

**IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (C) NO. 373 OF 2006**

Indian Young Lawyers Association & Ors.	Petitioners
Versus	
The State of Kerala & Ors.	Respondents

**INITIAL WRITTEN SUBMISSIONS OF DR. ABHISHEK SINGHVI,
SENIOR ADVOCATE, ON BEHALF OF RESPONDENT NO.2,
TRAVANCORE DEVASWOM BOARD**

I. HISTORICAL FACETS

- 1.1** The present submissions are restricted to the Sabarimala Temple since the submissions of the Petitioners have likewise been restricted to the latter.
- 1.2** Sabarimala is a Temple of great antiquity dedicated to Lord Ayyappa, a deity depicting “a hyper masculine God born out of the union of two male Gods, Shiva and Mohini, where Mohini is Vishnu in a female form”. **Additional Affidavit (V-2/pp.2/para 3).**
- 1.3** Although there are innumerable Ayyappa Temples in India (approx 1000), the Sabarimala Temple is supposed to depict “Naishtika Brahmacharya” viz. a perennial brahmachariya (celibate student); his great powers deriving specifically from his ascetic endeavours, in particular from abstention from sexual activities, a practice also followed by pilgrims before and during the pilgrimage to Sabarimala. **Additional Affidavit (See Osella, Filippo and Osella, Caroline (2003) at V-2/pp.2-3).**
- 1.4** While the mythology and legends are more fully described at the Additional Affidavit filed by the

Respondent No. 2 (**V-2/pp.2-10**), what is important is to note at (**V-2/pp.7-10**) that:-

- (a) The location of the Temple mythologically is based at the place where Lord Ayyappa's arrow fell and the Lord directed the King to construct a Temple north of the holy river Pampa at the place called Sabarimala. (**V-2/pp.7**).
- (b) The Lord then explained the importance of penance 'vratham' namely abstinence and a vow of celibacy and other forms of self denial for a period of 41 days. (**V-2/pp.7-8**).
- (c) The 41 days vratham is intended to purify the human mind and body. (**V-2/pp.8-9**).
- (d) Additional Affidavit pages 9-11, para 5 are highly relevant and to be read but is not reproduced and is reproduced in Convenience Compilation. (**Annexure C-1/pp.1-4**).

1.5 The antiquity of the Temple is undisputed-

- (a) Pages 40, 42 and 46-47 of the Additional Affidavit/V-2 have references from the memoirs of Lieutenants Ward and Conner surveying the Travancore and Cochin States published in 1893 and 1901. (**Especially V-2/pp.46-47**).

1.6 Attached in the Convenience Compilation is a comprehensive Ph.D. thesis by Radhika Sekar in the Department of Sociology and Anthropology at Carleton University, Ottawa Ontario in October 1987 titled "The Process of Pilgrimage : The Ayyappa Cultus and Sabarimala Yatra". This thesis establishes the very *raison d'etre* for the existence of the denominational Temple of Sabarimala based upon deep penance, celibacy and abstinence by all visitors, male or female. Relevant internal pages of this Ph.D. are pages 1, 12, 23, 29, 32, 38, 41-44. (**Annexure C-5/pp.14-190**).

- 1.7** To the same effect is the article in the Royal Anthropological Institute written in 2003 by Osella, Filippo and Osella of the University of Sussex titled “Ayyappam Saranam : Masculinity and the Sabarimala pilgrimage in Kerala”, the relevant pages of which may be referred to are internal pp. 730-732, 739. **(Annexure C-6/pp.191-215).**
- 1.8** Equally important is the historical and evolutionary discussion found in paras 7, 8, 39, 40 to 42 of the Kerala High Court Judgment in S Mahendran v. The Secretary, Travancore Devaswom Board. **Writ Petition (V-1/pp.41 to54) (DB).**
- 1.9** Sabarimala also follows the system of being open only:-
- (a)** for the Mandalam month viz. 17th November to 26th December of the normal calendar year each year;
 - (b)** for the first five days of each Malayalam month which starts approximately in the middle of each English calendar month; and
 - (c)** also additionally for the period of Makar Sankranti, viz. approximately from January 1 to mid January of each year.
- 1.10** A practice started in hoary antiquity and continued from time immemorial without interruption becomes usage and custom. See inter alia:
- (a) Ewanlangki-E-Rymbai v. Jaintia Hills District Council, (2006) 4 SCC 748, (DB) (para 26).**
 - (b) Bhimashya v. Janabi, (2006) 13 SCC 627, (DB) (paras 25-29).**
 - (c) Salekh Chand v. Satya Gupta, (2008) 13 SCC 11, (DB) (paras 26 and 27).**

- (d) **Ramkanya Bai v. Jagdish**, (2011) 7 SCC 452, (DB) (para 31).
- (e) **Laxmibai v. Bhagwantbuva**, (2013) 4 SCC 97, (DB) (paras 12-14).
- (f) **Riju Prasad Sarma v. State of Assam**, (2015) 9 SCC 461, (DB) (paras 31-32, 61, 64, 66).
- (g) **Shakuntalabai v. L.V. Kulkarni**, (1989) 2 SCC 526, (DB) (paras 18 and 19).

1.11 In a nutshell, the characteristics and elements of a valid custom are that it must be of immemorial existence, it must be reasonable, it must be certain and it must be continuous. **(See, Shakuntalabai v. L.V. Kulkarni, (1989) 2 SCC 526, (DB) (para 19)).**

II. FACETS OF ARTICLE 14, CLASSIFICATION, ARBITRARINESS

- 2.1** The case put forward by the Petitioners is on the basis of 'gender discrimination' being violative of Articles 14 and 15 of the Constitution, insofar as women are prohibited from entering into the Sabarimala Lord Ayyappaswamy Temple. This ignores the fact that females below the age of 10 and above the age of 50 are permitted entry into the Temple. Females of reproductive age are not permitted. But, even in their case, no absolute prohibition exists, as each one of them, when she crosses the age of 50, would be entitled to enter into the Temple.
- 2.2** In the first instance, therefore, the classification would be one between women in the age group 10-50 years, and women below the age of 10 and over the age of 50. This classification is not gender based and is not challenged as being violative of Articles 14 and 15 of the Constitution.
- 2.3** If the complaint is one of gender based discrimination, it can only be in regard to the classification between women in the age group 10-50 years as against men belonging to the same age group, as women outside this age group are permitted entry. Classification of intra women group by age brackets is not gender based though it may otherwise be assailed as invalid classification.
- 2.4** The issue then reduces itself to whether the classification between women between the age of 10 years and 50 years, and men of the same age group, has a reasonable basis, and whether such classification has a nexus to the worship at the Temple.

- 2.5** But, it has to be noted that women of all ages can worship Lord Ayyapaswamy in more than 1000 temples of Lord Ayyappaswamy all over India and abroad/the NCT alone having as many as eight Ayyappaswamy Temples.
- 2.6** If this be so, the classification is really between the Temple of Lord Ayyappaswamy at Sabarimala, with its special attributes as against all other Temples of Lord Ayyappaswamy all over India and abroad. The question, then, would be whether this classification has a nexus with worship at the Sabarimala Temple in the context of its origins, history and evolution.
- 2.7** In light of the above summarized historical origin and evolutionary trajectory of the Sabarimala Temple, the restriction on entry *qua* women between ages 10 to 50 clearly bears a reasonable nexus to the objects sought to be achieved. The object and rationale of this denominational Temple has been sufficiently elaborated in Part-I above and is not repeated herein. The restrictions as aforesaid *qua* women of a certain age bear a direct nexus to that object.
- 2.8** The classification is founded on an intelligible differentia which distinguishes women of that age group from both men and women of other age groups and makes that age group the basis of exclusion based upon inherent physiological characteristics which bear a nexus to the objects of abstinence, celibacy, purity and self denial, already summarized above. Needless to add, the maintenance of the purity of the idol/deity in the form of a Naishtika Brahmacharya is also a paramount object which is sought to be achieved. Consequently, the differentia is not only intelligible, not only distinguishes the persons or things that are grouped together from others left out of the group, but the differentia also have a rationale relation to the object sought to be achieved.

(State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534, (7JJ) para 23).

2.9 Reference to Article 17 of the Constitution of India by the Petitioners is misplaced for the following reasons:-

(a) Article 17 originated in the context of denial of entry to a particular class of Hindus based on caste viz. Dalits.

(b) There was specific and special constitutional protection granted from the inception of the Constitution to such class of historically discriminated Hindus/dalits and that constitutional protection has been continued upto date.

(b)i. The basic object and core of Article 17 was to prohibit untouchability based on caste in Hindu religion and religious considerations within Hinduism. No such caste based or religions based discrimination or untouchability is practiced at Sabarimala. Indeed, this temple is unique inasmuch as all castes and creeds and indeed even non-Hindus are liberally allowed entry, subject to the other “vratham” (vow) restrictions.

(b)(ii). Though the specific clarification sought by Nazruddin Ahmed and Prof. K.T. Shah qua amendment No. 372 to Article 11 (now Article 17) was not accepted by Dr. Ambedkar on 29.11.1948 (**see CAD Vol.7/pp.665-669 also in convenience compilation**), it is submitted that everyone understood Article 17 as implicitly prohibiting caste religion based untouchability.

(c) There is no exclusion of the entire class of women (as was historically done *qua* dalits) in the present case, but merely an exclusion of women within a certain age band based upon a direct nexus with

the historical origin and evolution of the Sabarimala Temple. No such nexus or rationale, much less a reasonable nexus or rationale can be spelt out for the exclusion of dalits per se.

- (d)** A reading of Article 25(2)(b) would demonstrate that a particular purpose is sought to be achieved, in regard to throwing open of Hindu religious institutions alone, as no reference is made to Muslim religious institutions or to the institutions of any other religion. Clearly, the provision was enacted to neutralize the age old prohibition against the Dalits and the lower castes entering temples for worship and has nothing to do with any restriction in a Hindu religious institution based on age.

2.10 Attached in the Convenience Compilation is a list of Diverse Temples where men are not allowed entry and list of Temples where women are not allowed. **(Annexure C-7/pp.217-218 and Annexure C-8/pp.218-219).**

2.11 Furthermore, it appears to be almost a universal practice (although the Sabarimala Temple exclusion is much broader for an age group) *qua* almost all Temples in India that actually menstruating women do not and are not supposed to enter those Temples during the actual days of menstruation.

III. SABARIMALA IS A DENOMINATIONAL TEMPLE AND IS ENTITLED TO MANAGE ITS “OWN AFFAIRS IN MATTERS OF RELIGION” UNDER ARTICLE 26(2)(B) OF THE CONSTITUTION OF INDIA

3.1 Several Supreme Court judgments have laid down the tests to qualify as a Religious Denomination under Article 26. For example, the Constitution Bench in **S.P. Mittal v. Union of India, (1983) 1 SCC 51, para 80** puts it thus:

“The words “religious denomination” in Article 26 of the Constitution must take their colour from the word “religion” and if this be so, the expression “religious denomination” must also satisfy three conditions:

- “(1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;
 (2) common organisation; and
 (3) designation by a distinctive name.”

3.2 For the reasons elaborated in Part-I above, it is submitted that Sabarimala clearly satisfies these Constitutional tests.

3.3 Religious Maths, religious sects, religious bodies, sub sects etc. or “any Section thereof” have been repeatedly held to be a religious denominations:

(a) Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005, (7JJ) (from SCC Online).

(followers of Ramanuja, known as Vaishnabas; also Madhwacharyas; etc. held to be religious denominations; see para 15)

- (b) Durgah Committee v. Syed Hussain Ali, (1962) 1 SCR 383, (CB) (from SCC Online) (para 33).**

(holding the Chishtia Sect of Muslims to be religious denomination).

- (c) Dr. Subramanian Swamy v. State of T.N., (2014) 5 SCC 75, (DB) (paras 1, 2, 4, 5 to 7, 10, 12, 24, 31, 32, 34, 37, 49, 70).**

(holding that Podhu Dikshitaras (Smarthi Brahmins) administering a Temple dedicated to Lord Natraja in the State of Tamil Nadu *qua* Sabanayagar Temple at Chidambaram are a denominational Temple entitled to the protection of Section 26(2)(b) of the Constitution. This judgment also usefully summarizes the entire relevant law in this regard at one place.

- (d) As a religious denomination, the Sabarimala management would also fall under the proviso to Section 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, (Act No.7 of 1965) (V-1/pp.35-37) read with the Rules of 1965 made thereunder especially Rule 3 and Rule 5(3)(iii) thereof. (V-1/pp.38-40).**

IV. ARTICLES 25 AND 26 OF THE CONSTITUTION PROTECT A VERY BROAD ARC OF RELIGION AND RELIGIOUS MATTERS INCLUDING CEREMONIAL ISSUES, RITUALS, ENTRY, DRESS, HOW TO STAND, HOW TO WORSHIP ETC, ALL AS ELEMENTS OF RELIGION

4.1 Articles 25 and 26 of the Constitution protect freedom of conscience and free profession, practice and propagation of religion as also the right of every religious denomination to manage its own affairs in matters of religion.

4.2 Religion, in this formulation, is a much wider concept and includes-

- (a)** Ceremonial law relating to the construction of Temples.
- (b)** Installation of Idols therein.
- (c)** Conduct of worship of the deities.
- (d)** Place of consecration of the principle deity.
- (e)** Where other Devatas are to be installed.
- (f)** Where several classes of worshippers are to stand and worship.
- (g)** Purificatory ceremonies and their mode and manner of performance.
- (h)** Who are entitled to enter for worship, where they are entitled to stand and worship and how the worship is to be conducted.

See *inter alia* **Sri Venkataramana Devaru v. State of Mysore, 1958 SCR 895, (CB) (SCC Online) (paras 17 and 18).**

4.3 Religion not merely lays down a code of ethical rules for its followers to accept but also includes rituals and observances, “ceremonies and modes of worship” which are regarded as integral parts of religion, and these forms and observances might extend even to matters of

food and dress. (**Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005, (7JJ) (from SCC Online) (para 17).**)

- 4.4** Similarly, the time of the day to give offerings of food to the idol, the performance of periodical ceremonies before the idol, the time, mode and manner of daily recitals of sacred texts or oblations to the sacred fire would all be regarded as parts of religion and religious practices. (**Shirur Math, Supra, para 20).**)
- 4.5** The above formulation was expressly reiterated in **Durgah Committee v. Syed Hussain Ali, (1962) 1 SCR 383, (CB) (from SCC Online) (para 33).**
- 4.6** The following Paragraph 11 from **Seshammal v. State of T.N., (1972) 2 SCC 11, (CB)** may also be quoted:

“Before we turn to these questions, it will be necessary to refer to certain concepts of Hindu religious faith and practices to understand and appreciate the position in law. The temples with which we are concerned are public religious institutions established in olden times. Some of them are Saivite temples and the others are Vaishnavite temples, which means, that in these temples God Shiva and Vishnu in their several manifestations are worshipped. The image of Shiva is worshipped by his worshippers who are called Saivites and the image of Vishnu is worshipped by his worshippers who are known as Vaishnavites. The institution of temple worship has an ancient history and according to Dr Kane, temples of deities had existed even in the 4th or 5th century B.C. (See *History of Dharmasastra* Vol. II, Part II, p. 710). With the construction of temples the institution of Archakas also came into existence, the Archakas being professional men who made their livelihood by attending on the

images. Just when the cult of worship of Siva and Vishnu started and developed into two distinct cults is very difficult to say, but there can be no doubt that in the times of the Mahabharata these cults were separately developed and there was keen rivalry between them to such an extent that the Mahabharata and some of the Puranas endeavoured to inculcate a spirit of synthesis by impressing that there was no difference between the two deities. (Seep. 725 supra.) With the establishment of temples and the institution of Archakas, treatises on rituals were compiled and they are known as "Agamas". The authority of these Agamas is recognised in several decided cases and by this Court in *Sri Venkataramana Devaru v. State of Mysore* [1958 SCR 895] Agamas are described in the last case as treatises of ceremonial law dealing with such matters as the construction of temples, installation of idols therein and conduct of the worship of the deity. There are 28 Agamas relating to the Saiva temples, the most important of them being the Kamikagama, the Karanagama and the Suprabedagama. The Vaishnavas also had their own Agamas. Their principal Agamas were the Vikhanasa and the Pancharatra. The Agamas contain elaborate rules as to how the temple is to be constructed, where the principal deity is to be consecrated, and where the other Devatas are to be installed and where the several classes of worshippers are to stand and worship. Where the temple was constructed as per directions of the Agamas the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting of mantras and devotional songs appropriate to the deity. On the consecration of the image in the temple the Hindu worshippers believe that the Divine Spirit has descended into the image and from then on the image of the deity is fit to be worshipped. Rules with regard to daily and periodical worship have been laid down for securing the continuance of the Divine Spirit. The

rituals have a two-fold object. One is to attract the lay worshipper to participate in the worship carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in the worship a particular attitude of aspiration and devotion is developed and confers great spiritual benefit. The second object is to preserve the image from pollution, defilement or desecration. It is part of the religious belief of a Hindu worshipper that when the image is polluted or defiled the Divine Spirit in the image diminishes or even vanishes. That is a situation which every devotee or worshipper looks upon with horror. Pollution or defilement may take place in a variety of ways. According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship. In fact, purificatory ceremonies have to be performed for restoring the sanctity of the shrine [1958 SCR 895 (910)]. Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu religious faith and cannot be dismissed as either irrational or superstitious. An illustration of the importance attached to minor details of ritual is found in the case of *His Holiness Peria Kovil Kelvi Appan Thiruvankata Ramanuja Pedda Jiyangarlu Varlu v. Prathivathi Bhavankaram Venkatacharlu* [73 IA 156] which went up to the Privy Council. The contest was between two denominations of Vaishnava worshippers of South India, the Vadagalais and Tengalais. The temple was a Vaishnava temple and the controversy between them involved the question as to how the invocation was to begin at the time of worship and which should be the concluding benedictory verses. This gives the measure of the importance attached by the worshippers to certain modes of worship. The idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the image which must be

avoided at all costs. That is also the rationale for preserving the sanctity of the Garbhagriha or the sanctum sanctorum. In all these temples in which the images are consecrated, the Agamas insist that only the qualified Archaka or Pujari shall step inside the sanctum sanctorum and that too after observing the daily disciplines which are imposed upon him by the Agamas. As an Archaka he has to touch the image in the course of the worship and it is his sole right and duty to touch it. The touch of anybody else would defile it. Thus under the ceremonial law pertaining to temples even the question as to who is to enter the Garbhagriha or the sanctum sanctorum and who is not entitled to enter it and who can worship and from which place in the temple are all matters of religion as shown in the above decision of this Court.

12. The Agamas have also rules with regard to the Archakas. In Saivite temples only a devotee of Siva, and there too, one belonging to a particular denomination or group or sub-group is entitled to be the Archaka. If he is a Saivite, he cannot possibly be an Archaka in a Vaishnavite Agama temple to whatever caste he may belong and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple. Indeed there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or vice versa. What the Agamas prohibit is his appointment as an Archaka in a temple of a different denomination. Dr Kane has quoted the Brahmapurana on the topic of Punah-pratistha (*Re-consecration of images in temples*) at p. 904 of his History of Dharmasastra referred to above. The Brahmapurana says that “when an image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, has ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other deities or is rendered impure by the touch of

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

V. THE JUDGMENT OF THE KERALA HIGH COURT DIVISION BENCH IS A JUDGMENT *IN REM* CONSTITUTING *RES JUDICATA* TO THE EFFECT THAT THE SABARIMALA TEMPLE DENOMINATION IS NOT ONLY ENTITLED TO PROTECTION UNDER ARTICLES 25 AND 26 OF THE CONSTITUTION BUT IS NOT CONDUCTING UNCONSTITUTIONAL PRACTICES.

5.1 The judgment of the Division Bench of the Kerala High Court in **S Mahendran v. The Secretary, Travancore Devaswom Board (pp.41 with reference to Paras 7, 8, 39, 40-42)** being one rendered in a PIL filed under Article 226 of the Constitution after examining oral and documentary evidence, is a judgment *in rem* and constitutes *res judicata* as well as constructive *res judicata* so that no subsequent writ petition under Article 32 or under Article 226 of the Constitution will be maintainable.

(a) State of Karnataka v. All India Manufacturers Organization, (2006) 4 SCC 683, (3JJ) (paras 32-35) – on the issue of *res judicata* and also the proposition that the said judgment would *in rem*.

(b) Dr. Subramanian Swamy v. State of T.N., (2014) 5 SCC 75, (DB) (para 49) – the declaration regarding religious denomination is judgment *in rem*.

5.2 The question whether a group or a sect constitutes a religious denomination is a mixed question of law and fact and can be decided by a Court only after examination of documentary and oral evidence, which was done in S. Mahendran's case by examining documents and 9 witnesses including the Thantri. Thus, a petition under Article 32 of the Constitution of India would not be the appropriate remedy for this issue.

(a) Arya Vyasa Sabha v. Commr. of Hindu Charitable and Religious Institutions & Endowments, Hyderabad, (1976) 1 SCC 292, (4JJ) (paras 2, 3 and 7).

5.3 Having been held to be a denomination by the High Court of Kerala after taking oral and documentary evidence including *Devaprashnam*, which finding is *res judicata*, Article 26(b) of the Constitution, though subject to Article 25(2)(b) of the Constitution, does not result in discrimination against a particular category of women since the law made under Article 25(2)(b) itself permits the exclusion of this category of women [The Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965].

(a) Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, (1962 Supp (2) SCR 496), (CB) (from SCC Online) (para 33).

5.4 Similarly, the finding in the PIL on the issue of denomination, being a judgment *in rem*, has to be treated as final and should be allowed to rest.

(a) State of Karnataka v. All India Manufacturers Organization, (2006) 4 SCC 683, (3JJ) (paras 32-35).

**New Delhi
Dated: 19.07.2018**

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**PAGES 19 TO 21 ADDED AS LAST THREE PAGES OF DR.
SINGHVI'S WRITTEN SUBMISSIONS**

**VII. NOTE ON ARTICLE 13, COI --- ARTICLE 13(1)
INAPPLICABLE AND ARTICLE 13(2) WILL NOT VOID
LAWS/CUSTOMS ETC. IF OTHERWISE PROTECTED
UNDER ARTICLES 25/26**

- 7.1** Facially, the text of Article 13(1) makes it clear that it is concerned only with pre-constitutional laws. No doubt law includes custom or usage having the force of law as per Article 13(3)(a).
- 7.2** As far as law other than custom and usage is concerned, Article 13(1) will not apply because the law involved in the present case (viz. 1950 Act r/w 1965 Act) is a post constitutional law.
- 7.3** To the extent that the custom and usage followed by Sabarimala in excluding women in the age group 10-50 is pre-constitutional and to the extent the Sabarimala denominational Temple relies upon the 1950 Act read with 1965 Act and also the Rules made thereunder, both would be liable to be challenged in terms of Article 13(1) (as regards custom or usage) and also Article 13(2) (as regards the 1950 and 1965 Acts).

- 7.4** The issue, however, is not whether the custom and/or usage and/or law fall or does not fall within Articles 13(1) and 13(2). The short point which arises is that assuming without conceding that they do so fall under Articles 13(1) and 13(2), whether as pre-constitutional custom/usage or as post constitutional law, whether they are protected under Articles 25 and 26 of the same Constitution in the same Part-III? It is obvious that if they are, they cannot be voided by an application of Articles 13(1) and/or 13(2).
- 7.5** If the Court holds that the custom/usage/law propounded by the Sabarimala denominational Temple is indeed protected under Articles 25 and 26 then the application or non-application of Article 13 would become irrelevant. Conversely, if this Hon'ble Court holds that the practice sought to be supported by the Sabarimala Temple does not fall within the arc of the constitutional protection of Articles 25 and 26, then also, the whole reference to and reliance upon Article 13 would be irrelevant. It is, therefore, submitted that in either event reference to Article 13 would be irrelevant.
- 7.6** The Supreme Court has held that religious beliefs, customs and practices based upon religious faith and scriptures (and, it is, submitted, *a fortiori*, confirmatory and consolidating post constitutional acts of legislatures) cannot be treated as void.
- See, inter-alia,
- **Riju Prasad Sarma v. State of Assam, (2015) 9 SCC 461, (DB) (Para 66)**
- See also,
- **Keshavan Madhava Menon v. State of Bombay, 1951 SCR (from SCC Online) (7JJ) (Para 15)**
- And
- **Mahendra Lal Jaini v. State of U.P., 1963 Supp (1) SCR 912 (from SCC Online) (CB) (Paras 18 to 21)**

on the differences between Articles 13(1) and 13(2) and the scope of the voiding effect, if any.