CHAPTER-5

LANDMARK CASES IN THE RELIGIOUS REALM:

Temples were the centers of Hindu religious life. Their influence on the society has always been enormous. A temple is conceived to be the representation of God in a cosmic form. It has occupied the most central place in the Hindu society for centuries. Building temples was considered to be an extremely pious act, bringing great religious merit. All matters concerned with temples were performed with religious overtones. Temples were autonomous institutions, having immense wealth derived through its lands and by way of offering from devotees. Kings and noblemen always made considerable donations for the benefit of various temples. However, none of them had ever thought of appropriating the wealth of these richly endowed holy institutions. Usurpation of the property of temples was thought to be a grave sin.

The rulers of Travancore considered it to be their solemn right and duty to maintain Hindu religious institutions in good condition. The traditional *melkoima* vested in them, made them responsible for this vital matter. But it did not empower them to meddle in the financial affairs of the Devaswoms. Unfortunately, the whole picture began to change with the advent of colonial expansionism. The treaty of 1805 brought Travancore under the Subsidiary Alliance. It stipulated an annual subsidy of eight lakh

rupees. This amount had fallen into arrears. Moreover, the State was asked to bear the entire expenses of the war waged against the partisans of Velu Thampi, in 1808-9. These demands bore no fruit. In order to ensure the speedy liquidation of all the arrears, the British had even contemplated the annexation of Travancore.[1] Finally, as a consequence of manifold political conspiracies, the then British Resident, Colonel John Munro took over the office of the *diwan*.

The resources of the State Government were limited and it offered no scope for improvement. Meanwhile, the huge assets of the temples caught the attention of the regime. As a prelude to their usurpation, allegations of mismanagement and embezzlement were fabricated against the trustees of temples.[2] Munro's order of 1811 led to the assumption of Devaswoms in Travancore. On the eve of the takeover, the income from immovable property of the latter was nearly sixteen lakh *para* of paddy and about 53,000 rupees. In addition, 70,000 *para* of paddy and 43,000 rupees were earned through *sanchaayam* and *kanikka*, respectively. Substantial income from *cheerikkal* lands, whose extent was unascertained, was not taken into account in the above calculation.[3] The *thirattu* of 1811 mentions the assumption of 348 major and 1123 minor Devaswoms.

The *kariakars* were ordered to collect rents and profits from Devaswom properties within their jurisdiction. All such collections were credited by them in the *Sirkar* accounts and they eventually merged in the public exchequer.[4] Income from Devaswoms gradually became absorbed in the general revenues of the State. Most of

the immovable property of the former was in course of time, treated as *pandaravaga*.[5] The State began to have a revenue surplus even after meeting the entire expenses of temples. Within three years of his assuming of office, Munro succeeded in paying, besides the then current subsidy, debts of eighteen lakh rupees to the English Company and six lakh rupees to individual creditors.[6]

The Proclamation of 1865 gave fixity of tenure and proprietary rights to the holders of *pandarapattom* lands. Soon, Devaswom lands too fell victim to the operation of this enactment. Attempts made for identifying and separating Devaswom and Sirkar lands, ended in dismal failure. The State frankly acknowledged the difficulties involved in that endeavour. Most of the Devaswom lands were entered in revenue accounts, during the periodic survey and settlement, as *pandaravaga*. When Devaswom lands were treated like that of the *Sirkar*, its holders got proprietary interest in it. Earlier they had only a leasehold or mortgagee's interest.[7]

In 1903, 116 temples were taken over by the Government, which came to be designated as Personal Deposit Devaswoms. Each of them had a separate personal deposit account with the Government treasuries. They are also known as Unincorporated Devaswoms. Their receipts and expenses were kept separate unlike the Incorporated Devaswoms, whose assets had already become inseparable from that of the State.[8]

The Settlement Proclamation of 1906 led to the substitution of rents in paddy with that in cash. Though intended for *pandarapattom* lands alone, Devaswom lands also came under its sway. As a result, the latter began to have a reduction in their income. It became a cause of concern for Hindus of Travancore. This prompted the regime to initiate sensible and meaningful measures for the betterment of Devaswoms.[9]

In 1907, M.K Ramachandra Rao, a judge of the Travancore High Court, was deputed to study the vexing problems concerning Devaswoms. His report clearly stated that the assumption of the temples had proved prejudicial to the interests of those institutions, by merging their properties in those of the Sirkar. The treatment of Devaswom lands on the same footing as the *Sirkar* lands was criticized. He affirmed that the relation of the Government to the Devaswoms must be deemed to be wholly that of a trustee. His report revealed the virtual indebtedness of the State to the Devaswoms to the extent of a crore of rupees. It was finally submitted in 1908.[10]

In pursuance of the findings of M.K. Ramachandra Rao, the Government undertook vigorous initiatives. In 1912, attempts were strenuously made to identify Devaswom lands and to separate their revenue from that of the *Sirkar*. The attempt at complete identification failed and no further steps were taken in that direction. However, the Government stated its intention to regulate the next revenue settlement in regard to Devaswom lands, so as to ensure full legitimate income to the latter. The fundamental difference between the lands of the Devaswoms and those of the *Sirkar* was also diligently noted by the regime.[11]

The separation of the Devaswoms from the Land Revenue Department was a foregone conclusion. However, the agitation launched by the Civic Rights League acted as a catalyst, in this regard. These agitators demanded the exclusion of Devaswoms from the Land Revenue Department, in order to facilitate the entry of all classes of Travancoreans into the ranks of the latter. A Devaswom Separation Committee was constituted, consisting of both Hindus and non- Hindus.[12] The Committee came to the conclusion that by the merger of Devaswom resources with that of the State, the Government has incurred an obligation to maintain them efficiently forever. All the members agreed in fixing an absolute obligation on the State to maintain Devaswoms in efficient condition. The State was persuaded to declare all Devaswom lands as *pandaravaga* and to compensate for the loss of revenue to the Devaswoms. There was a divergence in opinion within the Committee. A dissenting note by a member portrayed the relation of the State with respect to the Devaswoms, as that of a trustee. On the contrary, the majority felt that the confiscation and annexation of Devaswom property by the State was an application of the *melkoima* inherent in the Maharaja.[13]

The Devaswom Proclamation of 1922 led to the formation of an independent Devaswom Department. While apportioning 40% of the State land revenue towards Devaswoms in proportion to the lands merged with the Government, the enactment allowed the grant of *pattas* to holders of Devaswom lands, irrespective of community and creed. The policy laid down in the Government proceedings dated 25 October,

1912, of separating Devaswom lands from *Sirkar* lands and assuring the Devaswoms their full revenue at the next settlement was finally abandoned by this Proclamation. In 1946, the 40% prescribed in 1922 was converted to a fixed amount of Rs.25 lakh.[14]

As far as the princely State of Cochin was concerned, when Colonel Munro assumed charge of the administration, Devaswom property began to be treated as *Sirkar* property. All Devaswom receipts were merged in the general revenues of the State. Since then, Devaswom lands in Cochin came to be assessed nearly in the same manner as *pandaravaga* lands. The assessment was levied in money at the same commutation rates. On the other hand the Unincorporated Devaswoms were self supporting and their incomes were not merged with that of the State. The settlement of Devaswom lands in the same manner as that of *Sirkar* lands and the levy of rent at a fixed commutation rate made the income of the Devaswoms most stationary. Gradually, the expenditure increased beyond their means. In order to correct the anomalies involved in Devaswom matters the Cochin Government deputed a Special Officer, to make suitable investigation in this regard; he submitted his report in 1908.[15]

A new scheme of Devaswom administration was enforced in September 1909. A Proclamation was issued in this respect on 11 February, 1910. All Devaswoms under *Sirkar* management both Incorporated and Unincorporated were amalgamated and constituted into a separate endowment. This involved the restoration of the properties and funds of such institutions annexed to the *Sirkar*. The receipts and expenditure of these Devaswoms were entirely separated from the general revenues. The Land

Revenue Department was relieved of all Devaswom work except the collection of rent of Incorporated Devaswom properties. Soon Devaswoms came to be divided into groups. By a Proclamation on 5 September, 1916, the income from the Incorporated and Unincorporated Devaswoms were constituted into a common trust fund. The financial distinction between group funds was done away with.[16]

With the passage of time, movements for responsible government gathered strength in Travancore and Cochin. This was a part of the rising tide of popular aspirations throughout India. The Instrument of Accession and the Standstill Agreement, based on the Indian Independence Act, led to the Centre taking over the subjects of Defence, Finance and Communications. The Representative Body Proclamation of Travancore , on 4 September, 1947, excluded Devaswoms and Hindu Religious Endowments from the ambit of any legislation.[17] The Devaswom (Amendment) Proclamation of 23 March,1948, provided for the allotment of Rs. 50 lakh in the State Budget annually, for the Devaswoms.[18] Similarly the Travancore Interim Constitution Act of 24 March, 1948, set aside a sum of Rs. 1 lakh for the *sreepandaravaga.*[19] The rulers of Cochin enjoyed complete control of Devaswoms in their domain. It was kept outside the purview of the legislature.[20] Ministers exercising executive control over Devaswoms were subject to the control of the Raja.[21]

On 1 July 1949, Travancore and Cochin were integrated to form the United State of Travancore- Cochin. This was the result of the Covenant entered into by the rulers of both the States. The Maharaja of Travancore became the Rajpramukh.[22] The United

State took over the obligation of Travancore to make annual contributions of Rs.50 lakh and Rs.1lakh, to the Devaswom Fund and *Sree Pandaravaga*, respectively. The Covenant vested in the Travancore Devaswom Board, obligations which were hitherto attended by the King of Travancore for the wellbeing of Hindu Religious Institutions and Endowments. The administration of Sree Padmanabha Swamy Temple and its properties were kept under the control and supervision of the Ruler of Travancore, who was empowered to appoint an Executive Officer and a three member committee to advise him in this regard. The Travancore Devaswom Board was to make an annual contribution of Rs.5 lakh towards the expenditure in the Sree Padmanabha Swamy Temple. The Devaswoms and Hindu Religious Institutions under the Ruler of Cochin under Section 50 G of the Government of Cochin Act, 1938, and the provisions of the Cochin Hindu Religious Institution Act, 1906, and all other properties were handed over to the Cochin Devaswom Board. However, the regulation and control of rituals and ceremonies in the Temple of Sree Poornathrayeesa at Thrippunithura and in the Bhagavathy Temple of Pazhayannore were to be exercised by the Maharaja of Cochin. The Devaswom Boards of both Travancore and Cochin came into being as a result of an Ordinance. Soon, there arose a need for an Act of the Legislature for replacing the Ordinance. This led to the enactment of the Travancore-Cochin Hindu Religious Institutions Act.[23]

The Devaswom Boards of Travancore and Cochin were to be corporate bodies having perpetual succession. Each of them had a common seal with power to hold and acquire properties for and on behalf of the Hindu religious institutions under its

management. They were empowered to make bye-laws for the conduct of all their proceedings and business. Both the Devaswom Boards consisted of three Hindu members each. Two of them represented the Hindus among the Council of Ministers and Legislators of Travancore-Cochin. A third member was nominated to each Board by the erstwhile rulers of Travancore and Cochin. Only a permanent resident of the United State, of atleast 35 years of age, was eligible to be a member of Devaswom Board. Office holders of the Government or local authorities, members of Parliament or State Legislature, and convicted criminals were not eligible for election or nomination as members of a Devaswom Board. Similarly, persons interested in a subsisting contract for making any supplies to or executing any work on behalf of any religious institution under the Devaswom Board, were too disqualified.[24]

If a person elected or nominated as a member of a Devaswom Board is declared by a court to be under in such disability, he ceased to be a member. The Secretary to each Board convened its meetings and kept the minutes of the proceedings of each meeting. He was to represent the Board in suits instituted for and against the Board. No suit was to be instituted against a Devaswom Board, until the expiration of two months after a notice in writing has been delivered at the office of the Board. The President and members of the Travancore Devaswom Board were to receive as their honoraria, Rs.450 and Rs.400, respectively. Their Cochin counterparts got Rs.300 and Rs.250, respectively.[25]

The Act provided for the interference of the High Court in matters concerning the Travancore and Cochin Devaswom Boards. Sections 8 and 67 provided for the removal of the members of the two Boards, on finding them to be unfit under the clauses of sections 7 and 66 of the aforesaid Act. The District Courts of Trivandrum and Trichur were authorized to issue an order disqualifying a member of the Devaswom Boards of Travancore and Cochin, respectively. An appeal against such an order lay to the High Court, to be heard by the Division Bench. Members of the two Boards were liable to be removed from their office by the High Court on grounds of proven misbehavior or incapacity. Applications in this regard were to be made before a single judge, at the first instance. On being convinced of the presence of a *prima-facie* case, the petition was to be referred to the Division Bench.[26]

The High Court was authorized to appoint a suitable agency for auditing the accounts of both the Devaswom Boards, annually. Every auditor appointed under sections 32 and 102, of the Hindu Religious Institutions Act was deemed to be a public servant within the meaning of the relevant sections of the Penal Code. The auditor was to send his report to the High Court. On receipt of the audit report from the apex court of the State, the Travancore and Cochin Devaswom Boards were duty bound to remedy defects or irregularities pointed out by the auditor and report the same to the High Court. If either of the Boards or any of its members, were found guilty of misappropriation or willful waste of funds, the High Court was empowered to pass an order of surcharge against the Board or a particular member. The order of surcharge executed against a member or members of a Board was to be done as if those were a

personal decree passed against them by the High Court. An order of surcharge under sections 32 and 105 of the 1950 Act was not to be an obstacle for a suit for accounts against either of the two Boards or the members concerned in respect of the matter finally dealt with by such order. For the ensuring transparency, provision was made for the supply of audit reports to any applicant. All legal proceedings taken on behalf of or against the Devaswom Boards or Hindu Religious Institutions or Endowments were to be continue for or against those entities.[27]

Eligibility for election:

In 1954, the High Court considered a very important case in this realm. A petition challenged the election of Balakrishna Marar (the first respondent) to the Cochin Devaswom Board on the ground that he was not eligible for election as a member of the Board under section 66(iii) of the Travancore-Cochin Hindu Religious Institutions Act, 1950[28]. The petitioner Govindankutty Menon was defeated in the above election. The first and foremost prayer in the petition was for the issuance of a writ of *quo warranto* against the first respondent. The latter was asked to furnish information regarding the authority under which he functioned as a member of the then Cochin Devaswom Board. Prayer was also made for a declaration from the High Court, to the effect that the first respondent was not authorized to occupy that office on grounds of him being not elected legally and properly.

Section 66 (iii) of the Hindu Religious Institutions Act had provided that a person could not be eligible for election if he happened to be an office-holder of a local authority. Balakrishna Marar was the Chairman of the Trichur Municipality on 4-6-1954, the date of his nomination and election under the rules in schedule II to the Act and till 12-6-1954, when his resignation by the letter dated 5-6-1954, was accepted by the Municipality. The term "local authority" was defined by section 2(20) of the Travancore-Cochin Interpretation and General Clauses Act[29], in the following words-"A Municipal Corporation or Council a Town Council, or other authority legally entitled to or entrusted by the Government with the control or management of a Municipality, constituted under the Cochin Municipal Act, 1938, was a local authority whose 'office – holders' were disqualified for membership of the Board under section 66(iii) of the Hindu Religious Institutions Act 1950.

The first respondent contended that the term "office holder" in section 66(iii) of the Hindu Religious Institutions Act meant only an 'officer', and that the Chairman was not an officer of a Municipality under the Cochin Municipal Act[30]. Even the term "office-holder" in section 66(iii) of the Hindu Religious Institutions Act had to be resolved with reference to the provisions of that Act itself. Section 87(i) of the said Act referred not merely to office-holders but also officers and servants. After a deep examination of various sections of the above Act, the Bench opined that while the words ‘officers’ and ‘servants’ were created as interchangeable or as denoting two gradations in the official hierarchy, the word "office-holder", was kept distinct and separate by the legislature as

denoting its superior status, as being quite different from an employee serving under a contract of employment.

The first respondent further contended that nothing should be termed an "office" unless there was a remuneration attached to it. The Court was told that the Chairmanship of the Trichur Municipality carried no remuneration but only a conveyance allowance, resulting in it being outside the purview of the Hindu Religious Institutions Act, 1950. But, the High Court negated this contention and held that the only fact which needed to be known was whether the particular office was the creature of a statute. The conditions under which an office should satisfy for information in the nature of a *quo warranto* to lie were as follows: -

(i) it must have been created by charter or statute

(ii) its duties are of a public nature,

(iii) it must be substantive in character or independent in title, whether permanent or at pleasure and not merely that of a deputy or servant functioning at the will and pleasure of others.

On the basis of section 70(1) of the Hindu Religious Institutions Act, the first respondent further contended that even if he was found to be an office holder of a local authority and thus within the mischief of section 66(iii) of the above Act, the disqualification could operate only if it was present on the date he assumed office as a member of the Cochin Devaswam Board. Balakrishna Marar's resignation was accepted by the Trichur Municipality on 12-6-1954 and he had assumed office as a

member of the Devaswam Board only on 15-6-1954. Therefore it was claimed that the disqualifications was removed nearly three days before his joining the Board. Disagreeing with the above contention, the High Court opined that, the crucial date under the Act was not the date on which the first respondent assumed office as a member of the Board but the date of his nomination and election under the rules in Schedule II to the Hindu Religious Institutions Act 1950.[31]

Section 63 of the above Act had provided for electing one of the three members of the Cochin Devaswam Board by the Hindu members of the Legislative Assembly of the United State of Travancore-Cochin. Section 64 of the same Act read as follows: - "A meeting of the Hindus among the members of the Legislative Assembly of the State of Travancore-Cochin shall be summoned under the authority of His Highness the Rajpramukh by any person authorized in this belief by the Rajpramukh to meet at such time and place and on such date may be fixed by him in his behalf for the election of a member to the Board. The election shall be held in accordance with the rules specified in Schedule II by the person commissioned by the Rajpramukh to preside over the meeting".

The second respondent was the person commissioned by the Rajpramukh to preside over the meeting at which Balakrishna Marar (first respondent) was elected as a member of the Cochin Devaswam Board by the Hindus among the members of the Legislative Assembly of the United State of Travancore-Cochin. Balakrishna Marar was nominated in accordance with the provisions of rules of Schedule II on 4-6-1954.

The petitioner, Govindankutty Menon who was the only other candidate, so nominated, secured only a lesser number of votes. As a result the first respondent was declared elected on the very same day by the second respondent according to rule 7 of the Schedule II. The said Provision read as follows:- "Where only two candidates are nominated for election as the member to the Board the candidate who obtains at the ballot the larger number of votes shall be declared elected by the Chairman".

The High Court stressed on the need to resolve the case by a proper construction of various sections of the Hindu Religious Institutions Act 1950. Another remedy was told to be in the hands of the Rajpramukh who could ensure the elections were held only subsequent to the arising of the vacancy by the efflux of four years from the date of the prior election. The Legislature was advised by the Court to introduce suitable amendments to the 1950 Act, in this respect. Attention was drawn to the provisions of section 70(3) of the Act which read as follows- "A member of the Board shall on the expiration of his term of office continue in office until the vacancy caused by the expiration of his term of office is filled up". Meanwhile, the High Court asserted that the plain mandate of the statute was that the material date for appraising the existence or otherwise of a disqualification was the date of election itself.[32]

Another contention of the first respondent was based on Section 67(4) of the Hindu Religious Institutions Act, 1950. It read as follows: - "Until an application has been made under sub-section (2) and final orders are passed thereon, the member who is

alleged to be subject to the disabilities stated in clauses (i), (ii), (iii), (iv), (v) and (vi) of Section 66 shall be entitled to act as if he were not disqualified".

According to the first respondent the above provision was an effective answer to the petition itself which was under Article 226 of the Constitution. Subsection (1) (2) and (3) of the above section of the 1950 Act read as follows:-

(1) If a person elected or nominated as a member of the Board is or subsequently becomes subject to any of the disabilities stated in clauses (i) (ii), (iv) and (v) of section 66 and is declared by a court to be under such disability as hereinafter provided or becomes subject to the disability mentioned in clause (iii) of (v) of section 66, or ceases to profess the Hindu religion, he shall cease to be a member.

(2) Any person interested may apply to the District Court Trichur for an order that a member of the Board has become subject to any of the disabilities stated in clauses (i) (ii) (iii) (iv) and (vi) of section 66 and the court may after making such enquiry as it deems fit by order determine whether or not such member is disqualified.

(3) An appeal shall be to the High Court against an order under sub section(2) and such appeal shall be heard and disposed of by a Division Bench".

After examining the relevant sub-section (i), the High Court opined that the use of the word "becomes" was explicitly indicative of the fact that the said sub-section was not pertaining to a disqualification under section 66(iii) which existed at the time of the election but which arose later. The marginal heading of section 65, section 66 and section 67, were "Qualification for membership in the Board", "Disqualification for membership in the Board", and "Supervening disqualification", respectively. The

Bench considered these marginal headings to be proper descriptions of the ambit of the above three sections.[33]

Unlike sub-section (1), sub-section (2) did not provide for the obtaining of the declaration in those cases where disqualifications existed at the time of the election, but merely confined the declaration possible to those cases where those disabilities arose subsequent to the election. The Court also noted that the disqualification enumerated in sub-section (v) of section 66 (conviction by a criminal court of any offence involving moral turpitude) had been totally omitted from sub-section (2). The very same disqualification was found to be present in section 8 (2) of the Hindu Religious Institutions Act 1950, which dealt with the Travancore Devaswom Board. The Bench opined that section 67 had nothing to do with the disqualification enumerated in section 66(iii), if it had existed at the time of the election itself.[34]

Finally, the election of the first respondent, Balakrishna Marar was declared void on the ground that he was disqualified at the crucial date, the date of his nomination and election on 4-6-1954, as he was the then Chairman of Trichur Municipality. This was the consequence of him being an office-holder of a local authority, within the meaning of subsection (iii) of section 66 of the Hindu Religious Institutions Act, 1950. However, the second prayer in the petition, which was for the High Court to declare the petitioner Govindan Kutty Menon as the properly authorized person to fill in the office of the member of the Cochin Devaswam Board was not accepted. In this regard, the Court opined that in cases where the returned candidate was found wanting in a

qualification, and if the voters were ignorant of this deficiency, then the candidate next on poll was not entitled to be seated and that there would merely be a fresh election.[35] The case was decided by Justices, Subramonia Iyer and M.S. Menon, on 7 September, 1954.

On ownership:

The dispute over the ownership of a temple was decided by the High Court on 10 December, 1961. Sree Bhoothapuram Kottale Temple, situated in Paralam Village, in Trichur was owned by the Venmani *illom*. One Govinda Kaimal was the *karyastha* of the temple under the *illom*, till his death. Later, there were disputes which led to civil and criminal cases between the Venmani *illom* and the relations of Govinda Kaimal. At the instance of Kunju Kaimal and Raman Nair, who were sons-in-law of Govinda Kaimal, a petition dated 17 August 1951, was submitted to the Cochin Devaswom Board for taking over the management of the temple and properties. The Board raised the contention that the temple did not belong to the Venmani *illom* and that the latter was only a trustee of the shrine. The temple was told to have been used as a place of public worship by the Hindus of the locality. The District judge of Trichur, accepted the contentions of the Cochin Devaswom Board and dismissed the suit instituted against the latter by Kunhunni Nambudiripad, who was the then *karanavan* of the Venmani *illom*. Soon, the plaintiff went on for appeal before the Kerala High Court, against the above decree.[36]

The two pertinent questions considered by the High Court were, whether the said temple was owned by the appellant's *illom* and whether it was dedicated to or used as of right by the Hindu Community as a place of religious worship. Differing from the decision of the District Judge, Justice Velu Pillai opined that the temple was owned by the appellant's *illom*. This realization was based on various documentary evidences. A receipt for rent in favour of the *illom* had described the properties as belonging to that household itself. Two other documents, which were counterparts of demises of the year 1077 M.E (1901-02) and 1088 M.E (1912-13), contained a similar description. The agreement for management of the temple, which the appellant's *illom* had given to Govinda Kaimal, in1944, did describe the temple as 'our……. Devaswom'. Documents of the year 1945, too contained a similar description. There was a receipt executed by the heirs of Govinda Kaimal (his two daughters) in favour of the appellant's *illom* under which they gave up all documents in their possession to the *illom*. An account book that was maintained by Govinda Kaimal clearly had referred to the temple as belonging to the *illom*. The High Court laid stress on documents, especially those of the years 1879, 1902 and 1903, which pointed to only a single conclusion that the temple was owned and not merely managed by the *illom*. The *illom* was nowhere mentioned as an *uralee* or trustee. Terming the District judge's assertion that the origin of the was lost in antiquity, as being an improper one, Justice Velu Pillai opined that the issue was not how or when the temple was constructed but was as to its ownership.[37]

The witnesses who swore that some of the villagers used to worship at the temple, were in some way or other, concerned in the litigations and disputes which arose after the death of Govinda Kaimal. There was nothing in the oral evidence adduced by the respondent to alter the inference that the temple was owned by the appellant's *illom*. There was no evidence to indicate any dedications of the temple for the benefit of the public. The High Court opined that even if worshippers have attended or they used to attend the temples and were not turned out by the *illom*, no presumption could be made that such worship or user was of right, once the temple was proved to be belonging to the *illom*. It was told that once the private character of the temple was proved, its use by the public could not be presumed to be as of right. The High Court also declared that the facts such as the temple's location nearly 30 miles away from the seat of the illom, the existence of a lane formerly and a public road now, by the side of the temple compound, and the presentation of a lamp-post to the temple by a stranger, were by themselves insufficient to deprive the *illom* of its ownership of the temple. After a thorough examination of all aspects of the case, the court concluded that the Sree Bhoothapuram temple was a private temple of the appellant Kunhunni Nambudiripad's *illom* and that it had not been dedicated to or used as a place of Public worship as of right by the Hindu Community. Accordingly, the order of the Cochin Devaswom Board declaring the temple to be on 'institution' was set aside and the suit decreed with costs against the Board.[38] The case was decided by Justice S. Velu Pillai.

Transparency and Accountability:

Justices, K.S. Paripoornan and K.A. Nayar had together decided two notable cases concerning the Hindu religious institutions. One such case was about the lack of transparency in the Travancore Devaswom Board. The Examiner of Local Fund Accounts had submitted a special report which related to the audit of special funds of the Travancore Devaswom Board. It was pertaining to the Sabarimala Improvement Fund, for the period from 17-11-1967 to 31-3-1976. The above audit was done in response to the orders of the High Court dated 4-1-1975. On 27-3-1987, the Division Bench passed an orders after examining the Audit Report, especially paragraphs 20 to 23. It dealt with the sale of Sabarimala Improvement Fund Tickets, Ayyappa Jyothi Tickets and Deepa Dakshina Tickets. While the first of the above were printed directly by the Devaswom Board, the rest were printed by the Sabarimala Amenties Implementation Fund Committee. The Bench observed that a sum of Rs 7, 25,830.47 was due from several persons to whom tickets were issued. In its earlier orders dated 29-8-1979 and 19-12-1979, the High Court had directed the Devaswom Board to submit report on the action taken by the latter for recovering the said amount. The then Advocate General had opined that legal action was barred by limitation. Unveiling the above facts, the Division Bench ordered the issuance of show cause notices to the members of the Devaswom Board as well as the Sabarimala Amenities Implementation Fund Committee, to show cause why the amount should not be surcharged against them. The Board was asked to furnish the names and addresses of such of these persons who were alive.[39]

Notices were issued to M.K.K. Nayar, Swami Athuradas, Prakkulam Bhasi, V. Harihara Subramony, P.K. Chandranandan, T.V.V. Pathy, P.R. Rama Varma Raja, and M.C. Menon. The above individuals were directed to show cause why the amount involved in the distribution of 8322 pictures of Lord Ayyappa and a sum of Rs. 7,25,830.47, which was due from persons to whom Sabarimala Improvement Fund (SIF) tickets were issued, should not be surcharged from them. Out of the eight persons to whom notices were issued, M.K.K. Nayar and M.C. Menon had already passed away. Except Prakkulam Bhasi, V. Harihara Subramony and P.K. Chandranandan, who were the President and members of the Travancore Devaswom Board, the rest were merely members of a committee formed in connection with the Sabarimala Improvement Fund. Objections were filed on behalf of the above persons. The Board too, filed a statement before the High Court.

The said notice issued by the Court on 27-3-1987 was in accordance with the section 32 of the Hindu Religious Institutions Act, 1950[40]. The above section read as follows-

Audit:-

(1) The Board shall keep regular accounts of all receipts and disbursements in respect of the institutions under its administration.

(2) The accounts of the Board shall be audited annually.

(3) The audit shall be made by auditors appointed by the High Court.

(4) Every auditor appointed under this section shall be deemed to be a public servant within the meaning of section 15 of the Travancore Penal Code.

(5) After completing the audit for any year or for any shorter period or any transaction or series of transactions, as the case may be, the auditors shall send a report to the High Court.

(6) The auditor shall specify in his report all cases of irregular, illegal or improper expenditure, of failure to recover moneys or other property due to the Board or to the institutions under their management or loss or waste of money or other property thereof caused by neglect or misconduct.

(7) The auditor shall also report on any other matter relating to the accounts as may be prescribed or on which the High Court may require him to report.

(8) The High Court shall send to the Board a copy of every Audit Report and it shall be the duty of the Board to remedy any defects or irregularities pointed out by the auditor and report the same to the High Court.

(9) If, on a consideration of the report of the auditor or otherwise the High Court thinks that the Board or any member thereof was guilty of misappropriation or willful waste of the funds of the institutions or of gross neglect resulting in a loss to the institutions under the management of the Board, the High Court may, after giving notice to the Board or the member as the case may be to show cause why an order of surcharge against the Board or the member , and after considerating the explanation, if any, pass an order as surcharge against the Board or the member as the case may be.

(10) The order of surcharge may be executed against the member or members concerned of the Board as if it were a personal decree passed against them by the High Court.

(11) An order of surcharge under this section shall not bar a suit for accounts against the Board or the member concerned except in respect of the matter finally dealt with by such order.

(12) A copy of the Audit Report shall be supplied to any person who duly applies for the same.

Section 32(9) of the Hindu Religious Institutions Act 1950, had empowered the High Court to pass an order of surcharge only against the Board or its members. This contention was fully accepted by the Bench. As a result the proceedings against some were dropped as they were only members of the Sabarimala Improvement Fund Committee which was an ad hoc body. The Court found it unable to proceed against them on the basis of section 32(9) of the 1950 Act.[41]

The President and members of the Travancore Devaswom Board at the relevant time were Prakulam Bhasi, V. Harihara Subramaony and P.K. Chandranandan. They were represented by counsels, Mr. Babu, K.S. Rajamony and Siri Jagan. They highlighted the fact that the various aspects which formed the basis of the said legal proceedings had taken place more than two decades ago. The adverse state of health of the former President and members of the Board, referred to and others concerned with the case,

was brought to the attention of the High Court. However, it was also asserted on behalf of the above parties that they had only worked for the development of Sabarimala. The High Court took serious note of the lapse of 22 years which had become an impediment in the way of a satisfactory and effecting adjudication. At this juncture, the Court threw light on the need to have the audit report submitted at the end of each year. It was observed that the provisions of the 1950 Act were insufficient to saddle liability on persons who deal with the funds of the Board or on behalf of it. The loose provisions in the said Act were told to have made the audit a meaningless ritual. The Court drew the attention of the Government towards the need to have effective statutory provisions, in this regard.[42]

During the sixties, the inflow of pilgrims to Sabarimala increased substantially. In order to provide the necessary amenities for the pilgrims, the Travancore Devaswom Board held informal discussions with the Ayyappa Seva Sangham and other organizations dedicated to render service to the pilgrims. As a result, a Sabarimala Development Committee was constituted. The then members of the Devaswom Board, the Devaswom Commissioner, the Works Engineers of the Board and 150 representatives hailing from different parts of Kerala and outside the State, attended the meeting. It was held on 23-10-1967 at the Sri Chitra Central Hindu Religious Library at Thiruvananthapuram. M.K.K. Nayar was the organizing Chairman and one P. Sadasivan Pillai functioned as the Chairman of the Implementation Committee. The then President and members of the Travancore Devaswom Board took part in various deliberations and thus showed active interest. Subsequent meetings of the Sabarimala

Development Committee took place in various dates. On many occasions, M.K.K. Nayar presided over such meetings. The participation of the President and members of the Devaswom Board was seen in all those meetings. Soon, an Executive Committee was formed with M.K.K. Nayar as its Chairman. The President and members of the Devaswom Board were the members of the above Executive Committee. The Secretary of the Board functioned as the ex-officio Chairman of the Committee.[43]

The collection of funds was made by the Sabarimala Amenties Implementation Committee. P. Sadasivan Pillai was its Chairman, and in that capacity he appointed many organizers within and outside Kerala. Tickets were printed by the Board for the collection of funds. The President and members of the Board, including its Secretary and the Works Engineer were participants in the deliberations which took place from time to time. As such they were fully aware of the developments in this respect. The funds collected by the Sabarimala Development Committee were entrusted to the Travancore Devaswom Board for the utilization of that amount for the developmental works at Sabarimala.[44]

The accounts of the said committee were kept separately. They were told to be not part of the Devaswom funds. It was argued on behalf the President and Members of the Devaswom Board that the proceeding initiated under section 32 of the Hindu Religious Institutions Act, 1950 was ill-conceived as the funds dealt with were neither Devaswom funds nor those belonging to the institution under the management of the

Board, as envisaged by section 25 of the 1950 Act. It was told that the committee for the Sabarimala Improvement Fund was not composed of the President and Members of the Devaswom Board alone. It was an ad hoc committee formed by the pilgrims and leading public figures. It was further stated that the mere presence of the President and Members of the Board in the deliberations of the Committee could not in any way render the funds of the latter as one belonging to the Devaswom Board or any institution under its management. It was argued that the President and members of the Board could not be proceeded against under Section 32 of the 1950 Act for misappropriation of non-accounting of the funds collected by an ad hoc committee.[45]

In this regard, the High Court drew the attention of all to the provisions of section 25 of the Travancore-Cochin Hindu Religious Institutions Act 1950. The said section read as follows.

"Devaswom Fund:- (a) The Devaswom Fund constituted for the Devaswom mentioned in Schedule I shall consist of

(1) the sum of fifty one lakhs of rupees mentioned in Article 238(10)(ii) of the Constitution of India as payable to the Devaswom Fund;

(2) the money realized from time to time by the sale of movable properties belonging to the said Devaswom;

(3) all voluntary contributions and offerings made by devotees.

(4) profits and interest received from investments of funds belonging to the said Devaswoms and

(5) all other money belonging to or other income received by the said Devaswoms.

(b) Out of the sum of fifty one lakhs of rupees mentioned in clause (1) of the proceeding subsection, an annual contribution of six lakhs of rupees shall be made by the Board towards the expenditure in the Sree Padmanabhaswami temple".

The Travancore-Cochin Hindu Religious Institutions Act, 1950 had the following preamble:-

"WHEREAS it is necessary to make provision for the administration, supervision and control of incorporated and un incorporated Devaswom and of other Hindu Religious Endowments and Funds".

The Bench observed that all collections made in any manner including all offering and contributions were to form part of Devaswom Funds. However, they added that the liability of the Board or its members or officers would depend upon the facts and circumstances of each case, in the light of section 32 of the 1950 Act. The Board was told to have a duty to oversee such collections and to take appropriate steps to ensure the proper utilization and accounting of such funds. The Court told the members of the Board that the latter could not plead for protection from proceeding under section 32(9) of the 1950 Act. Highlighting the fact that the President and members of the Board were the members of the committee which had collected the funds, the Court held them accountable and responsible. It was also observed that the collection was made in connection with an institution under the management of the Board. By quoting section 25, the Court observed that all voluntary contributions and offerings made in

connection with an institution under the management of the Board would constitute the Devaswom Fund. The President and members of the Board were told to be trustees of the said funds. The High Court held that the Board and its members could not escape from their accountability regarding the wastage of funds relating to the Sabarimala Improvement Fund. The Court pronounced them liable to be proceeded against under Section 32(9) of the 1950 Act, for acts of omissions or commission specified by section 32(9) of the Act. The Court sought to fix statutory liability on the member of the Board. The various activities and collections pertaining to the Sabarimala Improvement Fund had taken place over twenty years ago. This delay was considered by the Court, to be a serious lapse. The Bench also observed that the funds collected were utilized for the projects envisaged by the Committee which had improved the facilities for the pilgrims at Sabarimala. This was told to have augmented the recurring income of the great shrine.[46]

The Audit Report had shown that a sum of Rs.7, 25,830.47 was due from several persons, to whom tickets were issued. No steps were taken to collect the amount Tickets were entrusted to the members of the Implementation Committee. The persons who were having an overall supervision of the whole matter were men of stature who volunteered to collect funds with a philanthropic motive. The Court refused to believe that such individuals had worked dishonestly. It was observed that the committee as well as M.K.K. Nayar and others, had voiced their concern in some members not having rendered detailed accounts or in not having remitted the amounts that could have been collected and for not having returned the unsold tickets and

such. The High Court however admitted that it had no evidence to show that the President and members of the Board had willfully shut their eyes to any act of misappropriation. Section 32(9) of the Act was told to have referred to intentional acts of commission, and not accidental ones.[47]

Finally, on 25 July, 1989, the High Court held that the President and members of the Board could not be surcharged on account of lapses told in the Audit report. At the same time, the Bench reminded these office bearers of their public accountability, and the need to submit audit report, periodically. The authorities were reminded of the need to enact appropriate legislation in order to earn the confidence of the Public in institutions such as the Devaswom Board.[48]

The question of religious belief:

On another occasion, Justices, K.S. Paripoornan and K.A. Nayar decided a different case which the question of religious belief of the persons elected to the Devaswom Boards was raised. In 1989 when vacancies arose in the Travancore and Cochin Devaswom Boards, K.K. Sankara Ganakan, who was formerly a District Judge, acted as the authorized person under sections 5 and 64 of the Travancore-Cochin Hindu Religious Institutions Act 1950 and issued a notice dated 13-6-89 to all Hindu Legislators of the State of Kerala. The latter were thereby asked to attend a meeting on 6-7-89 at the Durbar Hall of the Government Secretariat at Thiruvananthapuram. The purpose of the above meeting was to elect a member each to the Travancore and

Cochin Devaswom Boards. It was stated that the election would be held according to the following Rule-"3(b) The person nominated shall affix his signature to the nomination paper before it is delivered to the Chairman, stating that he believes in God and professes the Hindu Religion and believes in temple worship and that he is willing to serve as a member of the Board, it elected".

It was later told that Rule (b) as extracted above was a mistake crept in because the Rules amended by Ordinance No.86 of 1984[49] were wrongly adapted. The amendment had not taken effect as the ordinance had lapsed. As a result the mistake was rectified by a circular dated 28-6-1989. This led to persons submitting nomination papers not having to declare his belief in God and temple worship. Section 6 of the 1950 Act had only provided for such persons to be permanent residents of the Travancore-Cochin region, having attained 35 years of age and professing Hindu religion.

Hence, the correct Rule 3(b) read as follows-3(b) Any Hindu member of the Legislative Assembly of the State of Kerala may nominate to duly qualified person who is not subject to any disqualification for election as the member of the Board by delivering to the Chairman between the hours fixed by the Chairman for the receipt of nomination papers a nomination paper signed by the propose and another Hindu member of the Legislative Assembly of the State of Kerala as seconder and staffing the name of the person nominated. The person nominated shall affix his signature to the nomination paper before it is delivered to the Chairman stating that he is willing to serve as a member of the Board if elected".

On 15-4-1989, Muraleedharan Nair (petitioner) sent a memorandum to the Governor of Kerala requesting the latter to permit only those Hindu legislators who give declaration that they believe in God and temple worship to participate in the process of electing a member to the Devaswom Board. The memorandum further stated that the term "Hindu Members" meant only those persons who professed Hindu religion and believing in God and temple worship. Apprehending that non-believers might be permitted to participate in the election, the Governor was requested to fill up the membership in the Travancore Devaswom Board which had fallen vacant due to the expiry of the term of the outgoing member of the Board, Saraswathi Kunjukrishnan. The authorized representative commissioned by the Governor for the conduct of the election, was requested to be given necessary directions in its regard. However, this request did not materialize. Hence, the petitioner filed an Original Petition praying to quash the notice issued to Hindu Legislators which had allowed them to participate in the said election, without giving a declaration that they had belief in God and Temple worship.[50]

When the above Original petition came up for admission on 5-7-1989, the High Court allowed the proposed election to the Devaswom Boards of Travancore and Cochin by the members of the Kerala State Legislative Assembly, to go on as scheduled on 6-7-1989. However, it was directed that the elected candidates could not take charge until the issuance of further orders by the Court. The said election was held as scheduled.

V. Akhileswaran and K.G. Venugopal were elected to the Travancore and Cochin Devaswom Boards, respectively.

Originally, the petitioner had challenged the election to both the Devaswom Board of Travancore and Cochin. However, in the light of the fact that the member to the Cochin Devaswom Board was elected unopposed, the argument was confined selectively to the Travancore Devaswom Board. The argument on behalf of the petitioner was that the legislative intent behind the Travancore-Cochin Hindu Religious Institutions Act, 1950 was to confer the right to vote and stand for election for election for membership of the Board to only those Hindus who believed in God and temple worship. It was contended that if the term 'Hindu' occurring in the 1950 Act was interpreted as any person being a Hindu by birth irrespective of any belief in God and Temple worship then the very purpose of the Act would be defeated. In this context, attention of the Court was drawn towards the Travancore -Cochin Hindu Religious Institutions (Amendment) Ordinance, 1984. The purport of the said Ordinance was to define Hindu as person who believed in God and Temple worship and Hindu religion. Unfortunately, the Ordinance lapsed and it was not substituted by an Amending Act. The petitioner opined that any other interpretation to the term Hindu was liable to violate the guarantee provided under Articles 25 and 26, of the Constitution. It was further contended that a large number of members of the then ruling party, CPI(M), who happened to be Hindu by birth, did not believe in God or Temple worship, and that the administration of temples should not be entrusted to a Board elected by them. The very same argument was applied in the matter of the nomination made by the

Hindus among the Council of Ministers. The petitioner expressed his fear that non-believers would destroy the temples and such religious institutions.[51]

Contrary to the above view, the respondents submitted that the duties and functions of the Devaswom Board were purely administrative in character and that religious aspects were decided by the *thantris*. Harping on the point that the 1950 Act was not intended to meddle with religious matters, it was claimed that belief in God and temple worship, were not essential for a person to be a member of the Devaswom Board. Turning to the pages of history, the Advocate General reminded the Court that an amendment defining the term 'Hindu' intended to exclude those who do not believe in temple worship, was once introduced in the Legislature of the erstwhile United State of Travancore-Cochin. The above amendment was put to vote and defeated by a huge majority. The Kerala State Legislature had also made an attempt in 1984, to define the term Hindu. However, it too did not fructify into an Act of legislature.[52]

The High Court examined same of the provisions of the Hindu Religious Institutions Act, 1950. The preamble of the Act read as follows- "WHEREAS it is necessary to make provision for the administration, supervision and control of incorporated and unincorporated Devaswom and of other Hindu Religious Endowments and Funds".

Section 2(b) had defined Hindu Religious Endowment, in the following words:-

"(i) every Hindu temple or shrine or other religious Endowment, dedicated to, or used as of right by the Hindu community or any section thereof; and

(ii) every other Hindu endowment or function, by whatever local designation, known and property, endowments and offerings connected therewith, whether applied wholly to religious purposes or partly to religious and partly to charitable or other purposes and every express or constructive trust by which property or money is vested in the hands of any person or persons by virtue of hereditary succession or otherwise for such purposes".

Section.3 provided for the vesting of the administration of incorporated and un-incorporated Devaswoms and of Hindu Religious Endowments, including their properties and funds in the Devaswom Board. Section 4 dealt with the composition of the Board while section 5 pertained to the procedure for the election of the members of the Board. Section 6 explicitly stated that a person shall not be qualified for nomination or election as a member, unless he professes the Hindu Religion. The High Court observed that only those who had faith in God and Temple worship were to be meant by the term 'Hindu' in the 1950 Act. The Court stated that only such persons could be aware of the efficacy, necessity and importance of Temple worship.[53]

An important contention which rose before the Court was that any persons professing Hindu religion were not necessarily believers in Temple worship and rituals. However the Bench opined that if the purpose of section 4 and 6 of the 1950 Act was only to see that Board consisted of Hindus merely professing Hindu religion, then, the exclusion of non-Hindus among the Ministers and Legislators from participation in the election process to the Board would not have been there. It was observed that the

qualification to be a member of the Devaswom Board and to be a member of the Electoral College was intended to be one and the same, namely, faith in God and Temple worship. After examining the constitutional powers and duties of the Board, the High Court opined that if the administration of the Board falls in the hands of non-believers, the result would be disastrous. While considering various interpretations given to the word 'Hindu', the Court declared that in the normal practical and meaningful sense, idol worship could be regarded as the core of the prevalent Hindu religion and that it was too late to be questioned. Attention was drawn to the fact that the erstwhile ruler of Travancore, who was a devout Hindu, ruled the State as the servant of the presiding deity of Sree Padmanabhaswami Temple. Moreover all the Devaswom properties were vested in the Ruler not by way of confiscation but as a trustee for its proper and efficient management. Temples were told to have flourished because of the unabated faith and will of the denomination which comprised the Hindus who had faith in God and Temple worship.[54]

Finally, the High Court declared that only those Hindus who believed in God Temples could get nominated or vote at the election to elect the members of the Devaswom Board. As a result, the election conducted to the Travancore Devaswom Board was quashed and directions were issued, on 10 April, 1990, to the respondents to conduct fresh elections.[55]

Priesthood and caste:

In 1995, the Kerala High Court delivered a significant verdict concerning priesthood in temples. The Kongorpilly Siva Temple at Alangad village in Ernakulam District was administered by the Travancore Devaswom Board. On 6-8-1993, one K.S. Rajesh, a non-Brahmin, was appointed as the *Santhikaran* (Poojari) of the above temple in the vacancy of one Mohanan Pootti. On 8-10-1993, a letter was sent by the Assistant Commissioner of the Devaswom Board to a subordinate officer of the locality informing the latter about the new appointment.

Adithayan, a Malayala Brahmin objected to the appointment of a non-Brahmin as the *santhikaran* of the said temple. He brought the issue before the High Court of Kerala by invoking Article 226 of the Constitution[65]. It was claimed that the appointment of a person who was not a Malayala Brahmin as poojari of a temple was opposed to the recognized usage followed. The petitioner contended that none other than a Malayala Brahmin had conducted poojas in the said temple and that it had become a recognized usage. The case was confined to the Siva Temple in question and the counsel for the petitioner did not press for the application of the usage to the other temples in Kerala. Quoting sections 24 and 31 of the 1950 Act, it was told that the Devaswom Board was duty bound to follow the aforesaid usage prevalent at that place. The petitioner further contended that his fundamental right as enshrined in Articles 25 and 26 of the Constitution was in danger if he was unable to offer worship in accordance with the recognized practice. The prayer in the petition was for questioning the said appointment.[57]

The above Original Petition was found to be one of public importance. Hence the single judge who admitted the petition referred it to a Division Bench. However, the single judge himself stayed the operation of the order appointing K.S. Rajesh as the *santhikkaran* of the Siva Temple. The Division Bench which considered the matter referred it to a Full Bench. The contentions of the petitioner were repudiated by the Travancore Devaswom Board through the affidavit sworn to by its secretary. The Sree Narayana Dharma Paripalana Yogam was also allowed to be impleaded as a party for it had came forward to defend the decision of the Devaswom Board.[58]

Elaborating its stand, the Board threw light on the existence of two categories of poojaries. The *karaanma santhikars* held office on the basis of hereditary rights while, the non-*karaanma santhikars* were appointed on the basis of selection made by the Board after interviewing the candidates. A panel comprising the President and members of the Devaswom Board, the Devaswom Commissioner and a competent *thanthri*, was the body designated to interview the candidates. The Board unequivocally asserted that there was never an insistence on the *santhikaran* to be a Brahmin. On the contrary, it was revealed that candidates, irrespective of their caste had been appointed as priests in various temples. As early 1969, the Devaswom Board had approved a programme for training *santhikars* under the direction of Swami Vyomakesananda who was the then President of Ramakrishna Ashramam. In the beginning ten Hindu students irrespective of their caste were selected for imparting training as *santhikars*. Successive batches began to have eleven trainees. On their

completion of the course, the trainees were subjected to a ceremony of *upanayanam* inorder to enable them wear the "sacred thread". To substantiate its contention the Devaswom Board submitted details of non-Brahmins who were appointed as *santhikars* during the previous decade.[59]

The High Court analysed the appointment of K.S. Rajesh in the light of sections 24 and 31 of the Hindu Religious Institutions Act 1950.

Section 24 read as follows:-

" The Board shall, out of the Devaswom Fund constituted under section maintain the Devaswoms mentioned in schedule I, keep in a state of good repair the temple buildings, and other appurtenances thereto, administer the said Devaswoms in accordance with recognized usages, make contribution to other Devaswoms in or outside the State and meet the expenditure for the customary religious ceremonies and may provide for the educational uplift, social and cultural advancement and economic betterment of the Hindu Community".

Section 31 read as follows:-

" Subject to the provisions of this part and the rules made there under the Board shall manage the properties and affairs of the Devaswoms, both incorporated and unincorporated as hereto before; and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage".

The High Court opined that the word "usage" employed in the above provisions could not be understood as capsulating the caste identity of the persons holding any office. The Court refused to construe it as an entitlement of a person to hold a particular office. Reference was made to Article 13 of the Constitution of India[60], in this regard. While defining the word "law" for the purpose of the Article, "custom" and "usage", were treated differently. It was finally told that the word "usage" in section 24 and 31 of the 1950 Act was not capable of legalizing the practice if any, of appointment of a person on the basis of his caste in respect of any office. The High Court refused to approve any usage by which persons belonging to one particular caste alone were employed in any office, be it priesthood or otherwise. Attention was drawn to the peremptory language contained in Article 13(2) of the Indian Constitution which interdicted the making of any law abridging the fundamental rights. Moreover, Article 15 (1)[61] was told to have forbidden the State from discriminating against any citizen on the grounds of race, religion, caste etc. Under Article 16(2)[62] the State was restrained from discriminating against citizen on the above grounds, regarding the eligibility to hold any employment or office under the State. The exception provided in sub-article (5) of Article 16[63] was told to be incapable of insulating any usage based on caste. It was also stated that the right under Article 25 of the Constitution[64] existed subject to other fundamental rights enumerated in Part III of the Constitution.

Taking the clue from Article 17 of the Constitution, the Parliament had passed the Protection of Civil Rights Act, 1955[65]. Section 3 of the above Act had prescribed a

punishment of imprisonment for not less than a month for persons obstructing any religious service on the ground of untouchability. Finally, the counsel for the petitioner took refuge under Chapter VII of Volume I of the "Travancore Devaswom Manual," claiming it to be the authority which had designated priesthood solely to Brahmins. However, this contention too, failed to impress the Bench. As a result, the stay order passed at the admission stage of the petition was vacated and the concerned authorities were directed to allow K.S. Rajesh to hold the office of *santhikaran* to which he was appointed by the Travancore Devaswom Board. This historic judgement was delivered on 4 December, 1995.

GURUVAYOOR DEVASWOM:

The *ooraima* right over the Guruvayoor Sreekrishna Temple was hereditarily vested jointly in the Zamorin Raja of Calicut and the Karanavan of the Mallisseri *illom* at Guruvayoor. This fact was explicitly recognized by the Madras High Court in its judgment of 1 November 1889 (in the Appeal No.35 of 1887). The Madras Hindu Religious Endowments Act came into force on 8 February, 1927.[66] This led to the constitution of the Hindu Religious Endowments Board. Soon, a petition was filed before the Board accusing the hereditary trustees of mismanagement of the affairs of the Temple. As a result, the Board instituted an enquiry which culminated in a new scheme of administration for the Guruvayoor Temple. This was on the strength of section 63(1) of the Madras Act. Unfortunately, the new scheme blatantly disregarded the position of Mallisseri Namboodiri by entrusting the management of the institution exclusively to the Zamorin Raja. The Karanavan of the Mallisseri *illom* instituted a suit

(O.S.No.1 of 1929) in the District Court of South Malabar at Calicut under section 63(4) of the Madras Hindu Religious Endowments Act. It prayed for amendment of the scheme settled by the Hindu Religious Endowments Board by recognizing his rightful position as joint-Ooralan of the Guruvayoor Devaswom. Another petition was filed by the very same persons on whose petition had led to the framing of the very scheme by the Board. This new petition (O.S.No.2 of 1929) in the District Court contented that the Board had not incorporated sufficient safeguard in the scheme for ensuring proper management. The petition prayed for amending the scheme by making provision for the appointment of additional non-hereditary trustees and placing the management in the hands of a Board of five trustees, three of when were to be nominated by the Board. The District Court upheld the claim of Mallisseri Nambudiri to be a joint hereditary trustee of the Guruvayoor Temple, along with the Zamorin Raja. The court also effected certain changes in the scheme of administration by the Hindu Religious Endowments Board for ensuring proper working of the Devaswom.

Opposing the above decision of the District Court, the Zamorin Raja filed appeals before the Madras High Court (A.S.Nos.211 and 212 of 1930). These were disposed of by a Division Bench on 21 November, 1930. The judgement confirmed the right of Mallisseri Namboodiri to function as joint-*ooralan* of the Temple. The District Court had declined to make provision for the appointment of non-hereditary trustees. This was upheld by the Division Bench, which, incorporated new safeguards in the scheme of administration of the Guruvayoor Devaswom. One such new provision so incorporated in the scheme was that of the trustees putting up a public notice intimating the date

and time of opening of the Bhandarams, sufficiently in advance so as to enable interested persons to be present on those occasions. That the entries regarding cash and jewels found in the Bhandaram should be attested by atleast two of such members of worshipping public, was made obligatory.

The management of the Temple was carried on accordingly until 1933, when a suit was filed by some worshippers (O.S.No.1of 1933) praying for the modification of the then existing scheme of administration. In accordance with the decree passed in the fresh suit, minor changes were effected in the aforesaid scheme, by the District Court. This modified scheme continued to guide the Guruvayoor Devaswom even after the enactment of the Madras Hindu Religious and Charitable Endowments Act, 1951, which came into force on 30 September, 1951.[67]

This dispensation lingered on even after the formulation of the linguistic State of Kerala on 1 November, 1956. Later, in 1965, the then Commissioner of the Hindu Religious and Charitable Endowments(Administration) Department, filed a petition (OP.No.3 of 1965) in the Subordinate Judge's Court at Trichur, under section 62(3) (a) of the Madras Hindu Religious and Charitable Endowments Act, 1951. The said petition prayed for the modification of the then existing scheme for the Guruvayoor Temple. A draft scheme was also submitted along with the petition. While, the petition, was pending before the subordinate judge's court, the Kerala Legislative Assembly passed the Guruvayoor Devaswom Act in 1971.[68]

Soon, the managing trustee of the Guruvayoor Temple, Manavedan, and the co-trustee, petitioned the High Court challenging some of the provisions of the Guruvayoor Devaswom Act of 1971 were. Serious contentions were raised against clauses (a), (b) and (g) of section 10 and clause (b) of section 27 (2). The petitioners claimed that the above provisions offended clauses (b) & (d) of Article 26 of the Constitution. Important provisions of the Guruvayoor Devaswom Act were analyzed by the High Court, section 3 of the Act vested the administration, control and management of the Guruvayoor Temple, its properties and endowments and the subordinate temples attached to it, in the Guruvayoor Devaswom Management Committee. The above Committee was a body corporate having a common seal and perpetual succession. The Committee was to sue and be sued by the name of the Administrator. Section 4 postulated the composition of the Committee. Section 5 dealt with the tenure of office of non-official members, their registration and removal; clause (e) of subsection (3) of the above section provided for the removal of a member of the Committee by the Government. Section 6 empowered the Government to deal with the dissolution and supersession of the Committee. Section 10 concerned itself with the duties of the Committee. Section11 imposed some restrictions on the powers of the Committee in alienating movable and immovable properties of the Guruvayoor Devaswom. Section12 laid down certain limitations on the power of borrowing and lending by the Committee. Section 13 provided for the submission of Annual Administration Report to the Government. Section 14 empowered the Government to appoint an Administrator who was to be not below the rank of a Deputy Collector or Deputy Commissioner. If the Administrator’s office happened to be temporarily vacant,

the Government could appoint another officer who was to have additional charge of the office of the Administrator. This was by virtue of section 16. While section 17 dealt with the powers, and duties of the Administrator, Section 18 conferred on him certain extraordinary powers in cases of emergency. Section 19 too conferred on the Administrator, certain powers.[69]

Section 20 dealt with the appointment of officers and employees of the Guruvayoor Temple by a Board consisting of the Commissioner (functioning under the Madras HR& CE Act), and the Administrator, including two persons appointed by the District Collector. The Managing Committee too, was to elect two persons among themselves, to the Board. Section 21 to 23, were regarding the Budget & Audit. Section 24 created the Sree Guruvayoor Temple Fund. Section 25 conferred on the Government the power to call and examine the records of the Administrator or of the Committee or of the Commissioner. This was told as a measure to satisfy the Government themselves, of the regularity correctness, legality or the propriety of such proceedings. Section 26 empowered the Government to make Rules. Sub-section (2) (c) of the section enacted that such Rules provided for the performance of duties by the Committee under section 10 and the mode and extent of the expenditure under section 24. The Rules so made had to be laid before the Legislative Assembly. Section 27 empowered the Guruvayoor Devaswom Managing Committee to make regulations subject to approval of the Government. Section 28 enabled the Committee to take possession and to be in possession, of all the movable and immovable property of the Devaswom. Section 32 constituted the Renovation Executive Committee. The said Committee was to

constitute the Sree Guruvayoor Renovation Fund, which was to be administered in accordance with the directions of the Government. Assuming power under Section 26 of the Guruvayoor Devaswom Act, 1971, the State Government framed the Guruvayoor Devaswom Rules.[70]

Article 26 of the Constitution provided every religious denomination with the right to manage its own affairs in matters of religion and to administer its property. The counsel for the petitioners argued that the latter were the representatives of the denomination to whom the temple and the Devaswom belong. The vesting of the administration and control of the Devaswom in the Committee by section 3 of the Act was told to have deprived the denomination and its representatives, of the right to administer, control and manage the Devaswom. It was also argued that the functions of the Committee included matters relating to religion as contemplated by clause (b) of Article 26.[71]

The High Court opined that the provisions of the 1971 Act which were specifically attacked did not touch matters pertaining to religion. It was observed that the section 10 (a) began with the expression “subject to the customs and usage in the Temple”. Quoting the said words, the Bench said that the rights of the Committee were subject to the custom and usage of the temple. The jury also stated that clause (b) and (g) of section 10, too did not touch matters of religion. The Bench had a similar opinion regarding section 27 (2) (b). The Bench opined that the Devaswom Managing

Committee's powers were all outside matters pertaining to religion. The petitioners were told that they were free to exercise all their religious functions.[72]

The composition of the Committee as postulated by Section 4 of the Act, vested the power of the Committee in the nominees of the Government as they were in a majority. The Government was thus able to control the Devaswom. In this regard Rule 4 framed under the Section, was taken into consideration. The Government's counsel however argued that the validity of the provisions of the very Act could not be tested or judged in the light of the Rules framed under the Act. He contended that the provisions of the Act cannot be held un-constitutional if a mere Rule is *ultravires*. The Act was attacked on the ground that it offended Articles 26(b) and 26(d) of the Constitution of India. This argument was totally rejected by the High Court.[73]

However, the Bench sounded a note of caution against Rules 4 and 10 framed under the provisions of the Act. Rule 4 kept the Committee at the mercy of the Government if the Administrator happened to disregard the former's wishes. Rule 10 empowered the Committee not only to fix the rates of *vazhipadu* but also determine the proportion to be given to the Devaswom. The Court advised the deletion of the said Rules as they were found to be outside the scope of the Act. The case was decided by a Full Bench consisting of Chief Justice T.C. Raghavan and Judges, V.P. Gopalan Nambiyar and G. Vishwanatha Iyer on 14 July, 1972.[74]

The Guruvayoor Devaswom (Amendment) Act, of 14 November 1972 intended to give a formal shape to the Renovation Committee and proposed to install the Minister for Devaswoms, as the head of the body. This was entirely new concept which was absent in the Guruvayoor Devaswom Act, 1971.[75] The Renovation Committee was actually not intended for receiving contributions alone. It also carried the responsibility of overseeing the proper spending of the funds collected for the particular purpose. Already, there existed the Managing Committee and an Administrator to decide on matters pertaining to Guruvayoor Devaswom. The latter was an IAS officer. Strangely, the Secretary of the Renovation Committee was not an officer of the State Government.

The most formidable challenge to the Guruvayoor Devaswom Act appeared in 1977. A petitioner, named Krishnan, contended that sections 3, 4, 5(3)(c), 5(5), 11, 14, 15, 20, 24(3), 25 and 32 of the Guruvayoor Devaswom Act, 1971, were violative of Articles 25(1) and 26 of the Constitution[76] of India on the ground that they abridge and interfere with to right of the denomination consisting of Hindus believing in temple worship, to practice their religion freely and maintaining their religious institution (the Guruvayoor temple) and administer its properties accordingly. It was stated that the cumulative effect of the totality of the provisions present in the Act was to usurp the management and control of the Guruvayoor Temple, its properties and funds from the denomination and to vest it in the Government of Kerala. The petitioner opined that under the pretext of legislating for the better management of the institution, the legislature had virtually invested the Government with absolute control over the

religious and secular affairs of the Guruvayoor Devaswom. The Act was accused of having conferred arbitrary powers on the Government, by empowering it to nominate 14 out of the 17 members who constituted the Committee. The Government also had the power to remove any of such nominated members at its will. The petitioner affirmed that the Managing Committee was devoid of independence and was reduced to an agency of the Government. The Act was alleged to have provided for the State Government to supersede the Managing Committee. The petitioner argued that section 4 had the effect of enabling the Government to nominate even those who were totally opposed to the practice of temple worship. That the denomination was completely kept out the Committee and the lack of any mechanism for ascertaining their wishes was also stressed, at this juncture. The Committee was not answerable to the denomination and none of its acts could be called in question by members of the denomination by any method, either before a civil court or before any other authority. Citing the above fact, the petitioner contended that the Committee was not the representative of the denomination. The Madras Hindu Religious and Charitable Endowments Act, 1951 and the Travancore-Cochin Hindu Religious Institutions Act, 1950, were told to be having better provisions which enabled the worshipping public to adopt suitable measures to correct any act of maladministration on the part of the concerned authorities.[77]

It was also raised that all the powers were actually invested in the Administrator appointed by the Government and that the Managing Committee had no effective control over him. Moreover, the power to appoint the employees of the Guruvayoor

Temple was not given to the Managing Committee. On the contrary, a separate body, (the Board constituted under Section 20) was created to perform the said task. This Board had five members, out of which three were full-time officers of the State, while, and the rest two, were elected by the Managing Committee. Thus it was sought to prove that the Managing Committee was a means to camouflage the usurpation of effective authority by the State Government. Section 24 of the Act had created the "Sree Guruvayoor Temple Fund, under the control of the Managing Committee. Clause(f) of sub-section(3) of section 24 had authorized the Committee to divert the trust funds with the sanction of the Government, for even those purposes which were having no connection whatsoever with the Guruvayoor Temple. Such diversion of trust funds for secular purposes was contended to be totally opposed to the established custom, traditions and usage of the Temple. The diversion of trust funds was permitted irrespective of whether or not surplus would be available after meeting all the requirements of the Devaswom.[78]

Section 32 of the 1971 Act provided for a Renovation Executive Committee, which was a separate body, wholly independent of the Managing Committee. The former was not answerable to the latter in any manner. Unlike the Managing Committee, the Government did not camouflage its controlling hand with regard to the Renovation Executive Committee, which was headed by none other than the Minister for Devaswoms, in Kerala. All of the thirty members of this Committee were appointed by the State Government. The petitioner submitted that the denomination was left without any remedy to check and correct instances of maladministration of funds by the

Renovation Executive Committee. It was also urged on behalf of the petitioner that work of renovation was an integral part of temple administration and that there was no justification for setting up an independent committee for the said purpose, and authorizing it to collect funds on behalf of the Devaswom. The State was accused of having nationalized the Guruvayoor Temple by divesting the deity of its proprietary right over the Temple funds and by providing for the diversion of such funds, irrespective of the availability of any surplus. This was pointed out to be an explicit violation of the principle of equality guaranteed by Article 14 of the Constitution of India.[79]

The respondents claimed that the provisions of the impugned Act were reasonable ones, solely for ensuring better administration of the Guruvayoor Temple. Attention of the High Court was drawn towards the unsatisfactory state of affairs at the said temple owing to the inadequacy of the earlier scheme which was based on the Madras Hindu Religious and Charitable Endowment Act, 1951. As early as in 1965, the Commissioner of the Hindu Religious and Charitable Endowments had approached the Sub-Court at Trichur, praying for amendment of the scheme of administration of the Guruvayoor Devaswom. This petition gathered dust in the Court. The fire accident of 25 November, 1970 provided the Government, the impetus to launch effective action. As a result the Guruvayoor Devaswom Ordinance was promulgated on 9 March, 1971, which was subsequently replaced by an Act of the State Legislative Assembly.The allegation that the Temple and its worshipers were arbitrarily singled out in violation of Article 14 of the Constitution, was strongly denied by the

respondents. On the contrary, they opined that 1971 Act touched only the secular affairs of Guruvayoor Devaswom and that religious matters continued to be performed in accordance with their custom and usage in the Temple. It was also submitted that some of the members of the Managing Committee being nominated by the Government doesn't bring the whole Temple under Government's control. The petitioner had attacked the resolution of the Managing Committee sanctioning a donation of Rs.50, 000 towards the 'One Lakh Housing Scheme' of the State Government. It was a pet project of the ruling party. However, the Court was requested to drop this point as the Government had not sanctioned the said proposal of the Managing Committee. It was also affirmed that Article 25 in its clause 2(a) gave the State the power to make laws regulating or restricting any economic, financial, political or other secular activity associated with religious practices. Similarly, sub-clause (b) was told to have empowered the State to make laws providing for social reform and welfare, even if it happens to interfere with religious practices. The respondents claimed that the fundamental right conferred by Article was subject to the said restrictions which the Article itself had imposed. They also expressed the view that the Constitution had contemplated the regulation of such practices, which were of economic, commercial or political, in character, even if they were associated with religious practices.[80]

The High Court opined that the scheme which was settled by the Madras High Court and which was modified by the District Court of South Malabar, had sufficient safeguards, which were incorporated at the insistence of the worshippers themselves.

The Madras Hindu Religious Endowments Act, 1926, which was in force at the time of the commencement of the Constitution, was told to have fully recognized the rights of the worshippers to intervene for the purpose of averting mismanagement. It was also observed that the legislature should consider the conferment of the power to nominate the members of the Managing Committee to an independent statutory body, other than the State Government, with proper guidelines. This was told to be relevant in the light of the then recent amendments to the Preamble of the Constitution, emphasizing secularism. The High Court declared itself being in favour of a compact committee consisting of persons who had faith in the deity and genuine interest in the affairs of the Guruvayoor Temple. The provisions of the 1971 Act were found to have the effect of curbing the independence of the Managing Committee by reducing it to a body subservient to the executive Government. The Court also opined that the powers of removal and suppression conferred on the Government were naked and absolute in character and even a suit was barred by section 29 of the Act. The Court concurred with the view that the absolute and unguided discretion of the Government to sanction donations of temple properties without even insisting on any prerequisite condition was clearly prejudicial to the interests of the denomination. Moreover, an order of the Government sanctioning such alienations was not amenable to any kind of challenge before any forum and even a suit was barred under section 29 of the 1971 Act.[81]

Section 14 empowered the State Government to appoint the Administrator of the Guruvayoor Devaswom, who according to section 15, was to be a full-time officer of the Devaswom, whose salary and allowances were to be drawn from the Temple Fund

as fixed by the Government. The Managing Committee was deprived of the power to appoint its own Secretary, who was anointed to be the Chief Executive Officer of the Temple. Section 17 had mentioned that the Administrator was subject to the control of the Committee. Section 26 (2) (a) empowered the State Government to make rules providing for exercise of control by the Committee over the actions of the Administrator. Utilizing the powers vested in it, the Government had formed the Guruvayoor Devaswom Rules, 1971. Rules, 3 and 4 were very much relevant in this regard.

Rule 3 and Rule 4 read as follows:

3. Power of the Committee over the actions of the Administrator:

It shall be competent for the Committee to call for and examine any papers connected with any action of the Administrator and give such directions to the Administrator in accordance with the provisions of the Act and these rules, as the Committee may consider necessary.

4. Administrator to carry out the decision of the Committee:

The Administrator shall take steps to implement the decisions of the Committee and in the event of failure without adequate reasons the Committee may bring the matter to the notice of the Government and the Government shall take action as it deems necessary against the Administrator.

Thus the Committee was deprived of any effective control over the Administrator. The latter was answerable only to the State Government. The right of the denomination to administer the Temple under Article 26 of the Constitution was violated. During the temporary absence of the Administrator, the State Government was empowered to appoint one of its officers not below the rank of Deputy Collector or Deputy Commissioner, for a period of not more than a month. This was by virtue of Section 16 of the Act. This very provision nullified the applicability of section14, thus making it possible for the Government to appoint a non-Hindu to be in charge of the office of the Administrator. The Administrator was the person authorized by section 17 of the 1971 Act to arrange for the proper performance of the rites and ceremonies in the Temple. The Administrator wielded wide powers. Section 17 had made him responsible for the custody of all records and properties of the Devaswom. He was empowered to grant licenses and leases of Temple lands, buildings (for not over a year) and to call for and accept tenders for works or supplies (valued at not more than Rs.5000). He was also having the power to order for emergency repairs, costing not more than Rs.5000. Section 18 further authorized the Administrator to direct the execution of any work, which was not provided for in the budget, irrespective of the expenses involved in it. He only had to inform the Committee about his actions. Thus, it become clear that the conferment of extraordinary powers on the Administrator, without making him fully answerable to the Committee, was an infringement of the rights of the denomination to manage and administer the institution and its properties.[82]

Section 19(6) had provided for all new appointments carrying a salary of Rs. 200 & above per mensum, be subjected to previous sanction of the Committee. This showed direct involvement of the State in the normal administration of a religious institution. The High Court regarded it to be inconsistent with the secular character of the State. Section 20 dealt with the appointment of employees of the Guruvayoor Temple. This task was to be performed by a body consisting of the Administrator, the Commissioner (HR&CE), an officer authorized by the District Collector, and two persons elected by the Managing Committee from among its members. Thus three out of five members were full-time officers of the State Government. The Managing Committee which was deemed to be representing the denomination was effectively sidelined in this regard. The Act had thus entrusted the power of appointment to the Board, consisting primarily of officers of the secular Government. The High Court found it highly detrimental to the interests of the institution and the denomination. It was also stated that the body which represented the denomination ought to have the right of appointing employees of the Temple.

Section 21 provided for the preparation of the annual budget of the Guruvayoor Devaswom by the Administrator. It had to be submitted to the State Government after bring approved by the Managing Committee. The budget was to become operative only after being sanctioned by the Government, which could modify any part of it. Section 25 even conferred revisional power on the State Government in the widest possible terms. The Government was empowered to call for and examine the records to satisfy themselves regarding any decision taken by the Administrator or the

Managing Committee. The State Government was also authorized to pass orders in supersession of those actions taken by the Administrator or the Committee.

Thus, despite the administration, control and management of the Guruvayoor Devaswom being vested in the Managing Committee consisting overwhelmingly of nominees of the Government, a Damocles' sword of threat of removal or supersession was constantly hung above their heads. Moreover, section 29 stated that the orders passed by the State Government were to be immune from challenge before any court of law. This had led to the denomination becoming totally powerless to question the actions of the Government.

Section 24 had contemplated the creation of a fund known as "Sree Guruvayoor Temple Fund". The income from Temple's properties, contributions from devotees etc, were sought to be diverted to the now fund. This was too struck down by the High Court as unconstitutional. The Court found force in the contention that the said section empowered the Committee to divert Devaswom funds even without the prerequisite condition that a diversion was to be effected only in the event of there being a surplus left after meeting all the expenses of the Devaswom. The High Court also opined that the provision present in section 24(3) (f) of the Act, that empowered a secular authority (State Government) to divert the Temple funds for purposes unconnected with the Temple, was unconstitutional. Section 29 barred any legal proceedings against the Government, the Administrator, the Commissioner, the Committee or its members, in respect of anything done or intended to be done under the Act. As a result, the

denomination was totally deprived of the remedy available under section 92 of the Civil Procedure Code. The Madras Hindu Religious & Charitable Endowments Act had provided this facility to denomination, when the Guruvayoor Devaswom was formerly under its realm. Section 29 effectively imposed a total restraint on the fundamental rights of the denomination.[83]

Section 32 had given birth to the Renovation Executive Committee. It was to consist of not more than thirty members. The Minister of the State of Kerala in charge of Devaswom was to be its President. The said section did not mention any qualifications for the membership of above Committee. The Government was empowered to unseat any member of the said body. The Renovation Executive Committee was authorized to receive contributions from the public, which were to be deposited in a newly created fund know as the “Sree Guruvayoor Renovation Fund”. The Renovation Executive Committee was wholly independent of the Management Committee. The very section was held violative of Articles 25 and 26 of the Constitution. Moreover, the fact that Minister in the Government was the President of the Renovation Executive Committee was taken to be a serious defect. The State Government was accused of having involved itself in the matter to renovation and reconstruction of a religious institution. Finally, summing up, the High Court declared that section 3, 4, 11, 12, 14-18, subsection(6) of section19, sections 20-21, section 24(1) (2), clause (f)of subsection 3, sections 25 and 32, were unconstitutional and void.[83]

The judgement of the State High Court mutilated the Guruvayoor Devaswom Act. It rendered the Act inoperative, in its original form. As a result, a new Ordinance was issued to replace the impugned Act. A fresh legislation prior to the expiry of the said Ordinance was the only alternative. This led to the introduction of the Guruvayoor Devaswom Bill, 1978. The Government was in a hurry and attempted to avoid a discussion concerning each clause of the new Bill. This met with opposition from many legislators. They wanted to analyze the defects in the earlier Act as it was explicitly revealed in the judgement of the High Court. The Chair justified the urgency shown by the Government by citing the decision of the Business Advisory Committee. Members were advised to express their opinion regarding the Bill, in a concise manner. The discussion which began with the introduction of the Bill on 1 March continued on 2 March. Legislators protested on having their duration of speech, being arbitrarily reduced. As a mark of protest the members owing allegiance to the Congress Party, the CPI (M), the Janata Party and the NDP stayed a walkout. The then Chief Minister, A.K. Antony reminded the House that the Ordinance was going to lapse by 19 March and that a new Act was unavoidable. He also criticized the leaders of parties who staged a walkout for deliberately violating an accord entered into by all of them with the Government for completing the discussion in a time-bound manner. E.P. Gopalan asked for referring the Bill to a Select Committee. T.M. Jacob welcomed the provision for nine-member Managing Committee as against the seventeen-member Committee, as prescribed by the 1971 Act. Soon, the Government successfully dealt with the matter and got the Bill passed.[85]

END NOTES

1. R.N. Yesudas, *Colonel John Munro in Travancore,* p.10.
2. *Ibid.,* p.38.
3. K.P. Sankaran Nair, *Kerala Devaswom Administrative Reforms Commission Report,* p.17.
4. K. Ananthanarayana Aiyar, *Report of the Devaswom Seperation Committee,* p.7.
5. K. Kuttikrishna Menon, *Report of the High Level Committee for Unification of Laws relating to Hindu Religious Institutions and Endowments, p.16.*
6. R.N. Yesudas, *op.cit.,* p.74.
7. K. Ananthanarayana Aiyar, *op.cit.,* p.8.
8. K.P. Sankaran Nair, *op.cit.,* p.17.
9. *Ibid.*
10. K. Kuttikrishna Menon, *op.cit.,* p.17.
11. *Ibid.*
12. K.K. Kusuman, *The Abstention Movement,* pp.14-18.
13. K. Ananthanarayana Aiyar, *op.cit.,* p.43.

14. *The Regulations and Proclamations of Travancore, Vol.5,* pp.324-27.

15. C. Achuta Menon, *The Cochin State Manual,* pp.421-24.

16. K. Kuttikrishna Menon, *op.cit.,* pp.31-33.

17. *Travancore Government Gazette Extraordinary* dt. 4/9/1947.

18. *Supplement to the Travancore Government Gazette No.32,* dt. 23/3/1948.

19. *Travancore Government Gazette, No.52,* dt. 10/8/1948.

20. *The Acts and Proclamations of Cochin, vol.16,* pp.1-10.

21. *Cochin Government Gazette Extraordinary* dt. 10/9/1947.

22. V.P. Menon, *The Integration of the Indian States,* p.21.

23. Political File No.397, Bundle 124A, dt. 19/7/1949.

24. *The Travancore-Cochin Code vol.1,* pp.379-422.

25. *Ibid.*

26. *Ibid.*

27. *Ibid.*

28. *Ibid.*

29. *The Travancore-Cochin Code, op.cit.,* pp.133-141.

30. *Rules and Notifications under Enactments of Cochin, Vol.5,* pp.1-144.

31. 1954 KLT.723

32. *Ibid.*

33. *Ibid.*

34. *Ibid.*

35. *Ibid.*

36. 1964 KLT.1034

37. *Ibid.*

38. *Ibid.*

39. 1990(1) KLT.349

40. *The Travancore-Cochin Code, Vol.1,* pp.377-422.

41. 1990(1) KLT.349

42. *Ibid.*

43. *Ibid.*

44. *Ibid.*

45. *Ibid.*

46. *Ibid.*

47. *Ibid.*

48. *Ibid.*

49. *The Acts and Ordinances of Kerala, 1984,* pp.813-18.

50. 1990(1) KLT.874

51. *Ibid.*

52. *Ibid.*

53. *Ibid.*

54. *Ibid.*

55. *Ibid.*

56. D.D. Basu, *Shorter Constitution of India, Vol.2,* pp.1185.1546.

57. 1996(1) KLT.1

58. *Ibid.*

59. *Ibid.*

60. D.D. Basu, *Shorter Constitution of India, Vol.1,* pp.59-77.

61. *Ibid.,* p.185.

62. *Ibid.,* pp.199-200.

63. *Ibid.*

64. *Ibid.,* pp.468-81.

65. V.R. Manohar, W.W. Chitaley, *The A.I.R Manual, Vol.29,* pp.939-50.

66. Madras Hindu Religious Endowments Act, 1926 (Act 2 of 1927)

67. *The Madras Code, Vol.4,* pp.325-87.

68. *The Acts and Ordinances of Kerala, 1971,* pp.24-32.

69. 1973 KLT.106

70. *Ibid.*

71. *Ibid.*

72. *Ibid.*

73. *Ibid.*

74. *Ibid.*

75. *Proceedings of Kerala Legislative Assembly, 6th session, Vol.32,* dt. 14 November, 1972, pp.2522-40.

76. D.D. Basu, *Shorter Constitution of India, Vol.1,* pp.468-89.

77. 1979 KLT.350

78. *Ibid.*

79. *Ibid.*

80. *Ibid.*

81. *Ibid.*

82. *Ibid.*

83. *Ibid.*

84. *Ibid.*

85. *Proceedings of Kerala Legislative Assembly, 3rd session, Vol.45,* dt. 1 March, 1978, pp.1716-24.