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RESEARCH ARTICLE

Deities' Rights?

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Abstract

A brief commotion arose during the hearings for one of twenty-first-century India's most widely discussed legal disputes, when a dynamic young attorney suggested that deities, too, had constitutional rights. The suggestion was not absurd. Like a human being or a corporation, Hindu temple deities can participate in litigation, incur financial obligations, and own property. There was nothing to suggest, said the attorney, that the same deity who enjoyed many of the rights and obligations accorded to human persons could not also lay claim to some of their constitutional freedoms. The lone justice to consider this claim blandly and briefly observed that having specific legal rights did not perforce endow one with constitutional rights. Nevertheless, a handful of recent and high-profile disputes concerning Hindu temple deities and the growing influence of Hindu nationalist politics together suggest that the issue of deities' rights is far from a settled matter. This article argues that declining to recognize deities' constitutional rights accurately reflects dueling commitments in the Indian Constitution.

Keywords: Hinduism; India; juristic personhood; sovereignty; constitutional law; Sabarimala

Introduction

Contemporary Indian law recognizes deities as juristic persons. British colonial law accorded deities legal personhood as well, and so too did the indigenous legal traditions on which colonial law drew, with varying success. Indian deities, in other words, have a well-founded expectation of vindicating their rights in the same fora as their human devotees, via the same representatives, and pursuant to the same rules. Because of this rich history, it came as no great surprise when, in July 2018, an attorney stood up before a panel of the Indian Supreme Court to argue that a particular Hindu deity's rights were being disregarded. What transformed the attorney's claim into a national media event was the *type* of right he asserted on behalf of his divine client, and—had the Court agreed with him—the implications it would have had for religion-state relations in the world's largest democracy.

Deities, argued J. Sai Deepak, have *constitutional* rights in India. Not only may they hold property, enter into contracts, and dispute tortious behavior—all classically private law actions that have long been within their repertoire—but they may also lay claim to that most fundamental of public law protections: the constitutionally guaranteed right.[1] This

[1] Note that however common it may be to distinguish between rights that are constitutional (or otherwise enshrined within a nation's basic law) and rights guaranteed in another legal form there is nothing *inherently* constitutional about any given right. That is, although the freedom of religion may be a constitutional right in India,

suggestion caused a small flurry of nervous excitement among Indian legal elites, who had been keenly following the lawsuit before the Court. The argument even prompted some disturbance within the Supreme Court itself, which hastily made room in its perpetually overburdened schedule for Deepak to expand on his theory. Although none of the legal or conceptual framework underpinning that theory was new, it appeared that the idea of divine personhood had been pushed to its shocking, if entirely foreseeable, extreme.

Nothing ultimately came of Deepak's day in Court. Four of the five justices on the Supreme Court panel declined altogether to engage with the theory, and the fifth did so in less than two pages of a nearly seventy-page opinion. In retrospect, the justices' disinterest provided a mercifully anticlimactic moment in what proved to be a convoluted and climax-ridden saga. Just a few months later, in September 2018, the lawsuit in which Deepak's client had been one of several dozen litigants culminated in an intensely controversial opinion. That opinion, in turn, inspired months of protests and counterprotests, triggered a review process that remains incomplete as of this writing, and gave rise to a wholesale reevaluation of key doctrines that has left Indian religious freedom jurisprudence in an uncomfortable limbo for several years. Fortunately, given all this commotion, the Court did not also declare that deities have constitutional rights. Although the justices seemed intrigued by the idea—one went so far as to call Deepak's presentation "impressive"[2]—in the end, the Court affirmed its long-standing, if largely implicit, belief that divine personhood in India is a matter of *private law*. Deities, in other words, do not have constitutional rights.

To explain why that outcome may seem peculiar—and why, nevertheless, it makes sense—I use Deepak's argument and the litigation context in which it was made, the long-standing dispute over the Sabarimala temple, as a window into the juristic status of Hindu deities in India.[3] Divine personhood frequently bemuses or puzzles Indian commentators, to say nothing of foreign observers, but it builds on long-standing theological traditions within Hinduism and legal traditions within Anglo-Indian law. Most significantly, the determination that deities are juristic persons but their rights do not extend into the constitutional realm coheres with a tension that lies at the heart of India's constitutional framework. That tension, which lies between different conceptions of democratic sovereignty, helps explain the thus-far-no-farther nature of the Court's response to J. Sai Deepak.

Status considerations are omnipresent and important in this conversation. Most discussions of the Sabarimala dispute are preoccupied with status designations created by the Indian Constitution that directly bear on the human beings who are involved in the litigation: whether pilgrims to Sabarimala constitute a religious denomination or subdenomination; whether the individuals denied access to the temple constitute a section or class of Hindus; and whether certain kinds of ritual taboos are legally analogous to untouchability. I focus on an altogether different kind of status: that of a nonhuman entity—a deity—and how the rights attached to that status reflect and affect the rights of human individuals.

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as it is in many other countries, it need not be protected by constitutional rather than statutory or common law means.

[2] Shishir Tripathi, *A Lawyer for Lord Ayyappa: Advocate Sai Deepak Turns Heads in SC Arguing for Sabarimala Deity's Right to Celibacy*, First Post (July 31, 2018), https://www.firstpost.com/india/a-lawyer-for-lord-ayyappa-advocate-sai-deepak-turns-heads-in-supreme-court-arguing-for-sabarimala-deitys-right-to-celibacy-4859291.html (stating that "the chief justice reportedly said that Deepak made an impressive articulation with both rhetoric and logic").

[3] Although divine personhood was far more central to the Ayodhya dispute, as discussed below, Ayodhya is not helpful for the question at issue in this article—namely, why temple deities might lack constitutional rights when they possess other rights. The Ayodhya Court, following existing jurisprudence, confined its discussion to property concerns: "legal personality is conferred on Hindu idols to provide courts with a conceptual framework within which to practically adjudicate disputes involving competing claims over disputed property endowed to or appurtenant to Hindu idols." *Mahant Suresh Das*, *infra* note 68, at ¶ 161.

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Divine Bachelors and Dynamic Equilibrium

Sabarimala is a Hindu temple in the southwestern Indian state of Kerala.[4] Even measured against Hinduism's rather capacious standards, Sabarimala is unusual in several respects. Its location is remote and intentionally difficult to access: a hilly and thickly forested area within what is now the Periyar National Park and Wildlife Sanctuary. Sabarimala is also closed more often than it is open: it receives devotees only during the first five days of each Malayalam calendar month, for the festival of Vishu (New Year's) each April, and for a roughly six-week pilgrimage season between November and January. Visitors to Sabarimala are also expected to undertake a forty-one-day vow of ritual purity before arriving at the temple, as part of which they abstain from meat, alcohol, sex, and other forms of ritual pollution. Despite all these peculiarities—or perhaps because of them—Sabarimala is one of the wealthiest religious institutions in India and a vital part of Kerala's economy. One former temple official remarked that Sabarimala may be "the biggest commercial enterprise" in the state.[5]

For several years now, however, Sabarimala's most famous unusual characteristic has been its remarkable presiding deity, Ayyappan, and the admissions practices that are said to reflect his preferences. In a common version of his origin myth, Ayyappan is described as the son of two prominent *male* deities, Vishnu and Shiva, who was born when Vishnu assumed the form of Mohini ("the Enchantress") and Shiva forgot himself in lust. The child they produced was adopted by a barren royal couple whose kingdom, called Pandalam, encompassed the forested area where Sabarimala now stands. Because of this adoptive relationship, the head of the erstwhile royal family of Pandalam—which is also the name of a historically verifiable principality in the region—continues to enjoy special privileges regarding the temple and its deity.

As a youth—he is most often pictured as a boy of around twelve—Ayyappan defeated a demoness who could not be slain by any one of the existing Hindu deities, including his powerful fathers. He then retired into the forests surrounding Pandalam to practice austerities for eternity and to bless any of his followers who make the effort to visit him there. A small shrine on the outskirts of the temple's premises commemorates the demoness, who revealed herself to be a beautiful maiden cursed to assume her terrible form until Ayyappan came to release her. Although she begged him to forego his austerities and marry her, Ayyappan declared that he would do so only when his devotees no longer needed him; she would have to wait until no new pilgrims made their inaugural journeys to his mountaintop dwelling. Veteran pilgrims thus consider it an obligation to recruit new companions who will accompany them to Sabarimala during the annual winter pilgrimage season as a way of ensuring that Ayyappan continues to reside there for the benefit of his devotees.

The admissions practices derived from this origin story are no less remarkable than the deity who inspires them. Unlike many Hindu temples, particularly in the extreme southern part of India, Sabarimala admits men of all faiths. There is even, in addition to the shrine for Ayyappan's waiting bride, another exterior shrine to the Muslim warrior Vavar, who is said to have been a friend and follower of the deity. Sabarimala is also said to have always admitted persons of all castes, even before doing so was made compulsory within the region by royal edict in 1936 and nationally by the Indian Constitution of 1950. At the same time, and unlike most Hindu temples—perhaps even unlike *all* of them (although one hesitates to use that word

[4] This account draws on, among others, Deepa Das Acevedo, *Just Hindus*, 45 Law & Social Inquiry 965 (2020); Filippo Osella & Caroline Osella, *"Ayyappan Saranam": Masculinity and the Sabarimala Pilgrimage in Kerala*, Journal of the Royal Anthropological Institute 729 (2003).

[5] Interview with Ramkumar, former Special Commissioner for Sabarimala, in Ernakulam, Kerala (Feb. 1, 2011).

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with anything pertaining to Hinduism)—Sabarimala prohibits women, regardless of faith or caste, from entering its premises when they are between the ages of ten and fifty. This age range is a rough proxy for the period between menarche and menopause. Whereas most Hindu temples operate under an unspoken assumption that women who are actively menstruating will avoid entering and polluting temple grounds, Sabarimala seeks to exclude women who are *potentially fertile* regardless of whether they are menstruating. As I show below, there have been multiple explanations for the unusual scope of the ban.

Sabarimala's admissions practices are of particular legal significance because the temple, like thousands of others across India, is a public religious institution. For most public temples, on most days, this designation matters for reasons that are mundanely logistical: it means that their operations and their budgets are managed by governmental authorities (the precise arrangement varies from state to state).[6] Occasionally, however—or, in the case of prominent temples like Sabarimala, very often—being a public Hindu temple matters for reasons beyond the administrative and the financial. By virtue of their public character, these temples are subject to the same constitutional constraints that bind other state actors.[7]

On the one hand, the Indian Constitution contains striking affirmations of the state's authority to reform Indian society. Most relevantly, Article 25(2)(a) allows the state to regulate or restrict "any economic, financial, political or other secular activity which may be associated with religious practice," and Article 25(2)(b) allows the state to provide "for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."[8] Other elements of the Constitution also allude to its aspirational nature: Article 17 abolishes the practice of untouchability, while Articles 15(3)–(5) and Article 16(4) provide affirmative support for disadvantaged populations. Finally, the Constitution's nonjusticiable Directive Principles section articulates a host of reforms that may or should inform governmental action. These undeniably transformative elements grant the state expansive discretion in the task of reshaping Indian society and reflect a sense that democratic sovereignty is *shared* between citizens and the state. They represent a striking departure from the dominant (if hardly uncontroversial[9]) principal-agent theory of democratic politics, in which state actors merely behave as representatives of the citizenry.[10]

At the same time, the Indian Constitution contains affirmations of conventionally—and *unconventionally*—liberal principles that serve to limit state authority in favor of citizen autonomy. Article 25 states that "all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion."[11] Article 26(b) extends this freedom to groups: "every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion."[12] Article 14, meanwhile, provides for equality before the law, while Article 15(1)–(2) restricts the government from discriminating against citizens on various grounds and prohibits discrimination on those grounds in

[6] For a more detailed analysis of temple administration in contemporary Kerala, *see* Deepa Das Acevedo, *Temples, Courts, and Dynamic Equilibrium in the Indian Constitution*, 64 American Journal of Comparative Law 555 (2016).

[7] For a comparable discussion that nonetheless centers on a different public temple (and a different dispute) see Deonnie Moodie, *On Blood, Power, and Public Interest: The Concealment of Hindu Sacrificial Rites Under Indian Law*, 34 Journal of Law and Religion 165 (2019).

[8] India Const., art. 25(2)(a) and (25)(2)(b).

[9] Craig T. Borowiak, *Disciplining Democracy: The Principal-Agent Model of Accountability*, *in* Accountability and Democracy: The Pitfalls and Promise of Popular Control 53 (2011) (criticizing the principal-agent framework of democracy as being overly narrow).

[10] Hanna Fenichel Pitkin, The Concept of Representation 2 (1967) (distinguishing between "representation" and "representative government," and associating only the latter with democracy).

[11] India Const., art. 25.

[12] India Const., art. 26(b).

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access to public spaces. These constitutional elements limit state authority in the service of classically liberal-democratic values centered on the person.

Most provisions that affirm the equality and autonomy of individuals or groups are qualified in some way: Article 26(b) is explicitly made "subject to public order, morality and health," Article 25 is subject to the same restrictions as well as "to the other provisions of this Part," and Article 15(1)–(2) is limited by implication.[13] Nevertheless, it would be a mistake to dismiss the importance of these autonomy-enhancing elements in favor of the Constitution's (admittedly striking) reformist provisions. Each type of provision upholds a distinct vision of the relationship between citizens and the state that demands acknowledgment and adherence by virtue of its inclusion in the Constitution.

This kind of argument, which relies heavily on drafters' intent, means something different in India than it does in the United States.[14] To begin with, there is a good deal of information about the process of constitutional drafting in India: full transcripts of the Constituent Assembly Debates have long been available and are now even accessible online.[15] Second, many of the Constitution's authors were also responsible for the drafting of early statutes, including the Hindu Code bills, that further defined religion-state relations after Independence.[16] Finally, India's federal judiciary has repeatedly worked to restrain itself and other branches of government even as it has tried to reform religious institutions and practices. As I have argued elsewhere, all of this means that the tension between these two approaches to citizen-state relations—between *shared* sovereignty and *citizen* sovereignty—"is an intentional *and* productive feature of Indian constitutionalism writ large (and by extension, of Indian democracy) rather than being accidental, pathological, or specifically about religion."[17]

If neither vision of sovereignty is meant to be paramount, then Indian constitutionalism is in fact characterized by a kind of "dynamic equilibrium" between the two rather than being "transformative" or "acquiescent" in nature.[18] Sometimes one approach to citizen-state relations becomes dominant, sometimes the other. Rarely, however, do both understandings of sovereignty emerge with such clarity in the course of a single dispute and within (by Indian standards) such a short timeframe as they have done in the battle over Sabarimala.

The Women's Entry Dispute, 1991–2018

Although the women's entry dispute began to command national and international attention around 2015, Sabarimala's ban was first litigated in the early 1990s and has been a source of some contention for even longer. Because of this longevity and complexity, and because not all aspects of the dispute speak to the issue of divine personhood, the narrative below focuses on just two moments in what is, at this point, a more than thirty-year story.

[13] The affirmative support provisions of Article 15(3)–(5) all begin with some formulation of the phrase "Nothing in this article shall prevent the State from making." India Const., art. 15(3)–(5).

[14] Jamal Greene & Yvonne Tew, *Comparative Approaches to Constitutional History*, Comparative Judicial Review 379, 391 (Erin F. Delaney & Rosalind Dixon eds., 2018) (noting that "while the Court has not adhered to a consistent interpretive approach, constitutional history is present in Indian constitutional practice" and offering examples).

[15] Constituent Assembly Debates, https://www.constitutionofindia.net/constitution_assembly_debates.

[16] Das Acevedo, *supra* note 6, at 577.

[17] *Id.* at 579.

[18] Gautam Bhatia, The Transformative Constitution: A Radical Biography in Nine Acts (2019); Gary Jeffrey Jacobsohn, Constitutional Identity 213–16 (2010) (note that Jacobsohn uses both "acquiescent" and "preservative" to describe a particular constitutional orientation that is roughly opposite to that of India's, which he calls "confrontational"). On the "dynamic equilibrium" of Indian constitutionalism, see Das Acevedo, *supra* note 6.

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In each of these moments, Ayyappan's preferences proved especially salient to the debate over women's entry.

Sabarimala's ban was first subjected to judicial scrutiny by the Kerala High Court in the 1991 case *S. Mahendran v. the Secretary, Travancore Devaswom Board.*[19] As one of the country's twenty-five high courts, the Kerala High Court is a court of original jurisdiction for petitions regarding fundamental rights and, consequently, for a type of action known as the *public interest litigation* petition.[20] Public interest petitions dispense with traditional standing requirements and the format of adversarial litigation; they were developed by the Supreme Court in the 1970s in order to expand access to justice for individuals who were too disempowered to speak on their own behalf. A public interest petitioner, in other words, is an individual who may have suffered no personal harm but who approaches the courts in order to vindicate the fundamental rights of others or to defend the public interest. For much of their nearly fifty-year history, public interest petitions have been one of the Indian judiciary's most well-known and widely lauded progressive achievements.[21]

S. Mahendran, the public interest petitioner who approached the Kerala High Court in 1990, complained that women between the ages of ten and fifty were visiting Sabarimala in violation of its admissions policies.[22] Mahendran addressed his public interest petition to an influential judge with long-standing interests in temple reform and so the High Court moved with unusual speed. Just as unsurprisingly—because this was in keeping with widespread judicial practice—the court used Mahendran's petition as an opportunity to weigh in on the constitutionality of the ban writ large.[23] After a series of quick hearings where it heard testimony from various parties and from a few expert witnesses, the court determined that Sabarimala's ban was indeed constitutionally valid because it was an essential aspect of Ayyappan worship.

A key point of contention during the *Mahendran* hearings was the precise rationale for the ban. Characterizing a practice as religiously motivated and identifying the exact nature of that religious motivation are particularly significant tasks in the Indian context because of the interplay between the constitutional provisions described above. That is, this kind of inquiry is made largely inescapable thanks to the tension between Articles 25 (freedom of religion for individuals) and 26(b) (religious autonomy for groups) and Article 25(2)(a) (state authority over "secular activit[ies] … associated with religious practice"). To help navigate this analysis, the Supreme Court developed the Essential Practices Doctrine, which holds that "what constitutes the essential part of a religion"—and what was therefore outside the purview of the state—"is primarily to be ascertained with reference to the doctrines of that religion itself."[24]

[19] *S. Mahendran v. The Secretary, Travancore Devaswom Board*, AIR 1993 Ker 42 (hereinafter *Mahendran*).

[20] *See generally* Shyam Divan, *Public Interest Litigation*, *in* The Oxford Handbook of the Indian Constitution 662, 664 (Sujit Choudhry et al. eds., 2016).

[21] For an overview of recent criticisms of public interest litigation, see the sources cited in Deepa Das Acevedo, *Sovereignty and Social Change in the Wake of India's Recent Sodomy Cases*, 40 Boston College International & Comparative Law Review 1, 11–14, nn. 47–61 (2017).

[22] This analysis of *Mahendran* draws on Deepa Das Acevedo, *Gods' Homes, Men's Courts, Women's Rights*, 16 International Journal of Constitutional Law 552, 560–64 (2018).

[23] On the "disappearing public interest petitioner," who is now necessary only to allow courts entrée into a particular issue, see Anuj Bhuwania, Courting the People: Public Interest Litigation in Post-Emergency India 39–41 (2017). On *suo motu* cognizance, which Indian courts increasingly use to address an issue in the absence of any petitioner, see Marc Galanter, *Snakes and Ladders: Suo Motu Intervention and the Indian Judiciary*, 10 Florida International Law Review 69 (2014).

[24] *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, A.I.R. 1954 S.C. 282 (hereinafter *Shirur Mutt*), at ¶ 20.

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In 1990, the respondents who opposed either the ban or Mahendran's claims regarding its enforcement made several attempts to suggest that the ban was not religious in any important sense. In response, the *tantri* (chief priest) of Sabarimala affirmed that the religious justification for the ban lay in Ayyappan's promise to remain a bachelor so long as his devotees needed him. As the High Court paraphrased his remarks:

> God in Sabarimala is in the form of a *Naisthik Bramchari* [a perpetual bachelor]. That, according to [the *tantri*], is the reason why young women are not permitted to offer prayers in the temple.
>
> Since the deity is in the form of a *Naisthik Brahmachari*, it is therefore believed that young women should not offer worship in the temple so that even the slightest deviation from celibacy and austerity observed by the deity is not caused by the presence of such women.[25]

For the Kerala High Court, this was extremely compelling: "There is a vital reason for imposing this restriction on young women," declared the court.[26] "It appears to be more fundamental" than the theory put forward by some petitioners and widely referenced in public discourse that fertile women are prohibited from entering the temple because their menstrual cycle prevents them from maintaining ritual purity for the full forty-one days of the vow.[27] Ayyappan's promise to remain available to his devotees by foregoing even thoughts of sex (let alone the duties and pleasures of a married householder) demanded respect and protection, the court seemed to imply. This, in turn necessitated the absence of sexually appealing, because fertile, women.

However, even if Ayyappan was central to the argument that won coveted "essential practice" status for the ban, he was not its true focus—*that* remained firmly set on the desires and well-being of Ayyappan's devotees. (It is worth noting that although pilgrims to Sabarimala are overwhelmingly male, there is no particular reason to think that Ayyappan devotees are similarly skewed along gender lines; indeed, the massive all-women marches protesting the Supreme Court's 2018 opinion suggest that there are plenty of women who cannot visit Sabarimala and yet worship Ayyappan and support the ban.) This emphasis on devotees, rather than on the deity himself, began to shift in 2015 with the rise of two social movements involving Sabarimala.

The first of these grew out of an open letter posted on a youth-oriented website.[28] The author, a college student named Nikita Azad, had learned of remarks made by a Keralite temple official to the effect that "when a machine is invented to scan if it is the 'right time' (not menstruating) for a woman to enter [Sabarimala] ... we will talk about letting women inside."[29] In addition to reproaching the temple official himself, Azad—who signed her letter "A young, bleeding woman"—mounted a powerful critique of the notion that menstruation is shameful and ritually polluting.[30] The letter immediately went viral.[31]

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[25] *Mahendran*, AIR 1993 Ker 42, at ¶ 40–41 (emphasis added).

[26] *Id.* at ¶ 39.

[27] *Id.*

[28] This analysis of Nikita Azad draws on Das Acevedo, *supra* note 22, at 567–71.

[29] *Let Machine to Scan Purity Come, Will Think About Women Entering Sabarimala: Devaswom Chief*, News Minute (Nov. 15, 2015), https://www.thenewsminute.com/article/let-machine-scan-purity-come-will-think-about-women-entering-sabarimala-devaswom-chief-35998.

[30] Nikita Azad, *"A Young Bleeding Woman" Pens an Open Letter to the Keepers of Sabrimala Temple*, Youth Ki Awaaz (Nov. 20, 2015), https://www.youthkiawaaz.com/2015/11/open-letter-to-devaswom-chief-sabrimala/.

[31] Nikita Azad, *#HappyToBleed: An Initiative Against Sexism*, Countercurrents (Nov. 23, 2015), https://www.countercurrents.org/azad231115.htm.

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Soon after, her fans (who, like Azad, may not have been terribly invested in the specific issue of women's entry at Sabarimala) began a Twitter campaign called #HappyToBleed. It was met with a countercampaign, which *did* emphasize Sabarimala, called #ReadyToWait.[32] Ultimately, Azad joined the Supreme Court litigation regarding Sabarimala's ban and submitted an intervenor's brief arguing that the ban should be held unconstitutional.[33]

Azad's original letter and subsequent court filings subtly redefined the idea that the ban on women was necessitated by Ayyappan's persona. Many Ayyappan devotees, some *Mahendran* litigants, and the Kerala High Court have viewed the ban as facilitating Ayyappan's commitment to his devotees. That is, they frame Ayyappan's choice to remain celibate as one that prioritizes his devotees over a bride, and the ban (whether required by him or imposed by his devotees) as a means to that laudable end.[34] Azad, in contrast, portrayed the ban as an expression of Ayyappan's own attitude towards women, saying that she "refuse[d] to belief [*sic*] in a God that considers his own children impure." Similarly, she questioned whether any deity gave someone the right to determine the locations where she, Azad, could "take" her menstrual blood (by entering while she was on her period), and whether any deity gave this particular temple official permission to have her "purity be checked" using a machine. In both cases, Azad reframes human actors as merely agents of a divine principal—a theory of divine personhood that, as I explain below, has a long history in India. Moreover, by linking the ban on women with Ayyappan's preferences (as expressed through human agents) Azad imputed more agency and awareness to the deity than had been done thus far.

Ayyappan became even more central to the dispute over Sabarimala via a second, almost simultaneous, social movement. Less than a month after Azad's letter was posted, a community activist name Trupti Desai began a series of agitations to expand women's access to Hindu temples.[35] Desai was based in the state of Maharashtra and many of her initial efforts targeted Maharashtrian temples that limited the times, days, or physical areas accessible to women worshippers. She and her followers sometimes literally stormed temple gates demanding that they be admitted inside, while at other times they marched or protested in the hopes of bringing public attention to bear on temple authorities. After a few successful campaigns in her home state, Desai announced in August 2016 that she was crossing state borders for the first time in order to spearhead a similar effort targeting Sabarimala. These attempts were marked failures—her intended visit in 2016 never materialized, and her second in 2018 was cut short when protesting crowds trapped her inside the Kochi airport—and she soon moved away from temple entry altogether. But for the duration of her engagement with Sabarimala, Desai also recentered Ayyappan within the debate over women's entry.

Desai, unlike Azad, was openly and enthusiastically religious. Her efforts to expand temple access for women complemented rather than proceeded in spite of her own approach to spirituality, and she always prayed at the temples she targeted. After she had successfully offered prayers at the Trimbakeshwar temple, Desai smilingly announced that she had "felt the pure joy of being close to God." "That force," Desai went on to say, "directly

[32] Vinod V. K., *Sabarimala Row: Women Devotees Say They're #ReadyToWait*, Onmanorama (Nov. 30, 2016), https://www.onmanorama.com/news/kerala/sabarimala-entry-ready-to-wait-women-devotees.html.

[33] *In re Nikita Azad (Arora)*, I.A. No. 10 of 2016 in WP(C) 373 of 2006.

[34] See *Mahendran*, *supra* note 25; *In re IYLA v. State of Kerala* and *In re People for Dharma*, I.A. No. 30 of 2016 in WP(C) 373 of 2006 (hereinafter *In re PFD*), at ¶ 8 (quoting from a Tamil-language *sthalapuranam* or "place narrative" of Sabarimala, in which Ayyappan declares that "It is true that You are My Shakti. But I am to be live [*sic*] as a Brahamacarin [*sic*] in this birth. So, I cannot marry You.").

[35] This analysis of Desai's movement draws on Das Acevedo, *supra* note 22, at 567–71.

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empowers you. That's why women must get inside."[36] More tellingly, during her campaign involving the Shani Shignapur temple, Desai declared, "I am a believer in god, in Lord Shani. Why must I be denied access to the god I believe in? What is this tradition which suggests women are impure? ... *I refuse to accept that this is what the god desired.*"[37] Desai's emphasis on personal devotion, as well as her disbelief that any deity would mandate gender discrimination, centered Ayyappan and faith within a debate that had been understandably focused on human beings and rights.

The contrasting ways in which Azad and Desai incorporated Ayyappan into their critiques of Sabarimala's ban did not redirect the debate, which remained focused on the relative rights and statuses of women who could not visit and the devotees who did not want them to. But Azad and Desai *were* responsible for attracting unprecedented attention to Sabarimala's ban: from 2015 onward the topic was covered, quite regularly, by prominent sources like *The New York Times* and the BBC, and in January 2016 the Supreme Court restarted hearings on the ban after an eight-year delay.[38] Beyond reinvigorating the debate over women's entry and, quite possibly, goading the Supreme Court into action, Azad and Desai's comments about Ayyappan's probable wishes and their personal relationships (or lack thereof) with the divine offered some suggestion as to how the next phase of the dispute might unfold. That phrase involved both a renewed interest in *what Ayyappan wanted* and a more careful consideration of *which of Ayyappan's preferences* were properly at stake. It also, for the first time, introduced the notion—thanks to Deepak's arguments—that Ayyappan himself might have constitutional rights that could provide an independent basis for upholding Sabarimala's ban.

Ayyappan at the Supreme Court

Although it only gained traction in 2016, the Supreme Court phase of the women's entry dispute began in 2006 when a group of female lawyers in Delhi filed a public interest litigation petition challenging Sabarimala's ban.[39] The lawyers had read about the troubles of a minor film actress who had confessed to visiting Sabarimala in the late 1980s, when she was in the prohibited age range. Disconcerted by the ensuing furor and even more so by the idea that a public Hindu temple was excluding women with the full knowledge of government actors, the lawyers asked the Supreme Court to overturn *Mahendran* and strike down a provision in Keralite statutory law that enabled enforcement of the ban. The petition they filed, *Indian Young Lawyers Association v. State of Kerala* ("*IYLA*"), was the core of the litigation in which both Nikita Azad and J. Sai Deepak would eventually participate.

Deepak represented a new advocacy association called People for Dharma that had been formed in the wake of Azad's and Desai's movements—in fact, People for Dharma organized the #ReadyToWait countercampaign in response to Azad.[40] Along with many other organizations and individuals, including caste-based associations like the Nair Service Society and the current head of the Pandalam royal family, People for Dharma had sought and received permission to participate in the *IYLA* hearings in order to defend the ban. (Although the

[36] Geeta Anand, *Forging a Path for Women, Deep into India's Sacred Shrines*, New York Times (Apr. 29, 2016), https://www.nytimes.com/2016/04/30/world/asia/forging-a-path-for-women-deep-into-indias-sacred-shrines.html.

[37] Abhiram Ghadyaipatil, *Trupti Desai: The Woman Who Took on a 400-Year-Old Tradition and Won*, Live Mint (Apr. 12, 2016), https://www.livemint.com/Politics/VpcrQzaNSOmqVSDOVBwccK/Trupti-Desai-the-woman-who-took-on-a-400yearold-tradition.html (emphasis added).

[38] See Anand, *supra* note 36; *Sabarimala: Indian Women Make History by Entering Temple*, BBC (Jan. 2, 2019), https://www.bbc.com/news/world-asia-india-46733750.

[39] *Indian Young Lawyers Association v. State of Kerala*, WP(C) 373 of 2006.

[40] Rohini Swamy, *These Are the Groups Trying to Prevent Women from Entering Sabarimala Temple*, The Print (Oct., 17 2018), https://theprint.in/india/governance/these-are-the-groups-trying-to-stop-women-from-entering-sabarimala-temple/136281/.

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State of Kerala was the primary named respondent, its position on the ban flipped several times over the twelve years the case was pending—always following a change in government—and during the final phase of the *IYLA* hearings, the state actually supported the petitioners.[41]) Of all the intervenors who submitted briefs to the Supreme Court, none received so much attention as the written and oral arguments Deepak made on behalf of People for Dharma.[42] And, while Ayyappan's putative constitutional rights was just one of several arguments put forward by the group in defense of the ban, it consisted of no fewer than three separate claims centered on Ayyappan's status as a juristic person.

First, People for Dharma made a property rights argument: even if Sabarimala was a public temple because it was open to the general population (rather than only to the members of a specific denomination or sect) it also had qualities that made it more like private property. Specifically, the temple was *Ayyappan*'s private property, and, like any other property owner, Ayyappan was entitled to set rules of admission and behavior.[43] As I explain below, this argument rested on an analogy in Hindu religious practice between temple deities and sovereign rulers that has been extensively studied by anthropologists and historians.

Second, People for Dharma made the constitutional argument that had so captured the media's fancy—namely, that because "Lord Ayyappa [*sic*] too has the character of a juristic person under Hindu law as recognized by this Hon'ble Court ... the Deity enjoys rights as a person" under the Constitution. This constitutional argument *itself* had three sub-parts.[44] First, People for Dharma claimed that, under Article 25, Ayyappan "has the right to follow His Dharma, like any other person."[45] Although seemingly innocuous, the vernacularization undergirding this claim—from "religion" to "dharma"—does important rhetorical and conceptual work. It is entirely possible—even necessary—to view gods as having their own dharma, if dharma is understood "in the sense of what is the right thing to do under a given set of circumstances."[46] Second, the group claimed that under Article 21, Ayyappan "enjoys the right to privacy ... which includes the right to preserve His celibate form and the attendant restricts [*sic*] that apply to Him under his vow of Naisthika Brahmacharya."[47] And, lastly, they argued that the temple's right to observe traditions under Article 26 is really about respecting Ayyappan's will, such that Ayyappan also has an Article 26 interest in preserving the ban.[48]

In its third line of reasoning, People for Dharma made an argument that blended the flavor of tort law with the content of constitutional law and agency law by saying that if the temple or *tantri* neglected their duty to protect Ayyappan's interests (and especially his Article 25 rights), his devotees were empowered to sue on his behalf.[49] This theory also rested on strong cultural and legal foundations, but—given the Court's negative conclusions on the first two points—was never independently addressed.

[41] Das Acevedo, *supra* note 22, at 563, n. 68.

[42] It also appears that V.K. Biju, who represented various Ayyappan devotees, made a version of the "deities' rights" argument, but it did not capture the Court's—or the media's—attention. *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1, 169–73 (¶¶ 241–55) (2018) (hereinafter *IYLA*) (Chandrachud, J.).

[43] *In re PFD*, ¶ III(5).

[44] *Id.*, ¶ IV(4).

[45] *Id.*

[46] Arvind Sharma, Modern Hindu Thought: An Introduction 89 (2005). It is far less intuitive to think of a god having a *religion*, perhaps one that is centered on a(nother) deity.

[47] *In re PFD*, ¶ IV(4). It is worth noting that construing privacy as centered on practices of sex (or abstinence), as in PFD's argument about Ayyappan, comports with recent Supreme Court jurisprudence about human beings. *Navtej Singh Johar v. Union of India*, 2018 SCC OnLine SC 1350, ¶ 161 (Misra, C.J.) (linking privacy to sexual orientation and identity via the concepts of autonomy and self-determination).

[48] *In re PFD*, ¶ IV(4).

[49] *Id.*, ¶ IV(5). See generally Shyamkrishna Balganesh, *The Constitutionalisation of Indian Private Law*, *in* The Oxford Handbook of the Indian Constitution 680, 686–90 (Sujit Choudhry et al. eds., 2016) (discussing "Private (Tort) Law as Constitutional Law in India").

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D. Y. Chandrachud, who was the only member of the *IYLA* panel to address this part of People for Dharma's brief in his written opinion, made short work of it. In a three-page, seven-paragraph section, he declared that (1) even if Ayyappan was a juristic person for certain limited purposes, it did not follow that he had constitutional rights; (2) Article 26 only "vests in *a collection of individuals*" and consequently Ayyappan by himself could not advance a claim under that provision; and (3) the civic rights of women ages ten to fifty and the "anti-exclusion principle" would preclude any Article 25 or Article 26 claims Ayyappan might have had.[50]

Justice Chandrachud's conclusions were reasonable—they were even appropriate—but they were not inevitable. As I discuss below, People for Dharma's central theme, namely that Ayyappan's interests are relevant to any evaluation of Sabarimala's ban, builds on more than a little cultural and legal precedent. Even the group's more specific argument, that Ayyappan has constitutional rights, was not without foundation, as were two of the specific constitutional rights, Article 21 and Article 25, that People for Dharma claimed on behalf of the deity. (The idea that Ayyappan could exercise Article 26 rights despite explicit language ascribing them to "religious denomination[s] or any section[s] thereof" was, by contrast, difficult to understand.) Despite presenting the first serious articulation of a novel, important, and wholly plausible theory regarding the nature of divine personhood, People for Dharma received unfortunately little traction with the Court. Even Justice Indu Malhotra, who was the lone dissenter on the *IYLA* panel and who voted to uphold Sabarimala's ban as an "essential practice" of Ayyappan worship, failed to engage with the idea that Ayyappan might enjoy constitutional rights.

Justice Malhotra did, however, address one issue that informed both People for Dharma's Article 21 (privacy) claim and the submissions of several other parties who supported the ban—namely, that the ban is essential to maintaining the unique persona of Ayyappan-at-Sabarimala: "The same deity is capable of having different physical and spiritual forms or manifestations. Worship of each of these forms is unique, and not all forms are worshipped by all persons. ... Worship has two elements—the worshipper, and the worshipped. The right to worship under Article 25 cannot be claimed in the absence of the deity in the particular form in which he has manifested himself."[51]

As Justice Malhotra implied, and as many respondents (as well as the Kerala High Court in *Mahendran*) have specifically argued, Ayyappan's manifestation at Sabarimala is different from his manifestations elsewhere.[52] At no other temple does Ayyappan appear as a *naisthik brahmachari*, and at no other temple does the rule prohibiting women ages ten to fifty apply. For instance, at the Achankoil temple some 130 kilometers from Sabarimala, Ayyappan appears as a married householder with two wives. At Kulathupuzha, another Ayyappan temple in southern Kerala, the deity appears as a child. People for Dharma's theory that Ayyappan-at-Sabarimala had a privacy right to maintain certain conditions of celibacy and asceticism cohered with the claim, put forward by many of the respondents and accepted by Justice Malhotra, that it is not possible to alter a significant aspect of a Hindu temple deity without doing real harm to the religious traditions of the temple and the constitutional rights of its devotees. Justice Malhotra, People for Dharma, and the other respondents all further diverged from the petitioners (as well as from the four justices on the *IYLA* majority) in claiming that eliminating the ban on women would have this persona-altering effect on Ayyappan-at-Sabarimala himself—and that if it *did* have this effect, the cost of overturning

[50] *IYLA*, (2019) 11 SCC at 234–36 (¶¶ 399–405) (Chandrachud, J.) (emphasis in original). On the anti-exclusion principle, see Gautam Bhatia, *Freedom from Community: Individual Rights, Group Life, State Authority and Religious Freedom Under the Indian Constitution*, 5 Global Constitutionalism 351 (2016).

[51] *IYLA*, (2019) 11 SCC at 281–82 (¶¶ 513–14) (Malhotra, J.).

[52] *Mahendran*, AIR 1993 Ker 42, at ¶ 40.

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the ban was too great. These disagreements over the legal and ritual contours of Ayyappan's personhood revealed intriguing blind spots in an otherwise rather extensive, if arcane, body of jurisprudence.

Temple Deities as Juristic Persons

Sanskritic materials regarding divine personhood and Common Law materials regarding juristic persons are dauntingly vast. Rather than trying to survey them in their entirety, this section explores them through a focus on the answers developed by each tradition and by their joint product, the Anglo-Indian corpus of jurisprudence now often simply called "Hindu Law," to a particular question: *Can deities act?* More specifically, can Hindu temple deities—images consecrated for worship—act?[53]

Sanskritic texts are divided on this issue, since they reflect the differing positions of the various Hindu philosophical traditions that produced them. For instance, some branches of the *uttaramimamsa* (later critique) school, which is more commonly known as Vedanta, hold that "deities can be real sentient corporeal beings" who "may be pleased or prompted to respond."[54] Conversely, the *purvamimamsa* (earlier critique) tradition—another one of the six conventionally recognized schools of Hindu thought—generally holds that "deities are purely hypothetical entities, posited to assist in the performance of a sacrifice."[55] Medhatithi, an especially influential *purvamimamsa* commentator who probably lived sometime between the ninth and eleventh centuries, did not think that deities were truly capable of action: "the gods do not use wealth according to pleasure, nor can they be seen exerting themselves for the protection (of the wealth)."[56] Other *purvamimamsa* thinkers after Medatithi were likewise skeptical.[57] And, although *purvamimamsa* has at times had a questionable reputation among scholars because of its "constitutive concern with demonstrating the authority of the Vedas," the school has enjoyed a "signal influence in the intellectual milieu of classical India," especially in northern parts of the subcontinent.[58]

It is no accident that Medhatithi's objection was articulated in property law terms. The overwhelming focus of Sanskritic texts analyzing divine personhood (and of Common Law jurisprudence, later on) has been the problem of how to manage devotee donations.[59] Although some donors may direct their support towards a temple as an institution, or for the maintenance of brahmin priests and other temple staff, or for the performance of discrete rituals, many donations (perhaps even *most* donations) are made to a deity him- or herself. A tract of land or an amount of money given to, for example, "Lord Ayyappan of Sabarimala"

[53] On the relationship between Hinduism and law generally, see Donald R. Davis Jr., *Hinduism as a Legal Tradition*, 75 Journal of the American Academy of Religion 241, 258 (2007) (concluding that "to the extent that dharma in Dharmashastra provides a touchstone for other Hindu conceptions of dharma, Hinduism is a legal tradition"). On the relationship between writing and Hindu law, see Timothy Lubin, *Writing and the Recognition of Customary Law in Premodern India and Java*, 135 Journal of the American Oriental Society 225 (2015).

[54] Günther-Dietz Sontheimer, *Religious Endowments in India: The Juristic Personality of Hindu Deities*, 67 Zeitschrift für vergleichende Rechtswissenschaft 45, 68 (1965).

[55] Sontheimer, *supra* note 54, at 68. There is disagreement regarding how best to characterize purvamimamsa's view of temple rites and image worship. Gérard Colas, *Images and Territories of Gods: From Precepts to Epigraphs*, *in* Territory, Soil and Society in South Asia 99, 115 (Daniela Berti & Gilles Tarabout eds., 2009). For my purposes all that matters is that purvamimamsa does not ascribe ontological validity to divine personhood.

[56] Sontheimer, *supra* note 54, at 63 (quoting Medhatithi).

[57] *Id.* at 65–69.

[58] Daniel Arnold, *Of Intrinsic Validity: A Study on the Relevance of Pūrva Mīmāṃsā*, 51 Philosophy East & West 26, 26 (2001).

[59] *See, e.g.*, J. Duncan M. Derrett, Introduction to Modern Hindu Law 493 (1963) ("Jurists were for long puzzled by the anomaly of the property of an idol, which could neither receive what was offered to it, nor manage it, nor vindicate its rights against trespassers.").

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raises several possible puzzles that sound in what we would now call property, agency, and tort. How, for instance, can a temple deity be said to benefit from a donation? If the deity's beneficial interest is only "ideal" (or allegorical) who should actually enjoy the donation? What are the limits of this beneficiary's right; does their right function like a life estate; can that right be transferred, inherited, or divided? And, of course, who is empowered to determine whether the deity's interests have been negatively affected (whether by the beneficiary or anyone else) and to speak on the deity's behalf before the relevant authorities?

If these property, tort, and agency considerations were the puzzles considered by classical Hindu thinkers, they were also the challenges confronted by colonial judges and administrators tasked with resolving disputes over donated assets. The complexity was especially severe in parts of north India where prominent temples were often founded, endowed, and managed by wealthy merchant families rather than being sites of royal authority, as they largely were in the south.[60] Disputes over donated temple assets thus often involved intricate ties of kinship and business that could be difficult to unravel. As a result, during the late nineteenth and early twentieth centuries, colonial officials began to increasingly classify these institutions as *public*, and to subject them to a rapidly growing bureaucratic infrastructure that varied across India but that opened temples to unprecedented state oversight.

Around the same time that temples were becoming public institutions subjected to greater degrees of state authority, *endowments* to temples were becoming increasingly private. That is, "Anglo-Indian jurisprudence on trusts … was grounded on a tripartite relationship between donor, trustee, and beneficiary, in which the intent of the first controlled the actions of the second with respect to the third."[61] In the case of deities, however, the law deviated strongly from donor intent, inasmuch as it interpreted donor intent figuratively rather than as literally giving something to the deity that the deity could then own and enjoy. Donations to deities thus came to be viewed as gifts to a "pious purpose" envisioned by the donor that did not necessarily require a consecrated image to be valid: the donor's *intent* created the beneficiary—the deity—as a kind of limited legal person whose interests could then be protected by the courts.[62]

In this way, donations to temple deities became a kind of private property without a clear private owner, while most Hindu temples became public institutions in charge of private assets, and temple deities figured as beneficiaries who could not actually benefit. This was remarkably different from the intentions of many donor-devotees, and it also contrasted with the notion—particularly obvious in the great royal temples of south India—that deities could not only act, but that they were characterized by powerful, because *royal*, action.[63] Temple ethnographies focusing on south India have repeatedly demonstrated the extent to which deities are understood to be sovereigns within their physical temples and masters of the vast lands and incomes attached to those temples.[64] Anecdotally, yet representatively, the word for *temple* (*kovil*) in the south Indian language Tamil can be literally translated as either "god's home" or "king's home."

[60] Ritu Birla, Stages of Capital: Law, Culture, and Market Governance in Late Colonial India 108–10 (2009).

[61] Deepa Das Acevedo, *Divine Sovereignty, Indian Property Law, and the Dispute over the Padmanabhaswamy Temple*, 50 Modern Asian Studies 841, 860 (2016).

[62] *Bhupatinath Smrititirtha v. Ram Lal Maitra*, (1910) I.L.R. 37 Cal. 128, 161 (Mookerjee, J.).

[63] Susan Bayly, *Hindu Kingship and the Origin of Community: Religion, State and Society in Kerala, 1750–1850*, 18 Modern Asian Studies 177 (1984); Arjun Appadurai, *Kings, Sects and Temples in South India, 1350–1700 A.D.*, 14 Indian Economic and Social History Review 47 (1977).

[64] Arjun Appadurai, Worship and Conflict Under Colonial Rule: A South Indian Case (2008 [1981]); Anthony Good, Worship and the Ceremonial Economy of a Royal South Indian Temple (2004); C.J. Fuller, Servants of the Goddess: The Priests of a South Indian Temple (1984); Arjun Appadurai & Carol Appadurai Breckenridge, *The South Indian Temple: Authority, Honour and Redistribution*, 10 Contributions to Indian Sociology 187 (1976).

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And yet, although the Hindu Law approach to divine personhood came to be dominated by colonial priorities, Common Law tenets, and curious "Law Sanskrit" terminology, it was not exactly "introduced in India by the British."[65] Rather, colonial-era Hindu Law on the subject of divine personhood and post-independence jurisprudence (which has not deviated in any important way from colonial precedents) are both roughly in keeping with *purvamimamsa*'s hesitations about the possibility of divine action.

Divine (In)action

Many recent high-profile disputes involving temple deities reflect both the complexity of the hybrid Sanskrit-Common Law system called Hindu Law and its emphasis on property, tort, and agency considerations. They also reflect assumptions and practices regarding divine personhood, particularly temple deities' incapacity for action, that are now standard in Indian jurisprudence.

In the Pathur Nataraja dispute that ended in 1991, the deity Nataraja (a manifestation of Shiva) appeared as a litigant in his own cause before British courts.[66] (His consort, the goddess Sivakami, appeared too.) The dispute centered on a twelfth-century bronze image of Nataraja that had been unearthed in the 1970s by a Tamilian laborer. After traveling along a complicated series of sales on the black market in antiquities, the image eventually ended up in the hands of a Canadian firm, Bumper Corporation, and was seized when it was sent to the British Museum for restoration. The government of India tried to repatriate the image and was prominently involved in coordinating and funding litigation to that end. Among other things, the Indian side argued that Nataraja's claim to his own bronze image was superior to the Canadian claim over the image. The Queen's Bench agreed, as did the Court of Appeal.[67]

The 2019 Supreme Court of India opinion *M. Siddiq v. Mahant Suresh Das* intermingled property and agency considerations to far more significant effect.[68] *Siddiq* is more commonly known as the "Ayodhya decision" because it determined, after decades of litigation and violence, the fate of a disputed plot of land in the north Indian city where the Hindu deity Ram is believed to have been born, and where, between 1528 and 1992, there stood a mosque. Not only did "Bhagwan Sri Ram Virajman" (the deity Ram) figure as lead petitioner in one of the suits consolidated under *M. Siddiq*, but "Asthan Shri Ram Janam Bhumi" (the land alleged to be Ram's literal birthplace) was named as a petitioner, too. The Supreme Court issued a unanimous but unsigned decision in which it sustained the deity's claims but declined to recognize the personhood of the land. Ultimately, the Court granted control over the land to Hindus through a government-established trust.

The following year, the Supreme Court reversed an earlier decision by the Kerala High Court regarding the Padmanabhaswamy temple in Trivandrum, some 100 kilometers away from Sabarimala.[69] The Padmanabhaswamy temple is both a prestigious public temple and the family temple of the erstwhile rulers of Travancore, whose state merged with the nearby princely kingdom of Cochin in 1949 and eventually became part of the Indian state of Kerala.

[65] Daniela Berti, *Ritual Presence and Legal Persons. Deities and the Law in India*, *in* Encounters with the Invisible: Revisiting Possession in the Himalayas in its Material and Narrative Aspects 1 (Anne de Sales & Marie Lecomte-Tilouine eds., forthcoming). On terminology, *see infra* note 73.

[66] For an account of this case see Richard H. Davis, *Temples, Deities, and the Law*, *in* Hinduism and Law: An Introduction 195 (Timothy Lubin, Donald R. Davis Jr. & Jayanth K. Krishnan eds., 2010).

[67] The appellate court judgment is *Bumper Development Corp. v. Commissioner of Police*, [1991] 1 W.L.R. 1362, [1991] 4 All E.R. 638 (C.A.).

[68] *M. Siddiq v. Mahant Suresh Das & Others*, (2020) 1 SCC 1.

[69] The Kerala High Court decision was in response to *T.P. Sundararajan v. State of Kerala & Ors.*, WP(C) No. 36487 of 2009 (the public interest litigation petition) and *Uthradam Thirunal v. Union of India*, WP(C) No. 4256 of 2010 (the royals' counterpetition). This account draws on Das Acevedo, *supra* note 61.

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The temple is also widely considered to be the richest religious institution in India, thanks to the contents of several underground vaults that hold fabulous wealth accumulated through Travancore's centuries of prosperous maritime trade.

In 2011, a state-led inventory that was prompted by a public interest litigation suit alleging mismanagement of temple assets revealed eighteen-feet-long gold chains, Napoleonic coins, and other treasures; the discovery prompted a fierce public debate over the proper ownership and use of those assets. Some commentators argued that, given the temple's status as a public institution, its treasures should benefit the public via the construction and endowment of universities, hospitals, or museums. Others maintained that the deity Padmanabha owned any assets found in his temple. A third perspective, articulated only by the leader of a prominent Hindu monastery, was that because the treasures consisted of "offerings made by the erstwhile rulers to the temple ... the recovery belongs to the royal family" as well.[70] For their part, the Travancore royals disclaimed the treasure but fought what they viewed as the state's usurpation of their guardianship rights over the temple and deity. Ultimately, those rights were affirmed by the 2020 Supreme Court opinion in *Marthanda Varma.*[71]

In all three instances, the deities—Nataraja, Ram, and Padmanabha—were expressly or indirectly found to own the assets at issue, which were a bronze image, a plot of land, and considerable movable wealth.[72] The deities were not, however, believed to *benefit* from those assets in any literal sense: the image was repatriated because it was an artifact of Indian heritage, the plot of land was desirable because Ram devotees wanted to build a temple there for their own worship, and the vaults' contents were to be preserved for posterity or used to fund the temple's administration. Put differently, courts have repeatedly underscored the public nature of religion and the public purpose of religious institutions by confirming the private nature of religiously endowed (but divinely owned) assets.

Additionally, in all three cases human actors were allowed to articulate the best use or treatment of the assets. Sometimes, as with the named petitioner in *Marthanda Varma* (who was then the head of the Travancore royal family), the human being in question was the "shebait," or the legally recognized guardian of the deity.[73] Sometimes, however, as with the Government of India in *Bumper Corp.* and the public interest petitioner whose actions eventually led to *Marthanda Varma*, the human being was simply an interested third party. As People for Dharma and Deepak would argue during the 2018 Sabarimala hearings, human beings other than the recognized shebait can bring suit on behalf of a deity, particularly when it is the quality of the shebait's guardianship that is at issue.[74] A deity, in other words, is not unlike the "oppressed and the bewildered" individuals for whose sake the Supreme Court originally developed public interest litigation in the 1970s: both the deity and the public interest beneficiary are considered utterly voiceless.[75] Indeed, temple deities are so incapable of intentional action that they contrast rather strikingly with two other

[70] *Treasure Belongs to Royal Family: Sankaracharya*, The Hindu (July 6, 2011), https://www.thehindu.com/news/national/treasure-belongs-to-royal-family-sankaracharya/article2162479.ece.

[71] *Marthanda Varma v. State of Kerala*, (2021) 1 SCC 225.

[72] *Siddiq* did not appear to explicitly affirm Ram's ownership of the disputed site. Nevertheless, the suit that prevailed—Suit No. 5—was filed in the name of Ram and Ram's birthplace, and it asserted that "[t]he place belongs to the deities" and "did not cease to be in possession of the deity." *Siddiq*, (2020) 1 SCC 1, at ¶ 40.3 (xi) and (xii).

[73] Derrett, *supra* note 59, at 498 ("The word for manager is 'shebait.' derived from the Sanskrit *seva*, 'service, worship.'") and 494 ("The property dedicated to [the image] is called *devottaram*, in Anglo-Indian jargon 'debutter.'").

[74] The *Siddiq* Court considered and accepted a devotee's right to bring suit on behalf of the deity. It also concluded that the devotee did not need to be judicially appointed, but that their intentions were subject to judicial scrutiny. *Siddiq*, (2020) 1 SCC 1, at ¶ 458.

[75] Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, 4 Third World Legal Studies 107 (1985) (internal citations omitted).

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supernatural (and occasionally juristic) persons: sacred rivers, like the Ganga and Yamuna, that have been accorded legal personhood under Indian law, and *sati*, the nonindividuated being created or augmented through the act of widow immolation.

A pair of unrelated cases from the mid-2010s in a single Indian state, Uttarakhand, provides something like a natural experiment comparing the relative agency ascribed to temple deities versus sacred rivers.[76] The first case concerned a proposed hydroelectric dam that, if constructed, would submerge a temple to the goddess Dhara Devi and thereby incur her wrath. The dam proceeded over the objections of devotees and environmental activists, the temple was relocated for its own safety, and soon afterward, floods caused extensive damage in the region and killed hundreds of people. Local residents viewed the floods as proof of the goddess's displeasure. The company building the dam denied responsibility by presenting the tragedy, ironically enough, as an *act of god.* When victims brought suit, the tribunal overseeing the case rejected both theories—that Dhara Devi was responsible, and that *no one* was responsible—and held the company liable for failing to take various safety precautions in its construction.

The second case began the year after the floods damaged Dhara Devi's temple, and it was brought as a public interest suit by a concerned citizen who objected to the proliferation of encroachments on the banks of the river Ganga. Not only did the presiding judge order the removal of the encroachments, he also proposed a series of protective measures (like the establishment of a river management board) and, most sensationally, he determined that "the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing with flow continuously or intermittently of these rivers, are declared as juristic/legal persons/living entities."[77] Important rivers like the Ganga are indeed considered sacred by most Hindus and a personified Ganga appears frequently in Hindu mythology, but the rivers had not until then been deemed juristic persons. The ruling received mixed reactions within India given the complicated infrastructural and even international challenges it created, as well as the differences between the Indian context and paradigmatic New Zealand legislation regarding the Whanganui River.[78] The State of Uttarakhand, meanwhile, proved to be a decidedly reluctant court-appointed guardian. Worried about vicarious liability for any damage the rivers caused to lives or property, the state filed an appeal before the Supreme Court. In 2017, the Supreme Court stayed the lower court's ruling.

If the Uttarakhand cases suggest that temple deities are less agentic than their riverine counterparts, *sati*, the act and the product of widow immolation, provides an even greater contrast.[79] Between 1999 and 2006, several north Indian immolations triggered unusual responses from women's activists, state actors, and the news media: rather than declaring that the deaths were poorly disguised murders because the women did not want to die, urban elites consistently relabeled these events as suicides—not *satis*—because the women, it seems, had *clearly* wanted to die. Put differently, despite long-standing consensus that *sati* is problematic because it epitomizes the erasure of subaltern agency,[80] the early 2000s

[76] This account draws on Berti, *supra* note 65, at 8–14.

[77] *Salim v. State of Uttarakhand*, WP(C) No.126 of 2014 (Mar. 20, 2017), at ¶ 19.

[78] Omair Ahmad, *A Court Naming Ganga and Yamuna as Legal Entities Could Invite a River of Problems*, Scroll (Apr. 3, 2017), https://scroll.in/article/833069/a-court-naming-ganga-and-yamuna-as-legal-entities-could-invite-a-river-of-problems.

[79] This account draws on Deepa Das Acevedo, *Changing the Subject of Sati*, 43 Political and Legal Anthropology Review 37 (2020). Note that Sati also refers to a Hindu goddess who is Shiva's wife, although "Sati does not commit sati." *Id.* at 48, n. 1.

[80] *See, e.g.*, Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, *in* Marxism and the Interpretation of Culture 271 (Cary Nelson & Lawrence Grossberg eds., 1988) (using the example of sati to declare that the subaltern cannot speak); Lata Mani, Contentious Traditions: The Debate on Sati in Colonial India (1998); and the essays in Sati, the Blessing and the Curse: The Burning of Wives in India (John Stratton Hawley ed., 1994).

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immolations clarified that something about *sati* is deeply troubling to urban commentators even in the face of voluntary behavior.

A clue to this puzzle lies in the folk ideologies that are habitually dismissed by commentators and according to which "[t]he subject of sati is amalgamated, synchronic, and nonindividuated"—and deeply powerful. The act of *sati* is said to complete a woman's transformation from being a *pativrata* (devoted wife) to a *sativrata* (one who has vowed to join her husband in the next world) to, at last, a *satimata* (*sati* mother, or goddess). In this final stage, *sati* is devoid of all the identity markers that make human beings unique. She is even habitually spoken of without definite or indefinite articles because "[i]nstead of many satis with many stories, there is one sati who possesses many aspects."[81] After the immolation, "no one can refer to her by her name. She is either 'satiji' or 'sati mata,' immortalised for her '*balidaan*' [sacrifice] and courage."[82]

At the same time that immolation strips away individuation, it also produces a being who can play a part in the world through curses and boons without being affected in return. As I have argued elsewhere, "Anthropological studies of sati even suggest that she is only minimally reachable by devotion and prayer, unlike Hindu gods who are regularly affected by human curses or ascetic prowess. Indeed, and further unlike Hindu gods (who possess limited legal personhood in India), sati is unreachable by human *law.* Court opinions involving specific sati temples or immolations rarely even reference either 'Sati' (wife of Shiva) or 'sati(- Charan Shah).' Instead the referent in these judicial pronouncements is often a nonspecific 'sati' or 'sati-ji' that is *not* the doer or recipient of deeds."[83] Put differently, "sati *herself* is unactionable or 'impervious'" to human beings.[84] She represents "a radically different conception of personhood" that is "at odds with the self of the Indian citizen-subject: she acts without being acted upon and is a person who is not an individual, all in a context in which actionability and specificity are antecedents to political belonging."[85]

As the antithesis of *sati*, who can perform action but cannot receive it, the temple deity is no less puzzling to Indian law. He or she is, however, considerably less threatening to its foundational unit, the citizen-subject. *Sati*'s capacity for unidirectional action and non-individuated personhood can be countered only through an un-labeling of events that would otherwise appear to be voluntary and therefore have specific ritual significance. With temple deities, by contrast, matters are considerably simpler. It is enough to exclude the deity, who can receive actions but cannot directly undertake them, from those laws that are most emblematic of citizenship in a democratic state: the freedoms and privileges guaranteed by a constitution.

Deities, Citizens, and Dynamic Equilibrium

Democracy in India, as I suggest above and as most scholars of Indian constitutional law agree, does not reflect the textbook model of citizen-sovereignty and delegated authority.[86] Indian citizens are explicitly and intentionally the subject of the state's efforts to transform society in ways they could not have predicted and perhaps would not approve of.[87] Being

[81] Lindsay Harlan, *Perfection and Devotion: Sati Tradition in Rajasthan*, *in* Sati, the Blessing and the Curse, *supra* note 80, at 79, 82. See also Catherine Weinberger-Thomas, Ashes of Immortality: Widow-Burning in India 218 (1999).

[82] Inderjit Badhwar, *Roop Kanwar's Sati Greeted with Shock across India, Deorala Became a Place of Worship*, India Today 98, 98 (Oct. 15, 1987).

[83] Das Acevedo, *supra* note 79, at 42.

[84] *Id.*

[85] *Id.* at 45–47.

[86] Gurpreet Mahajan, Identities and Rights: Aspects of Liberal Democracy in India 4 (1998)

[87] Granville Austin, The Indian Constitution: Cornerstone of a Nation 27 (1999 [1966]) ("The Constituent Assembly's task was to draft a constitution that would serve the ultimate goal of social revolution.").

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amenable to state action is thus an intrinsic aspect of political belonging rather than simply being an inescapable consequence of it. This understanding of democratic sovereignty as being shared or divided between citizens and the state is the one that receives the most attention and that inspires the most enthusiasm, both at home and abroad—it is at the core of the "transformative constitutionalism"[88] so often associated with the Indian Court.[89] But it is not, as I argue above, the only understanding of sovereign authority affirmed by the Constitution. The Indian Constitution also makes room for a more conventional view of democracy according to which sovereign authority vests in citizens and is merely exercised on their behalf by the state. Constitutional provisions, statutory law, and judicial principles that seek to corral or qualify the state's transformative efforts all attest to this vision of citizen-state relations.

The equal validity of these visions demands a "both, and" approach to constitutional interpretation that is tricky to achieve, besides being messy and often unsatisfying, but that is nonetheless an innovative attempt at balancing competing political goals. At its best, this approach produces a kind of dynamic equilibrium in which neither the one nor the other way of understanding democratic sovereignty becomes overwhelmingly or permanently dominant.

Justice Chandrachud's *IYLA* opinion—or, more specifically, that portion of it discussing Ayyappan's rights and announcing their limitations—reflects the sort of balancing that the Indian Constitution demands. I have elsewhere expressed rather severe disagreements with other aspects of Justice Chandrachud's *IYLA* opinion, and even more so with the other "majority" opinions in *IYLA* that were authored by Chief Justice Misra and Justice Nariman.[90] Nevertheless, those earlier criticisms do not detract from the merits of Justice Chandrachud's analysis respecting divine personhood.

This is because recognizing Ayyappan's personhood and granting him rights sounding in property, tort, and agency acknowledges the sense in which temple deities have long been analogized to human beings and deemed susceptible to the effects of human action. Temple deities can receive gifts and suffer inadequate care, and they were widely understood to have this capacity for receiving action before colonial law transformed them into juristic persons. (They were also understood to be *fictional* persons by some precolonial systems of thought, as *purvamimamsa* materials indicate—that is, neither the figurative nor the literal view of their personhood is of entirely colonial origin.) But however much their ability to be affected by the world may make temple deities similar to political *subjects*, it does not render them analogous to *citizens*, who are capable of independent and therefore sovereign action. Deities do not act, except through their shebaits or via devotees who seek to represent their interests, and the very content of those interests (as well as the actual enjoyment of their assets) are determined by these human actors. They are, in other words, and more than a little ironically, subjects who are almost too vulnerable to be citizens.

Indian courts have responded to this perplexing figure of the temple deity—a subject who is not a citizen—in a way that reflects a commitment to the "both, and" approach of the Constitution. By giving credence to the popular view that deities are person-like, judges remove the state from refashioning religious belief and dictating the necessary attributes of personhood. By withholding some rights from deities—indeed, by withholding the most symbolically (and in India, functionally) significant rights available to Indian citizens—judges achieve exactly the opposite effect. Justice Chandrachud's conclusion that Ayyappan

[88] Bhatia, *supra* note 18.

[89] See the sources in notes 18 and 87, *supra*, and Jeffrey Gettleman, Hari Kumar & Kai Schultz, *Hundreds of Cases a Day and a Flair for Drama: India's Crusading Supreme Court*, New York Times (Sept. 27, 2018), https://www.nytimes.com/2018/09/27/world/asia/india-supreme-court-modi.html.

[90] Das Acevedo, *supra* note 4.

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has rights but not those contained in Part III of the Indian Constitution cohered not only with decades of Hindu law precedent and strains of precolonial philosophy, but also with the delicate balancing demanded by a national charter committed to two very different understandings of citizen-state relations.

Conclusion

Divine personhood and deities' rights represented little more than a momentary detour in what has become one of twenty-first century India's most convoluted and high-profile litigated disputes. As of this writing, the exact status of Sabarimala's ban remains unclear. Today, when the Indian news media covers Sabarimala, it discusses either the continued impact that the women's entry dispute has had on party politics or the current state of the temple's finances, which were crippled by the coronavirus pandemic only to rebound with such ferocity that, in 2023, workers in charge of processing donated coins had to be given a rest after seventy-two days of continuous counting.[91]

But even though the conversation about Sabarimala has long since moved on from J. Sai Deepak's arguments and Justice Chandrachud's response, the matter of Ayyappan's rights raises questions that remain worthwhile. What, from an international human rights perspective, would it mean for a deity to claim the kind of fundamental rights associated with a national constitution? Is there actually anything unusually problematic about divine constitutional rights given the lack of any cross-jurisdictional consistency in what is considered constitutional? And—perhaps regardless of the answers to these questions—what would the implications be for rights of *human beings*, like those represented by the *IYLA* petitioners?

IYLA's determination that Ayyappan's rights are limited in nature also remains a source of valuable insight. For students of Indian law, the line between constitutional rights and other rights that was made explicit in *IYLA* acts as a reminder that "constitutionalization" has its limits, even in India, and notwithstanding all appearances to the contrary. For students of other contexts, the undeniably striking circumstance of a deity participating in litigation—even if indirectly—as well as the even more striking determination that a deity's rights are limited, suggest that there is more than one way to employ legal fictions in the service of managing religion-state relations. Strange circumstances may conceal remarkably familiar tensions.

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[91] *Sabarimala Temple Revenue: Counting of Coins to Resume After Break on Feb 5*, News9Live.com (Jan. 30, 2023), https://www.news9live.com/state/kerala/sabarimala-temple-revenue-counting-of-coins-to-resume-after-break-on-feb-5-au1332-2040618.

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