

*Divine Sovereignty, Indian Property Law, and the Dispute over the Padmanabhaswamy Temple**

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Abstract

Secular governance in India was meant to have incorporated religion within public life, but the implementation of ‘Indian secularism’ has in important ways been premised on separating religious and secular lifeworlds. Public Hindu temples, whose assets and operations are managed by a melange of statutory bodies, courts, and state governments, exemplify this puzzling situation. The 2011 discovery of treasures within the Padmanabhaswamy temple in Trivandrum, Kerala, prompted extended public debate about the ownership of temple assets as well as litigation that eventually reached the Supreme Court of India. Indian citizens, erstwhile princely rulers, and the deity of the temple were variously presented as the true owners of the wealth. Ultimately, both public discourse and judicial opinion largely reaffirmed the notion that religious institutions are to be treated as private, contractually defined properties, and that temple wealth, as specifically religious property, exists outside of market circulations.

Introduction

In the summer of 2011, an otherwise relatively inconspicuous Hindu temple gained international media traction. Gold chains 18 feet long, Napoleonic currency, and gold artifacts past imagining astonished audiences across the world as reports tracked an investigation of the treasures secreted within the Sri Padmanabhaswamy temple in the small, south western Indian state of Kerala. Reuters and the Associated Press disseminated photos and updates from the Indian

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news media, which daily re-evaluated the net worth of the findings (last estimated at \$20 billion US dollars), and also reproduced some of the burgeoning debate over their ownership. In April 2012 the temple achieved the ultimate in elite American discourse: a piece in *The New Yorker*.

Identification of the proper owners, administrators, and beneficiaries of religious institutions has figured prominently in discourses on law and market governance in contemporary India—sometimes with regards to assets, as with the Padmanabhaswamy temple, but also pertaining to physical spaces of worship. In the late 1980s the Queen's Bench in Britain was astonished to find the Hindu deity Shiva appearing before it as a plaintiff in the case of an allegedly stolen bronze statue, dubbed the Pathur Nataraja.¹ In that case, the Indian government, which was seeking to recover the bronze after it had been transported through the black market and eventually sold to a Canadian businessman, filed on behalf of Shiva, who was presented as the 'owner' of the bronze depicting one of his many forms. The case was resolved in favour of the deity, causing no small consternation in the world of fine arts collection. Conversely, in 2010 the Allahabad High Court issued a long-awaited verdict on the disputed Babri mosque in Ayodhya, which Hindu activists contended had been built on the site of a destroyed temple and should be reconstituted as such.

In large part, the Ayodhya case asked whether a religious community ('Indian Hindus') could claim a right to a physical space. To the degree that the bench relied on archaeological support for a pre-existing Hindu temple in constructing its verdict, the case suggested that communities could indeed assert ownership over public places of worship. Such claims reflect deeper interconnections between social gift-giving and the transformation of Hindu religious endowments into modern legal trusts, governed by contract law and centred on donor intentions instead of social impact.² But as the Padmanabhaswamy temple case demonstrates, the public quality of Hindu institutions as

¹ Richard H. Davis, 'Temples, Deities, and the Law', in Timothy Lubin, Donald R. Davis Jr., and Jayanth K. Krishnan, *Hinduism and Law: An Introduction*, Cambridge University Press, Cambridge, 2010, pp. 195–206.

² Ritu Birla makes a compelling case for this transition in *Stages of Capital* via a discussion of the gifting practices of wealthy merchant families in South India. Faced with the task of categorizing religious endowments as public or private, a task complicated by traditional and to the colonial mind 'mutually exclusive' considerations like social benefit, divine enjoyment, and personal profit, colonial officials encoded endowments as largely private. Endowments were held to remove assets from the commercial sphere according to the intentions of private individuals, transform assets

well as the regulation of such institutions for the general good—the bedrock on which the incorporation of religion within Indian public life is founded—are mediated through the private property claims of competing parties.

In important ways, this temple is representative of the South Indian royal and pilgrimage temples already richly documented by anthropologists and historians.³ From 1729–1949, the Padmanabhaswamy temple was the family institution of the royals of Travancore as well as the pre-eminent Hindu temple and the largest landholder in the kingdom.⁴ Although Travancore remained nominally independent until its accession to India in 1949, the Padmanabhaswamy temple was also drawn into processes of bureaucratic centralization that began in British India during the early nineteenth century. For instance, in 1811 Travancore's powerful diwan/Resident persuaded its queen regnant to centralize hundreds of temples, their assets, and their daily management. The intensification of temple regulation in Travancore between 1811 and 1949 mirrored similar efforts in British India, and complemented emerging conceptions about the shape responsible governance would take in India after independence. Although this pre-colonial and colonial history is crucial to understanding the contemporary dispute and commands a significant portion of this article, my exploration of this historical foundation is undertaken with a view to teasing out present-day arguments and processes that have especially deep roots.

At the same time, the events of 2011 were made especially contentious by the particular histories of Kerala and the Padmanabhaswamy temple itself. On the one hand, the Padmanabhaswamy temple was not

into the private property of deities, and leave assets in the management of individuals who existed in private contractual relationships with the deity. Ritu Birla, *Stages of Capital: Law, Culture, and Market Governance in Late Colonial India*, Duke University Press, Durham, 2009.

³ Arjun Appadurai, *Worship and Conflict under Colonial Rule: A South Indian Case*, Cambridge University Press, Cambridge, 2008; Susan Bayly, 'Hindu Kingship and the Origin of Community: Religion, State and Society in Kerala, 1750–1850', *Modern Asian Studies* 18:2, 1984, pp. 177–213; Nicholas B. Dirks, *The Hollow Crown: Ethnohistory of an Indian Kingdom, Second Edition*, University of Michigan Press, Ann Arbor, 1996; C. J. Fuller, *Servants of the Goddess: The Priests of a South Indian Temple*, Cambridge University Press, Cambridge, 1984; Pamela G. Price, *Kingship and Political Practice in Colonial India*, Cambridge University Press, Cambridge, 2008.

⁴ Mark De Lannoy, *The Kulasekhara Perumals of Travancore: History and State Formation in Travancore from 1671 to 1758*, CNWS Publications, Leiden, 1997; P. Shungoony Menon, *A History of Travancore from the Earliest Times*, Kerala Gazetteers, Trivandrum, 1983.

merely vital to the performance of pre-colonial sovereignty—rather, it constructed and grounded that sovereignty.⁵ Between 1750 and 1949 the sovereign of the kingdom was the deity of the temple, while the head of the royal family ruled on the deity's behalf as guardian and pre-eminent servant (*Padmanabha dasa*). On the other hand, Keralite politics have been marked by a distinct approach to property ownership and public assets. A series of land redistributions in the 1960s and 1970s, combined with long-standing government support for education and women's well-being, have further defined the nature of claims made by Keralites upon the state and upon their fellow citizens in the name of public welfare.

The 2011 investigation and subsequent litigation resurfaced debates that have long preoccupied the Indian judiciary about who owns the assets of a public temple, whether ownership and intended benefit are co-extensive, and how to determine whether a temple and its assets are public in nature. Several participants and commentators argued for a resolution that would underscore the temple's status as a public religious endowment, suggesting that the wealth be channelled into universities, museums, and local infrastructure. Others insisted that the treasure was the personal property of the deity because of the jurisprudential convention that deities are legal persons who own the assets of their temples. A third position—held only by the leader of a prominent Hindu monastery in Tamil Nadu—held that the royals had amassed and protected the treasure and that it consequently belonged to them. Although the judiciary and state government ultimately supported the private property claims of the deity, they did so on the grounds that doing so most effectively discharged the state's responsibility to protect the temple as a public religious endowment. Seen from the opposite angle, the 2011 investigation demonstrated that the protection and inclusion of religion within the public sphere is predicated upon the treatment of religious endowments as private, contractually defined properties.

⁵ In this sense, the Padmanabhaswamy temple exemplified Appadurai's *Worship and Conflict*, rather than Dirks' *The Hollow Crown* conception of the relationship between temples and kings: that it was a precondition for royal authority rather than merely being a sign of that authority.

Temples and politics in southern Kerala

Notwithstanding the unique characteristics of the Padmanabhaswamy temple, Travancore, and Kerala mentioned earlier, strong ties between temple management in this region and in other parts of India make the site an excellent location in which to study national practices and concerns. This section highlights some of those similarities between Travancore and British India on the one hand, and Kerala and contemporary India on the other hand.

In 1788, Anizham Thirunal's successor entered into an agreement with the Governor of Madras to lease two British battalions. As part of the agreement, Travancore received an agent of the Company at the royal court, a position that was eventually transformed into that of British Resident—and, in the case of John Munro, served double duty as diwan, or prime minister.⁶ After Munro centralized a large number of temples in 1811, temple management in Travancore began to mirror broader Indian—particularly Madras Presidency⁷—trends in religion–state relations. In the Madras Presidency, for instance, *Regulation VII* (1817) concretized the East India Company's intensifying role in the management of Hindu religious institutions, 'takeover' of direct administration that 'seems to have been inspired by what can only be described as essentially "conservative" impulses—as profoundly socio-political and socio-economic but also, incidentally, as antiquarian and conservationist'.⁸ Meanwhile, in Travancore, centralization brought the entire surplus revenues (and, after 1903, the assets) of affected temples, as well as incidental and not strictly financial issues related to temple practice, within the purview of the central Revenue Department.⁹ Relatedly, for a century

⁶ T. K. Velu Pillai, *The Travancore State Manual, Volume Three*, The Government of Travancore, Trivandrum, 1940, pp. 389–90.

⁷ Although there is a growing body of literature devoted to distinguishing between the practices and consequences of colonial rule in the Madras Presidency and those of the Bengal Presidency (see, for instance, Wagoner 2003; Washbrook 2004), my intention here is only to limit the discussion of parallel developments in temple management to Madras. It remains, in fact, for future scholarship to more explicitly address differences in the presidencies' approaches to temple management.

⁸ Robert E. Frykenberg, 'The Emergence of Modern "Hinduism" as a Concept and as an Institution: A Reappraisal with Special Reference to South India', in Günther Dietz-Sontheimer and Hermann Kulke, *Hinduism Reconsidered*, Manohar, New Delhi, 2005, p. 91.

⁹ Proclamation 14 considers whether non-Hindus may be obliged to supply temple provisions, and what ritual rights are owed to non-Hindus who do supply such

after centralization began courts in Travancore, like courts in the Madras Presidency, began to exercise greater supervision of temple governance and to arbitrate disputes between temple elites.¹⁰ In another parallel, the reconstruction of religious institutions as trusts in British India followed a gradual process of separating public and private spheres of life, first by defining the parameters of the secular private trust in 1882 via the *Indian Trusts Act*, then those of trusts having a public or charitable purpose in the 1890 *Charitable Endowments Act*, and ending with the *Charitable and Religious Trusts Act* of 1920. Just two years later, in 1922, Travancore separated the assets and management of temples from the Revenue Department and transferred them to the newly created Devaswom (temple) Department, while simultaneously removing temple cases from the civil courts and placing them under the sole jurisdiction of the crown. Yet a third analogue exists in the debates about the exclusion of lower and untouchable castes from Hindu temples that preoccupied British India in the early twentieth century, spurring movements for the statutory prohibition of exclusionary practices. These temple entry movements ultimately found their first success in the 1936 Temple Entry Proclamation issued by Travancore's last king, Chithira Thirunal.¹¹

All of these developments were firmly grounded within the domestic politics of Travancore. The creation of the Devaswom Department followed years of agitation by virtually every segment of Travancorean society: caste Hindus, non-caste Hindus, and non-Hindus. The

provisions. Parvathi Bayi notes that a letter from her ex-dewan as well as her own order and proclamation have already been published to the effect that Moplahs (Keralite Muslims) and other non-Hindus should be exempt from supplying provisions to temples. However, since 'the Moplahs and other non-Hindus have conveyed their sorrow that they are [still] being asked to supply provisions to the temple for the prescribed prayers and feedings', the proclamation reiterates that they should be exempt from providing supplies unless it is their wish to do so. Proclamation 14 (issued 16 May 1816), in S. Raimon, *Thiranjedutha Rajakeeya Vilambarangal (Selected Proclamations of the Sovereign)*, Government of Kerala, Thiruvananthapuram, 2005, pp. 20–21. I am grateful to Mallika Das for the translation of this and all other Malayalam-language texts cited in this article.

¹⁰ See Appadurai, *Worship and Conflict*, as well as Robert Eric Frykenberg, 'The Construction of Hinduism as a "Public" Religion: Looking Again at the Religious Roots of Company Raj in South India', in Keith E. Yandell and John J. Paul, *Religion and Public Culture: Encounters and Identities in Modern South India*, Curzon, Richmond, 2000, pp. 3–26.

¹¹ Marc Galanter, 'Temple-entry and the Untouchability (Offences) Act, 1955', *Journal of the Indian Law Institute* 6:263, 1964, pp. 185–95.

latter two, increasingly empowered by educational reforms, economic success, and the nationalist movement in nearby British India sought high-status civil service jobs, particularly those in the prestigious Revenue Department which had hitherto been denied them on the pretext that only caste Hindus could be involved in the management of Hindu temples. Relatedly, non-caste and non-Hindu Travancoreans also objected to the merger of temple assets and revenues with state assets and revenues because of a fear that tax income was being used to support institutions they could not in some cases walk near, much less enter. Caste Hindus, on the other hand, held the opposite fear that temple revenues garnered from their communities were being siphoned off for state purposes. Similarly, Chithira Thirunal's temple entry proclamation served to appease the large and increasingly powerful non-caste Hindu population, without whose support the already vulnerable Travancore royals would have been further weakened.¹²

Local politics and institutions were, however, increasingly subject to an exchange of ideas between British and princely India, particularly as demands for responsible governance began to yield results in the presidencies. The decision to split the Revenue Department, for instance, was ultimately referred to the advocate general of Madras when the council of Travancorean elites appointed to study the matter could not decide whether the king owed maintenance to the temples whose assets were under his control, or whether his relationship with them was of a unidirectional nature. The advocate general declared that the king did indeed have obligations to protect and support the temples—a position which not only reflected contemporary policy in Madras, but which would be carried over into independent India. When Gandhi pushed for temple entry statutes elsewhere in India, and when the Madras Legislative Assembly debated such a statute for Malabar (the Malayalam-speaking portion of the Presidency, later integrated into Kerala), both drew significantly on Chithira Thirunal's 1936 proclamation, albeit to vastly differing effect.¹³ And after accession

¹² Dick Kooiman, 'Invention of Tradition in Travancore: A Maharaja's Quest for Political Security', *Journal of the Royal Asiatic Society* 15:2, 2005, pp. 151–64; Robin Jeffrey, 'Temple-Entry Movement in Travancore 1860–1940', *Social Scientist* 4:8, 1976, pp. 3–27.

¹³ For instance, in the Madras Legislative Assembly, one member dismissed the proclamation by saying that, 'everybody acquainted with that proclamation knows, and in fact, all of us know, that the order was issued because the Maharaja possesses autocratic powers'. Another was even more vehement, exclaiming, 'An autocratic

to India in 1949, the newly created Indian state of Travancore-Cochin established for itself, in 1950, an act governing temples and other religious endowments bearing strong resemblance to legislation passed by the erstwhile Madras Presidency.¹⁴ Indeed, the Malabar region continues to operate under the Madras Hindu Religious and Charitable Endowments Act, nearly 60 years after Malabar became part of Kerala.

Because changes in the management of Hindu institutions were heavily informed by developments outside Travancore, there was no significant overhaul of the system at the point of accession to India, or even when Travancore-Cochin merged with Malabar to create the state of Kerala. The infrastructure of temple administration differs moderately among Indian states, from government departments (Tamil Nadu) to individual commissioners (Andhra Pradesh) to regional boards (Kerala),¹⁵ and the very existence of boards or departments to manage temples is mostly limited to the southern states, where rulers have historically exercised greater supervision over temples.¹⁶ Whatever variations exist among them, however, the mechanisms for governing temples and other Hindu endowments reflect a set of national principles concerning the relationship between religion and state. First, secularism in India implies non-establishment and religious freedom, but it does not require non-interference or

mandate! When such autocratic States are unfit to come into the Federation with democratic British Provinces, I would very much like to know whether a mandatory order passed by the Sovereign of Travancore can be taken as a proper example for introducing this reform here.' Extracts from the Debates of the Legislative Assembly of the Province of Madras regarding the Malabar Temple Entry Bill, 30 August (1938), *Fort St. George Gazette*, Kerala State Archives, File 64-65, Bundle 1129 (1904-56). Conversely Gandhi—who had in 1925 visited Kerala to offer support to participants in the Vaikom Satyagraha demanding temple-entry—made a second visit to Travancore after the promulgation of Chithira Thirunal's declaration, saying 'I have come as a humble pilgrim to offer congratulations to the Maharaja.' M. K. Gandhi, 'All about Travancore', *Young India* 7:13, 1925, pp. 1-4.

¹⁴ *Madras Hindu Religious and Charitable Endowment Act, 1951 (Act XLIX of 1951) & Rules* (referenced as 'Remesan 2009'), and *Travancore Cochin Hindu Religious Institutions Act & Rules, 1951* ('Remesan 2006').

¹⁵ In Tamil Nadu, the Department of Hindu Religious and Charitable Endowments is the apex body governing public temples, while in Andhra Pradesh there is a commissioner who oversees all temples except the extraordinarily rich and powerful Tirumala Tirupati temple (governed by a separate board).

¹⁶ Franklin A. Presler, 'The Structure and Consequences of Temple Policy in Tamil Nadu, 1967-81', *Pacific Affairs* 56:2, 1983, pp. 232-46.

evenly distributed interference.¹⁷ Second, the state is obliged to exercise both ‘external’ regulation (that is, the administration of institutions) and ‘internal’ regulation (the reinterpreting, limiting, or prohibiting of particular practices).¹⁸ External regulation is frequently explained via the historical obligations of rulers towards temples and is undertaken at the level of states, whereas internal regulation is tied to the nation’s need to control potentially destructive aspects of religion and is done at the level of federal institutions (legislature, judiciary, Constitution).

Systems of external regulation—the boards, departments, and commissioners that oversee quotidian operations—particularly reflect the idea that Indian religions (but especially Hinduism) are such that religion cannot and should not be relegated to the private sphere.¹⁹ The impossibility of separating religion from public life derives from the view that Hinduism is a ‘way of life’ (terminology now most associated with Hindu nationalism) or, alternatively, that it is an exceedingly diverse family of practices, traditions, and beliefs, rather than a discrete ‘religion’.²⁰ When coupled with the belief that religiosity is intense in India,²¹ this attitude toward Hinduism led several constitutional framers to argue that the non-private nature of religion rendered it imperative that government involve itself in

¹⁷ Rajeev Bhargava, ‘India’s Secular Constitution’, in Zoya Hasan, E. Sridharan, and R. Sudarshan, *India’s Living Constitution: Ideas, Practices, Controversies*, Anthem Press, London, 2005, pp. 105–33; Rajeev Dhavan, ‘Religious Freedom in India’, *The American Journal of Comparative Law* 35:1, 1987, pp. 209–54; Rajeev Dhavan, ‘The Road to Xanadu: India’s Quest for Secularism’, in Gerald Larson, *Religion and Personal Law in Secular India*, Indiana University Press, Bloomington, 2001, pp. 301–29.

¹⁸ Deepa Das Acevedo, ‘Secularism in the Indian Context’, *Law & Social Inquiry* 38:1, 2013, pp. 138–67.

¹⁹ Gurpreet Mahajan, *Identities and Rights: Aspects of Liberal Democracy in India*, Oxford University Press, Delhi, 1998; Gurpreet Mahajan, ‘Religion and the Indian Constitution: Questions of Separation and Equality’, in Rajeev Bhargava, *Politics and Ethics of the Indian Constitution*, Oxford University Press, New Delhi, 2008, pp. 297–310.

²⁰ Robert D. Baird, ‘On Defining “Hinduism” as a Religious and Legal Category’, in Robert D. Baird, *Religion and Law in Independent India*, 2nd edition, Manohar, New Delhi, 2005, pp. 69–86; Wilfred Cantwell Smith, *The Meaning and End of Religion*, Fortress Press, New York, 1962; see also the many articles in the edited volume, Günther-Dietz Sontheimer and Hermann Kulke, *Hinduism Reconsidered*, Manohar, New Delhi, 2005.

²¹ T. N. Madan, ‘Secularism in Its Place’, *The Journal of Asian Studies* 46:4, 1987, pp. 747–59; Harold G. Coward, ‘India’s Constitution and Traditional Presuppositions Regarding Human Nature’, in Baird, *Religion and Law in Independent India*, pp. 51–68.

the oversight and support of religion, or else risk absenting itself altogether from a crucial aspect of public life.²²

At the heart of 'Indian secularism', then, is a notion that responsible government—as well as responsive government—demands that the state ensures the ability of citizens to practice their religion. In Kerala, the board controlling public temples in former Travancore fulfils this obligation in part by effectuating a kind of modern interpretation of the temple's pre-colonial role in material redistribution: from the collective surplus earnings of all the temples under its jurisdiction, the board pays out an annual stipend to each temple according to its size and the number of ceremonies and priests it must support. Via the earnings of a few exceptionally wealthy temples, hundreds of other institutions that do not earn enough from devotional offerings, some of which are no bigger than a roadside altar, are thus kept in operation. Precisely this kind of approach to temples as public institutions, and temple assets as public assets, surfaced during the events of 2011—and subsequently found itself in conflict with case law and administrative practice that treats the temple as private property belonging to the deity.

*T. P. Sundara Rajan vs The State of Kerala*²³

On 14 September 2007 the popular Malayalam daily *Kerala Kaumudi* published an article documenting the efforts of the head of the royal family to inventory the contents of the Padmanabhaswamy temple's vaults, or *kallaras*. The inventory, according to the article, was for the purposes of creating a visual record for members of the royal family. Uthradom Thirunal (who, as the younger brother of the last king, would have inherited the throne had Travancore remained independent) had hired a professional photographer and requested that four vaults built into the temple's outer circle (*chuttambalam*) be opened. These rooms, which are protected with iron bars and sealed with pitch (*arakku*), are opened only for festivals, when some of the gold and silver artifacts inside are taken out to be used in temple rituals. However, the general secretary of the Padmanabhaswamy Staff Organisation claimed that in addition to the royal inventory

²² P. N. Bhagwati, 'Religion and Secularism under the Indian Constitution', in Baird, *Religion and Law in Independent India*, pp. 35–50.

²³ W.P. 36487 of 2009, henceforth referred to as *T. P. Sundara Rajan*.

done on 3 August, the rooms had been opened at an earlier date by the temple's administrative society and over 400 gold pots removed from them. The same article noted that the administrative society denied all of the general secretary's charges, and demanded how it could have removed valuables from a temple where 68 police officers were on permanent duty.²⁴

The next day *Kerala Kaumudi* published an interview with Uthradom Thirunal, who was both irritated and aggrieved over public response to his actions. 'This is a time when honesty and beliefs are declining. I felt that an account of everything has to be made. I have been taking care of all of this since 1991', he stated, adding that he had not 'compromised the welfare of the workers in any way'.²⁵ Also at issue besides the vaults holding festival objects was a 'secret' (*rahasya*) vault accessible only from another chamber on the northern side of the temple. Uthradom Thirunal believed that this room had been last opened in 1885, and furthermore, that it contained the wealth accumulated by Travancore royals since 700 AD. 'We have the total right to open this', he declared. 'This is the wealth that our family accumulated over several generations, and now our own employees portray me and others as criminals and aim accusations at us.'²⁶

Articulated thus as an assertion of his right to access the temple (and its treasures) as much as a defence of his managerial integrity, Uthradom Thirunal's response produced two interlinked reactions. First, it ignited speculation over what, exactly, had been squirrelled away in the temple's vaults, and led the Kerala High Court to order a cataloguing of exactly the kind Uthradom Thirunal claimed to have been attempting himself. In the course of enumerating the vaults' contents, a second theme—present since the initial *Kaumudi* article, but hugely amplified by Thirunal's articulation of royal intimacy with the temple—came to occupy centre stage. Rather than simply subscribing to the precedent set by existing case law and assuming that any discovered wealth belonged to the temple (thus refocusing attention onto the efficacy with which that wealth was being managed), conversations inside and outside the courtroom became preoccupied with the complexities of envisioning temples as trusts. Devotees,

²⁴ C. P. Sriharshan, 'Sri Padmanabha swami's diamond treasure in the kannimoola', *Kerala Kaumudi*, 14 September 2007.

²⁵ C. P. Sriharshan, 'The diamond treasure of Sri Padmanabha swamy contains palace properties', *Kerala Kaumudi*, 15 September 2007.

²⁶ *Ibid.*

sectarian associations, academics, and politicians disagreed as to what precisely was the issue facing this unusually prominent and unusually unregulated temple, let alone what might be the solution. Specifically, discrepancies between the assumptions of secular governance in India according to which temples exemplified the place of religion in public life, and the norms of Anglo-Indian jurisprudence which understood temples as contractually defined trusts, fuelled debate over who owned the contents of the vaults. Much of that interchange occurred in the press, but the rest of this section details the judicially mediated engagement between litigants in the dual cases of *T. P. Sundara Rajan* and *Uthradom Thirunal*.

Uthradom Thirunal's statements about royal prerogatives in the two *Kaumudi* pieces led several readers to file writ petitions and public interest litigation suits challenging the royals' authority over the temple and its wealth. The Principal Sub Court of Trivandrum granted an injunction against the opening of the vaults, which was appealed in the District Court by the royal family. Simultaneously, the royals filed an appeal in the Kerala High Court against a quo warranto petition submitted by T. P. Sundara Rajan.²⁷ Rajan, who was a retired police officer and lawyer, as well as an ardent devotee of Padmanabha, had stated that the temple's managing trust was incapable of protecting the wealth stored in the vaults, and requested an inventory and the creation of a new government-instituted body to administer the temple. All other petitions relating to the royals and the temple were subsumed into Rajan's suit and collectively addressed as *T. P. Sundara Rajan vs The State of Kerala*.

In the royals' appeal, filed as *Uthradam Thirunal vs Union of India*,²⁸ Uthradom Thirunal argued that such a takeover would be a breach both of temple custom and of a covenant entered into by the princely state of Travancore with the Union of India, which had vested the administration of the temple in trust with the hereditary rulers of Travancore. Specifically, the covenant (portions of which were later incorporated into the *Travancore Cochin Hindu Religious Institutions Act, 1950*, or *T-C Act*) declared that the administration of the Padmanabhaswamy temple 'vested in trust in the ruler of the Covenanting

²⁷ A quo warranto petition demands that the person to whom the petition is directed demonstrate his authority to exercise a particular right which he claims to hold.

²⁸ *Uthradam Thirunal Marthanda Varma and others vs Union of India*, W.P.C. 4256 of 2010, henceforth *Uthradam Thirunal*.

State of Travancore'.²⁹ This definitively shifted the dispute from the successfulness of Thirunal's guardianship to whether he could be considered a ruler of Travancore despite never having been king.

Rajan not only claimed that Uthradom Thirunal himself was not a ruler for legal purposes, but also that in addition to unlawfully retaining authority over the temple, he had also usurped the government's prerogative of appointing civil servants to oversee its daily management. Thirunal countered that 'the Ruler referred to in Section 18(2) of the *T-C Act* is a permanent concept and that takes in the senior members of successive generations of the Royal Family of Travancore i.e., the last Ruler's family'.³⁰ He further argued that the administration of the temple after Travancore's accession to India was determined by the terms of the Covenant. Consequently, Article 363 of the Indian Constitution—which removes treaty disputes between former rulers and the Indian state from adjudication by Indian courts—prohibited all contemporary Indian courts, including the Supreme Court, from hearing the case.³¹ Finally, Uthradom Thirunal noted that the State of Kerala, which was a respondent in both Rajan's petition and Thirunal's appeal, had testified to the satisfactory management of the temple and declared that there was 'no need for the Government to interfere in the matter'.³²

In its 31 January 2011 decision on both *T. P. Sundara Rajan* and *Uthradam Thirunal*, the Kerala High Court addressed both Rajan's petition and Thirunal's appeal, making the following observations. First, since the *T-C Act* did not define the term 'Ruler', a definition had to be sought in the Constitution. Article 366(22), which was upheld in *Raghunathrao Ganapatrao vs. Union of India*,³³ describes a ruler as someone who is recognized by the president as a ruler or as the

²⁹ *Kerala States Union Covenant*. 'Outstanding Features of the Kerala States Union Covenant: Rajpramukh's Powers Akin to Those of Governors', *The Indian Express*, 9 June 1949.

³⁰ *Uthradam Thirunal*, at 6.

³¹ Article 363(1) states: 'Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, *sanad* or other similar instrument which was entered into or executed by any Ruler of an Indian State and to which the Government of the Dominion of India or any of its predecessor Governments was a party . . . ' (*Constitution of India*, Art. 363, §1).

³² *Uthradam Thirunal*, at 9.

³³ 1994 Supp.(1) SCC 191.

successor of a ruler prior to the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971. Under these conditions, the Court ruled, Uthradom Thirunal was not a ruler of Travancore and therefore did not retain trusteeship of the temple or any control over its administration. Second, because Uthradom Thirunal was not a Ruler as per Article 366(22), the provisions of Article 363(1) did not apply to him and petitions against his administration of the temple could be heard by Indian courts. Finally, the Court pronounced that the Padmanabhaswamy temple was neither the family property of the Travancore royal family nor the personal property of the last ruler (Chithira Thirunal), as evidenced by Chithira Thirunal's declaration that the royals did not constitute a joint family having shared property, and his non-inclusion of the temple among the personal properties bequeathed by him through his will.

The Court ordered the State of Kerala to create a trust to administer the temple within three months, conduct an inventory of the vaults, and to form a special security force to protect the valuables presumed to be inside them. Uthradom Thirunal and other members of the royal family would continue to perform their ceremonial functions and would be permitted to use items stored in the vaults for such purposes. Interestingly, the Court, which had earlier on in the decision critiqued the state government for permitting the commercialization of religious institutions, also ordered that a museum be created so that 'the glory of the Temple and the State will get a boost and probably the Great Temple will become a major tourist attraction and income earner'.³⁴ This idea—that the temple wealth should be used directly or indirectly for public purposes, especially for the construction of a museum—would gain traction in the months to come.

Un-buried treasure

On 27 June 2011, the inventory began under the aegis of a seven-member committee including Uthradom Thirunal and Rajan.³⁵ The committee's discoveries dominated headlines in Kerala as the media frantically attempted to assess the value of the treasure being

³⁴ *Uthradom Thirunal*, at 10.

³⁵ The other five members of the committee were two retired High Court judges, one government representative, one member of the Department of Archaeology, and the civil servant in charge of the temple.

unearthed. Estimates climbed daily as five out of the six vaults slated for inspection (designated A–F) were opened, and peaked around Rs. 1 trillion by 3 July. The sixth vault, vault B, was left temporarily closed because of suspicions that opening it would incur the wrath of the deity. Coverage of the proceedings, and especially images of the fantastic wealth being unearthed from the vaults, fuelled speculation as to how the treasure should be handled. On 1 July an 18-foot-long gold necklace used to adorn the image was discovered, while by the end of the inventory kilograms of gold coins and artifacts, as well as currency from the Roman Empire, Venice, Portugal, and Napoleonic France, had been found.³⁶

Public opinion, uniformly fascinated by the discoveries, was nevertheless severely divided over their ownership and best possible use. Three major issues surfaced: who owned the treasure, who should administer the treasure, and in whose interests should the treasure be administered? Alone among commentators, the Shankaracharya of the Hindu monastery in Kanchipuram (Tamil Nadu) declared that the treasure consisted of ‘the offerings made by the erstwhile rulers to the temple, hence the recovery belongs to the royal family’.³⁷ The royals themselves repeatedly claimed that they viewed the vaults’ contents as belonging to the deity, and that they wished only to protect the traditions and the devotees which had for so long been under their care. And, despite the royals’ insistence that the sole issue at hand was the proper administration of the assets, most other participants in the debate viewed the identification of their proper owner and beneficiary as the crux of the problem.

Hindu organizations generally supported the temple’s ownership and beneficiary claims, as did the Nair Service Society, a powerful upper-caste association, and the former chairman of the Cochin-based Indian Council for Historical Research, Dr M. G. S. Narayanan. Many of these commentators expressly linked the temple’s ownership claims to those of the deity, and viewed ownership and beneficiary status as co-extensive. Narayanan, for instance, strongly advocated for the position that once donated, devotional objects were defined by the fact of donation rather than by their original provenance, so that the contents of the vaults were unequivocally the private property

³⁶ Gurcharan Das, ‘All the world’s gold’, *The Hindu*, 28 August 2011.

³⁷ Anonymous, ‘Treasure belongs to royal family: Sankaracharya’, *The Hindu*, 6 July 2011.

of the deity.³⁸ However, he said that only ‘the temple authorities, including the former Maharajah of Travancore, can decide how its money could be spent’, thereby circumventing the very issue of administration that was plaguing litigants and the courts.

Other commentators, including two regional Hindu organizations, supported partial or full use of the treasure for purposes other than temple maintenance. While indirectly granting the ownership claims of the temple/deity, and skirting the issue of administration, these organizations were most interested in the problem of whose interests should guide the management of the treasure. The Hindu Aikya Vedi stated that artifacts with historical and archaeological importance not needed for ritual observances could be displayed within the temple precincts, while the Kerala Kshetra Samrakshana Samiti suggested that portions of the wealth ‘found to be without historic value’ might be used to establish a university similar to the Sree Venkateswara Vedic University funded and operated by the board of the Tirumala Tirupati shrine, in Andhra Pradesh.³⁹ Interestingly, given their broader interests in protecting traditional practices (or in the case of the Samiti, in protecting temples themselves) both groups suggested that although the treasure *was* the deity’s private property, it could be used to benefit the public. Of course, the ‘public’ presented by both the Hindu Aikya Vedi and the Kerala Kshetra Samrakshana Samiti as an appropriate beneficiary was emphatically—and exclusively—Hindu, since only Hindus are permitted within the temple precincts and the mission of the Sree Venkateswara University is to promote ‘Vedic, Agamic, and Cognate literature’.⁴⁰ Commentators became more overtly concerned with the task of defining, within the constraints of law and local politics, a public in whose name the assets would either be undisturbed or repurposed.

The creation of a museum (not limited to Hindus) resonated with some scholars, including Shahid Amin and K. N. Panikkar,

³⁸ R. Madhavan Nair, ‘Treasure belongs to temple, says M. G. S. Narayanan’, *The Hindu*, 6 July 2011.

³⁹ Anonymous, ‘Treasure should be kept in temple’, *The Hindu*, 11 August 2011. The ‘Hindu United Front’, and the ‘Kerala Temple Rescue Association’, respectively. The Tirumala Tirupati Devasthanams is a statutory body responsible for the governance of the Vaishnavite temple in Tirupati, Andhra Pradesh, which until recently was famous as the richest Hindu temple in the world. It is unclear whether that distinction now belongs to the Padmanabhaswamy temple.

⁴⁰ See <http://www.svedicuniversity.org/>, [accessed 9 August 2013].

while the idea of establishing a public (nondenominational) facility with the temple's wealth drew support from the members of various 'rationalist' associations. Indeed, the secretary of one of these associations, the Kerala Yukthivadi Sangham, argued that the wealth could not rightfully be used for the benefit of Hindus alone because it had been collected by the Travancore royals in the form of taxes and tribute from several religious communities. The suggestion that temple assets might form part of a wider, less sanctified political economy apparently did not go over well: shortly after he made these remarks the secretary's house was attacked by vandals.⁴¹

Along with the Indian Rationalist Association, the Sangham urged the state government to declare the finds 'public assets' and thus assume control over not only the assets themselves, but also over the very process of determining their rightful owner, hitherto in the hands of the Kerala High Court. Both organizations have worked to have the assets of temples and their administrative bodies (such as the regional temple boards) treated as public assets *not* exempt from rules governing the state's use of public monies. Six months before the Padmanabhaswamy temple vaults were opened, the Kerala Yukthivadi Sangham and Indian Rationalist Association had been involved in an extended investigation concerning another powerful temple, in nearby Sabarimala, where board officials were suspected of manufacturing a divine light that annually draws hundreds of thousands of pilgrims. In January 2011 over one hundred pilgrims died in a stampede after they gathered to witness the appearance of the light, widely considered the climax of the 40-day long pilgrimage season. During the ensuing High Court investigation, the Kerala Yukthivadi Sangham and Indian Rationalist Association argued that board members were intentionally violating constitutional principles by using public assets (that is, donations) to fund the production of the light and draw even greater numbers of pilgrims/donors/customers to the temple. As with this earlier case, during the Padmanabhaswamy temple investigation the Kerala Yukthivadi Sangham and Indian Rationalist Association maintained that the act of donation did not transform assets into private property, particularly since the donated assets were managed by a governmental unit: the temple board created by the *T-C Act*. Neither group has ever successfully made these claims in court because

⁴¹ Anonymous, 'Rationalist leader's house attacked', *The Hindu*, 4 July 2011.

of the convention in Kerala (and in India more broadly) that statutory bodies are not appendages of the state.⁴²

The High Court's ruling in *Uthradam Thirunal* offered wholehearted support for the idea that the treasure was public in origin and continued to have a connection to the public, although the Court equivocated on the matter of how to conceptualize that public. On the one hand, the Court stated that 'ever so many private temples have assumed great importance and have accumulated wealth which is nothing but contribution[s] from the devotees and public ...', suggesting that 'devotees' and 'the public' were not co-extensive, and thus that non-devotees had a connection, if not an ownership claim, to the temple's assets. On the other hand—and in the very next sentence—the Court reversed itself by concluding that 'wherever public money is collected by temples and religious institutions, we feel Government has a duty to ensure that such public institutions are accountable to the devotees', implying that the 'public' to whom the state was responsible was in fact wholly composed of Hindu devotees, deity unspecified.⁴³ (Note that Court's equivocation on conceptualizing 'the public' shifts along both state/market and secular/religious axes.)

Although the Court vacillated while articulating the object of temple administrators' obligation, it clearly presented 'the public' as the beneficiary of temple governance and consequently as the party whose interests were paramount.⁴⁴ By declaring that even private temples assumed importance and wealth only through 'devotees

⁴² The rise of unelected bodies like temple boards in India has been described as originating from a concern, at the time of founding, that 'the politics, conflicts of interest, and corruption of the country's representative institutions could seriously hamper the young nation'. Nick Robinson, 'Expanding Judiciaries: India and the Rise of the Good Governance Court', *Washington University Global Studies Law Review* 8:1, 2009, pp. 1–70, p. 17.

⁴³ *Uthradam Thirunal*, at 10.

⁴⁴ Lack of differentiation between beneficiaries of the temple (that is, of the very existence of an institution in which one may worship and participate in a religious community) and beneficiaries of the temple's assets is responsible for much mischief (see, for instance, Michael C. Baltutis, 'Recognition and Legislation of Private Religious Endowments in Indian Law', in Baird, *Religion and Law in Independent India*, p. 449 in which this distinction is not maintained). Worshippers who are able to propitiate deities clearly benefit from the existence of temples, but case law has consistently upheld the deity as the official—if figurative—beneficiary of the temple's assets. Assets endowed to a temple are rarely if ever dedicated to the general public; rather they are dedicated to a purpose (rituals, support for pilgrims) which colonial law anthropomorphized in the figure of the deity, or they are dedicated to the deity itself.

and the public', the Court seemingly dismissed the relevance of the public/private distinction for prominent religious endowments altogether. It was almost irrelevant that the last king had not included the temple among the personal or family properties listed in his will (which would have given them an undeniable, if not necessarily justiciable, claim to being 'private'). The Court's logic suggested that even *had* they been included in the king's will, the temple's wealth and importance would have still have been public in origin, and consequently the state would still have had a duty to ensure that such an institution was accountable to parties besides the royals and the deity. In this sense, the Court exemplified the view that the 'important things' about temples are already known—that they 'are "public" and "religious" and their problems stem primarily from "politics" and mismanagement'.⁴⁵ Royally controlled it might have been, but in the view of the Court, the temple was primarily defined by its relationship and its obligations to the public.

The High Court's attitude in *Uthradam Thirunal* was entirely in keeping with the Indian state's commitment to treating religion as vitally important to its citizens and therefore as inextricable from public life and government involvement. In directing the State of Kerala to create a mechanism for administering the Padmanabhaswamy temple, and in charging the government with protecting the assets, structure, and traditions of the temple for the sake of its devotees, the Court realized that aspect of 'Indian secularism' which demands that the state support religious life as it would support anything else considered critical to citizens' well-being. Requiring the state to assume administrative responsibility also realized that element of Indian secularism that recognizes religion as a potentially fraught area of civic life demanding regulation and reform. But—as has been the case for over 150 years—the Court affirmed the public nature of religion, as well as the public's interest in ensuring that religious endowments are properly managed, by safeguarding the temple as a space of private property belonging to the deity Padmanabha. In other words, it underscored the public nature of religion by confirming the private nature of a religious endowment.

⁴⁵ Franklin A. Presler, *Religion under Bureaucracy: Policy and Administration for Hindu Temples in South India*, Cambridge University Press, Cambridge, 1987, p. 61.

The rights of gods in the world of men

The peculiar sense in which endowments to religious institutions are private, while the institutions themselves are deeply public, hinges on the particular history of trusts in colonial and post-colonial India (on this history, see especially chapters 2 and 3 of Birla's *Stages of Capital*). Anglo-Indian jurisprudence on trusts began to evolve in the late nineteenth century, and was grounded on a tripartite relationship between donor, trustee, and beneficiary, in which the intent of the first controlled the actions of second with respect to the third. Trusts froze and protected the intent of the donor beyond his death using the principle of mortmain ('dead hand') and, simultaneously, conferred upon beneficiaries the total ownership of the donation.⁴⁶ In the case of gifts to temples, however, case law came to position the deity-image as owner, and elaborated a kind of limited legal personhood in which the image (by virtue of its inanimate state) was left in a perpetual minority. Anglo-Indian jurists like Prannath Saraswati, Jogender Chander Ghose, and B. K. Mukherjea argued that the personhood of deities was nothing but a legal fiction representing the intentions of the donor.⁴⁷ Consequently, a distinction had to be made between ownership and beneficiary status: because deities were only devices for the expression of human intent, and because they could not independently benefit from and dispose of what was given to them, they were owners only in a secondary sense. Indeed, no one—neither the deity, nor its representative (the 'shebait'), nor devotees—could enjoy and dispose of the property without limitation.⁴⁸

Anglo-Indian jurists also argued that as far as the personhood of images was concerned, Hindu scriptures were in complete agreement with the common law conception of trusts.⁴⁹ Although Dharmashastra texts were what Warren Hastings had in mind for Hindus when he declared in 1772 that natives would be governed by their own legal systems, and although most subsequent Anglo-Indian law pertaining

⁴⁶ Birla, *Stages of Capital*, especially chapters 2 and 3.

⁴⁷ Jogender Chunder Ghose (1917–1919), *The Principles of Hindu Law*, vols 1–3, S.C. Auddy & Co., Calcutta, pp. xx–xxii; B. K. Mukherjea, *The Hindu Law of Religious and Charitable Trusts: Tagore Law Lectures*, 5th edition, Eastern Law House, Kolkata and New Delhi, 2006; Prannath Saraswati, *The Hindu Law of Endowments: Tagore Law Lectures (1892)*, Thacker, Spink, Calcutta, 1897.

⁴⁸ Mukherjea, *The Hindu Law of Religious and Charitable Trusts*, p. 159.

⁴⁹ *Ibid.*, p. 39.

to Hindus was indeed based on Dharmashastra,⁵⁰ there seems to have been an exception for the issue of temple deities. Davis⁵¹ and Sontheimer⁵² explicitly connect the case law's conceptualization of deities as legal persons, as well as its insistence that such personhood is figurative rather than literal, to the Purva Mimamsa exegetical school.⁵³ Mimamsa philosophy prioritized the Vedas and Vedic sacrifice, and offered two interpretations of the purpose of sacrificing to deities which became influential with regard to image worship in temples.⁵⁴ In the first, image worship actually entails the propitiation of deities via sacrifice or gifting in order to earn merit, while in the second (dominant) reading, the act of sacrifice is itself meritorious and the ability of deities to enjoy gifts is dismissed as fallacy⁵⁵ The orthopraxy of the dominant reading strongly contrasted and continues to contrast with popular belief, according to which deities do literally receive gifts, and in which gifts to temples—considered divine abodes or kingdoms—become part of a deity's personal wealth. Ethnographic studies of temples have thus argued that they combine spatial, processual, and symbolic attributes centred on a sovereign deity who receives and redistributes gifts, and who in the process leads worshippers to cooperate with one another while affirming their individuality.⁵⁶

⁵⁰ Donald R. Davis Jr., 'A Historical Overview of Hindu Law', in Lubin, Davis Jr., and Krishnan, *Hinduism and Law: An Introduction*, pp. 17–27, p. 25.

⁵¹ See Richard H. Davis, 'Temples, Deities, and the Law', as well as Richard H. Davis, *The Lives of Indian Images*, Princeton University Press, Princeton, 1997.

⁵² Günther-Dietz Sontheimer, 'Religious Endowments in India: The Juristic Personality of Hindu Deities', *Zeitschrift für vergleichende Rechtswissenschaft* 67:1, 1965, pp. 45–100.

⁵³ Meanwhile, J. D. M. Derrett seems to implicitly endorse the Mimamsa approach: 'For dedication of an idol and its temple and endowment for its worship are never for the benefit of the idol, but for that of the worshippers' (J. D. M. Derrett, *Introduction to Modern Hindu Law*, Oxford University Press, Bombay, 1963, pp. 508). For an explanation of why this view supports Mimamsa (as opposed to Dharmashastra) thinking, see Richard H. Davis, 'Temples, Deities, and the Law'. Davis states that Dharmashastra disdain for temple priests was founded on the belief that they live on assets 'stolen' from the deity.

⁵⁴ Davis, 'Temples, Deities, and the Law', p. 200.

⁵⁵ Francis Xavier Clooney, *Retrieving the Purva Mimamsa of Jaimini*, PhD thesis, Department of South Asian Languages and Civilizations, University of Chicago, 1994. See especially Chapter 4, pp. 170–75.

⁵⁶ See Appadurai, *Worship and Conflict*, and Fuller, *Servants of the Goddess*, both cited earlier, as well as Carol A. Breckenridge, *The Sri Minaksi Sundaesvarar Temple: Worship and Endowments in South India, 1833–1925*, PhD thesis, University of

Nevertheless, colonial fixation with the purity of the Vedas melded with the desire of some jurists to view Hindus as having their own law comparable to that of Britain, with the result that the personhood of deities—though acknowledged—was considered substantively empty and dubbed a ‘legal fiction’.⁵⁷ Trust law continued to present the deity as the benefactor of donations, but not because jurists actually viewed the deity as benefactor. Instead, both the deity’s personhood and the categorization of the deity’s property as private property worked to protect temple assets by delegitimizing the customary claims of others, most especially donors, priests, and temple administrators. Temple assets could be better preserved intact because they could only be alienated when alienation was in the interest of the deity, which it rarely was.⁵⁸ By positioning the deity as legal beneficiary of gifts to temples, colonial jurists were in this way able to de-emphasize the claims of individuals and groups, and to strengthen the idea that temple endowments were really charitable trusts—that is, trusts for public benefit. Just who that public was, of course, remained unresolved.

Conclusion

When the Kerala High Court decided *Uthradam Thirunal*, it concluded (quoting the Supreme Court) that ‘the properties of deities, temples, and Devaswom Boards’ must be safeguarded as a means to ‘ensure that such public institutions are accountable to the devotees’. The Court dismissed the State of Kerala’s assertion that the Padmanabhaswamy temple was a private temple and that it was not the role of the

Wisconsin-Madison, 1977; Anthony Good, *Worship and the Ceremonial Economy of a Royal South Indian Temple*, Edwin Mellen Press, Lewiston, 2004.

⁵⁷ Mukherjea, *The Hindu Law of Religious and Charitable Trusts*, p. 39. On the construction of a ‘Hindu law’, see Bernard Cohn, ‘Law and the Colonial State in India’, in June Starr and Jane F. Collier, *History and Power in the Study of Law: New Directions in Legal Anthropology*, Cornell University Press, Ithaca, 1989, pp. 131–52. For a refutation of the idea that ‘popular Hinduism’ is nothing but degenerate ‘textual Hinduism’, see, generally, C. J. Fuller, *The Camphor Flame: Popular Religion and Society in India*, Princeton University Press, Princeton, 1992.

⁵⁸ Moreover, the personhood of the deity allowed for the assets to be preserved without exposing religious endowments to the taint of hoarding and joint ownership associated with the Hindu undivided family, which colonial jurists feared rendered any form of alienation—and thus market operations—impossible. Birla, *Stages of Capital*, p. 80.

government to interfere in its administration: 'the opinion of the State about private temples ... itself is not going to advance any public interest'.⁵⁹ By locating the public interest in the government's responsibility to safeguard a deity's private property, the Court naturalized the colonial era construction of temples as trusts, of trusts as private property. Moreover, as indicated by the Court's references to 'devotees and the public', the decision elided problems caused by the idea that a government committed to serving the public interest ought to safeguard the accountability of Hindu institutions. In other words, even though *Uthradam Thirunal* determined that the public interest was best served by protecting the private interests of the deity, the decision only exacerbated complexities in the relationship between secular governance built on state support for religion and religion's removal from the commercial sphere, on the one hand, and the conceptualization of an 'Indian public' on the other hand.

Whose places of worship are scrutinized by the state, to what extent, and under what rationale are considerations that have critically informed politics in India since before independence. Constitutional mandates and judicial support for state involvement in religion have not simply been based on the general belief that religion was a public affair, or that democracy and secular governance should ameliorate rather than preserve the status quo,⁶⁰ but that Hinduism is, for a variety of reasons, in need of public governance. Hinduism requires extra oversight because it lacked internal ecclesiastical structure and because, as the saying goes, the only kind of theocracy India can be is a Hindu theocracy. In the latter case, the need to build minority, especially Muslim, security in the aftermath of partition and the birth of a nation overwhelmingly constructed by and composed of Hindus, has necessitated the reform and regulation of Hinduism as well as the limitation of state involvement in minority faiths. Hinduism has also been viewed as particularly suited to state oversight because the numerical majority of Hindu parliamentarians renders the legislature a 'Parliament for Hindus'.⁶¹ But this singling out of Hinduism, in

⁵⁹ *Uthradam Thirunal*, at 10.

⁶⁰ Gary Jeffrey Jacobsohn, 'The Sounds of Silence: Militant and Acquiescent Constitutionalism', in Steven Kautz, Arthur Melzer, Jerry Weinberger, and M. Richard Zinman, *The Supreme Court and the Idea of Constitutionalism*, University of Pennsylvania Press, Philadelphia, 2009, pp. 131–61.

⁶¹ Pratap Bhanu Mehta, 'Reason, Tradition, Authority: Religion and the Indian State', in Indira Jaising, *Men's Laws, Women's Lives: A Constitutional Perspective on Religion, Common Law and Culture in South Asia*, Women Unlimited, New Delhi, 2005, pp. 56–86.

particular of Hindu personal law and religious institutions, has not gone without first drawing the ire of Hindu nationalists, and has even filtered into ‘the common-sense of the Indian middle class as distinct from the scholarly forays of intellectuals’.⁶² In Kerala, for instance, where the temple boards appoint many Hindu priests and the High Court must approve temple expenditures over Rs. 100,000 (USD 1,600), governmental oversight of the state’s considerable Muslim and Christian minorities is limited to a Wakf (Islamic property) Board that is not subject to High Court supervision, and court observation of a large annual Christian gathering. The court observer for that gathering, a Hindu, exclaimed that ‘the executive will not be doing anything which will interfere in minority religious rights’, adding that ‘they [minorities] can do any damn thing’.⁶³

Although Hindu critiques of Indian secularism often emphasize the unfairness of heightened governmental involvement in Hinduism in this way, legislative and executive reactions to *Uthradam Thirunal* reflected the other side of the coin. Facing re-election in 2016 and dependent upon support from the large upper-caste Nair community, Kerala’s Congress-led government has consistently reiterated its position that the treasure belongs to the deity, and that as such it is the duty of the government to protect it. ‘I will never agree with the idea that the state should take control of a temple or any other place of worship’, declared Chief Minister Oomen Chandy (a Christian), during the height of the investigation, adding that he would ‘protect the Sree Padmanabhaswamy temple at any cost’.⁶⁴ In this he was supported by the findings, submitted in November 2012, of an independent investigator commissioned by the Supreme Court, who wrote of the ‘good will and extreme piety of the Royal family’ and advocated for their continued involvement in the temple’s administration.⁶⁵ Conversely, former Chief Minister V. S. Achuthanandan, the leader of the CPI-M (communist) party—and a Hindu—made headlines during the investigation when he accused Uthradom Thirunal of pilfering valuables on his daily visits to the temple. The CPI-M, which draws most of its support from Christian

⁶² Rajeev Bhargava, ‘Introduction’, in Rajeev Bhargava, *Secularism and Its Critics*, Oxford University Press, New Delhi, 1998, pp. 1–30, p. 27.

⁶³ Interview, Sreelal Warrior, Ernakulam, Kerala, 22 February 2011.

⁶⁴ Anonymous, ‘Chandy not for temple takeover’, *The Hindu*, 29 July 2011.

⁶⁵ S. A., ‘Render unto Padmanabhaswamy’, *The Economist*, Asia section, 19 February 2013.

and Muslim Keralites, has repeatedly argued that the assets are now the property of the people of Kerala.⁶⁶

The real-life workings of Indian secularism, already complicated by the twin demands of non-establishment and state involvement in religion, are thus rendered further complex by the intricacies of temple management. Not only does the construction of temple deities as juristic persons transform a public religious institution into the private property of an inanimate being, but it ties the good of that being to the good of the public. This further distinguishes the Indian case from other common law contexts where the personhood of inanimate beings (churches, parishes) mediates between the general good and the good of a particular subsection of the public. In the Indian case, the artificial being—the deity—is one very considerable step further removed from the public whose interests are said to be tied to its own, since unlike a parish community the deity is not a corporate body composed of members of the public. When the Kerala High Court describes both a deity and the public as having claims upon a temple, and when a chief minister presents himself as obliged to protect a deity's assets by virtue of his office, they articulate a vision of governance in which the state serves citizens by serving God. State involvement in religion is thus easily recoded as 'protection' or 'duty'—but of private property, and towards a deity. This, in turn, bears unusual implications for the state's involvement in religion by allowing involvement to be easily coded as 'protection' or 'duty' rather than as 'interference'—and, moreover, by presenting state involvement in the language of private property rights. In other words, an important way in which Indian secularism integrates religion within the public sphere is by rebranding Hindu temples as private entities serving the interests of individual beings.

⁶⁶ Ibid.