes with regard to temples (from ‘protector’ to ‘litigant’ as Breckenridge, 1977, puts it); the cessation of State donations to temples; the rationalization and bureaucratization of their management; and the long-standing, regular promotion of a reformed, ‘spiritualist’—‘purified’—Hinduism. It is also difficult to see how courts could be seen as ‘basically conservative’ (Presler 1987: 61). Many judges have made explicit in their judgments a wish to usher in a new world, while often discoursing on a Golden (Vedic) Age, as /p. 26/ reformist movements also do. As mentioned in the introduction to this volume, the question that might be—and has already been—raised is whether their decisions are effective. Galanter (1971: 484), commenting on *Yagnapurushadji*,<sup>46</sup> was under the impression that

‘the public being addressed is not the unenlightened mass but the elite itself. The opinion is an occasion for intralite debate [...]. The concern of the court’s judgment is to reduce the dissonance of the elite—a dissonance which derives from their own ambivalence about Hinduism and about secularism. [...] The lawyer’s fallacy that behavior corresponds to legal rules offers powerful reinforcement of the elite’s fallacy that the masses are following them—a coincidence of illusions that can lead to dangerous miscalculation about popular sentiment and about the efficacy of legally enacted reforms.’

In a different context but from the same perspective, Mallampalli (1995: 94) underlined the fact that, in India, there was the need ‘for a strong consensus to support the verdicts of the Supreme Court. [...] secular government in India requires much more than the decisions of judges and politicians—it demands a change in the popular mindset.’ In the present case, to what extent are Court decisions that enable priests from any caste to officiate in any non-denominational public temple supported by popular opinion? There can be only a nuanced answer.

It is certainly necessary to go beyond triumphalist declarations, which can be found in some news items. For instance, under the title ‘Kerala temples caste out purity phobia’, *The Times of India* (Kochi edition of 12 March 2012) thought that a new move:

‘powerful enough to break the last bastion of casteism, has already ushered in many non-brahmins to preside over pujas and kriyas hitherto handled only by priests who were brahmins by birth. In the last two months, the Travancore Devaswom Board (TDB) filled up 50 out of the 100 posts for pujaris (priests) with non-brahmins, who will soon start performing rituals in shrines assigned to them among the 2,000 temples under TDB.’

However, some caution is called for. Not all priests trained at the new schools are appointed to TDB public Brahmanical temples; many find /p. 27/ a job officiating in temples within their own community. As for the NSSs far as Ezhavas are concerned, temples established by their saint-reformer Sri Narayana Guru (ca. 1854-1928) have Ezhava priests; and in 2012

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<sup>46</sup> *Sastri Yagnapurushadji v. Muldas Bhundardas Vaishya*, AIR 1966 242?SC 1119; (1966) 3 SCR 242.



the NSS (Nayar Service Society) announced that it was about to appoint to Nayar temples the first batch of Nayar priests who finished training at its new school.<sup>47</sup> The fact that powerful caste organisations such as the SNDP and NSS are involved in these changes is in itself remarkable. However, since such priests officiate at their own community's temples, putting into practice what they have learned at schools where Brahmanical rituals are taught, this looks more like a Brahmanisation of the rituals of non-Brahmanical communities than a revolution in Brahmanical temple priesthood itself.

Nevertheless, some priests born into non-Brahmanical communities are indeed appointed to Brahmanical temples; this may be the reason for some resistance (the filing of a petition against the appointment of K.S. Rakesh as priest, in 1993, was one such instance, see *N. Adithayan* 1995 and 2002). On Friday 1 March 2013, Harish Kumar, an Ezhava priest, tried to join a TDB temple near Kochi after being transferred from another temple where he had been officiating. The local temple manager did not allow him to assume his new charge. According to a newspaper report, 'the authorities were of the opinion that since Harish belonged to [a] so-called lower caste it would be a violation of temple codes to permit him to perform poojas.' The issue was settled, said the report, 'after the intervention of SNDP Yogam workers', who also asked the TDB to impose sanctions on the manager (*Kaumudi Online* 2013). The incident was described as a setback in the policy of opening up the priesthood to non-Brahmans and as confirmation that there had been no real social change (Krishnakumar 2013). I would argue on the contrary that, firstly, the situation itself was unheard of only a few years ago; and secondly, that the Court's decision has made it unlawful for any public authority to oppose the performance of puja by a non-Brahman priest who has been duly appointed to a Brahmanical temple.

Indeed, the TDB and similar institutions are realistic and do not make similar appointments to high-visibility temples. The TDB runs a lot of lesser, poorer temples and according to one critic this is where /p. 28/ most of the 'sensitive' appointments are made (Mukundan 2001). So there is indeed some resistance. There are regular nominations of this type, however, and, suffice to say, the trend is clearly under way, with the support of almost all political parties.

The particularly enthusiastic support from Hindu natinalists nevertheless draws attention to the political dimensions of changes that are often presented in terms of secularism.<sup>48</sup> My intention here is not to enter the general debate about India as a secular nation. However, I do wish to highlight the social and political conditions that have facilitated the above-mentioned changes. Scholars have remarked on how the Supreme Court regularly equates secularism with an 'inclusivist' and spiritualist version of Hinduism, which is exemplified by references to Swami Vivekananda, Mahatma Gandhi and Sarvepalli Radhakrishnan (Sen 2010).<sup>49</sup> The latter was probably the first to consider Hinduism as 'a way of life' as early as 1926 (Sen 2010: 9), a definition used by the Courts from a 'secularist' perspective (most notably in *Yagnapurushadji*, p.244) or, by contrast, in what has been seen as a legitimation of Hindutva (in the so-called 'Hindutva judgments').<sup>50</sup> The Supreme Court's underlying assumptions seem often to be 'reformist' in the sense envisioned by Hindu reformist movements in the nineteenth century (Brahmo Samaj, Arya Samaj), which projected an ideal of Vedic purity free of what is presented as being later 'superstitions'. All these

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<sup>47</sup> See *Deccan Herald* (2012); Nair (2014).

<sup>48</sup> This remark may also apply to the ambiguities surrounding the project of a uniform civil code.

<sup>49</sup> This has led to regular confusion between 'secularism' and Hindu 'tolerance', see Mallampalli (1995), Sen (2010).

<sup>50</sup> *Manohar Joshi vs Nitin Bhaurao Patil & Anr* on 11 December 1995, 1996 AIR 796, 1996 SCC (1) 169; *Dr. Ramesh Yeshwant Prabhu vs Shri Prabhakar Kashinath Kunte & ...* on 11 December 1995, 1996 AIR 1113, 1996 SCC (1) 130. For an analysis, see Nauriya (1996).

visions converge in considering that a Brahman is so, not by birth but by personal realisation of the *brahman*, a claim made long ago in some Sankrit philosophical texts as well as by many devotional movements, and which Raja Ram Mohan Roy made a political cause as early as in the 1820s (Bhattacharya 2010: 71).

It has led the Courts to take a considerable part in theological and ritual debates, which, for lack of an overall Hindu authority, was—they felt—a responsibility that fell to them; this entailed (re)formulating religion (Fuller 1988; Galanter 1971; Smith 1963). The aim was to /p. 29/ purify present-day Hinduism and to unify Hindus as a means of building a strong unified India, a goal and a means widely shared across the political spectrum. However, this homogenization process clearly overlaps with an ‘exclusivist’ Hindutva version of Hinduism (Mallampalli 1995; Sen 2010). As Galanter (1971: 484) remarked:

‘it is assumed that the unification and organization of Hinduism will somehow contribute to national integration. But this is not a self-evident proposition. Perhaps the disunity of Hinduism contributes to national unity. The successful breaking down of Hinduism's capacity to generate and tolerate internal differences may well lessen India's capacity to sustain pluralistic democracy.’

When it comes to priesthood, a discourse about secularism is also strategically promoted by Hindu nationalists (as is the case with the question of a uniform civil code). However, this version of so-called ‘secularism’ actually seeks to be achieved through the transformation of non-Brahmans into Brahmans by performing initiation ceremonies. To take just one example, a RSS body sponsored a well-publicized initiation into Brahmanhood of nine children in May 2001 in Thiruvananthapuram.<sup>51</sup> The organizers claimed that this would be ‘a land-mark event in Kerala’s history of social progress to eliminate caste’ (Mukundan 2001: §3). Protestations, it seems, only came from the Kerala Dalit Panthers, for whom the ceremony meant:

‘to cultivate casteism and Brahmanical supremacy within the society [...]. The claim of the organisers that by making non-Brahmin children as Brahmans through such rituals can eliminate casteism is bogus. The real intention of the organisers is to spread an impression that one has to become Brahmin to get social recognition and acceptability and, thereby, to impose the Brahmanical supremacy and status-quo upon the present society.’ (Mukundan 2001: §11).

As a matter of fact, priests born into non-Brahmanical castes and appointed to Brahmanical temples had all been turned into ‘new’ Brahmans beforehand, preserving in a reformed way the adequation /p. 30/ between Brahmanhood and the priestly service in these temples. Therefore, rather than opening up the priesthood to all castes, the *de facto* process has been to brahminize the persons concerned — leaving open the question regarding their future in the local social fabric of caste relationships.

This paradoxically clashes with the affirmation made by the Courts that a priest is a ‘secular’ person. And it is in keeping with the recent decision by the Kerala Government to appoint only Hindus as members of the TDB, whatever their job may be—even a clerk or, as the case came before KHC, as a Light Motor Vehicle Driver (*Bijulal Kumar*).<sup>52</sup> ‘Opening up’

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<sup>51</sup> It is well-known that an author like Savarkar opposed caste distinction. However, one of the main ways RSS tries to implement such a goal is through a process of Sanskritisation of lower-status castes – see for instance Jaffrelot (2003: 454-62) on the work of Sewa Bharti (an RSS department) in Agra slums.

<sup>52</sup> *Bijulal Kumar G., S/O. ... vs The Travancore Devaswom Board* on 28 May 2009, WP(C). No. 12965 of 2007(R). There is a consistent body of litigations concerning the religion of Board members and of those who can nominate them. The Admendment goes even further because it has become necessary even for clerks or ‘light motor vehicles drivers’, as in the present case, to be Hindu.

the Brahmanical priesthood to persons who are non-Brahmans by birth therefore has to be seen as the conjunction of reforms operated at executive and judiciary levels to implement the secularist vision of the Constitution, with reforms pursued at grassroots level by reformists or radical Hindu movements which tend, on the contrary, to Sanskritize society. This interplay produces a 'secular' regulation of religion in a society where the public sphere, according to Fuller (2003: 149), has become increasingly religious.

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