

IN THE SUPREME COURT OF INDIA AT NEW DELHI

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 373..... OF 2006

IN THE MATTER OF:

1. Indian Young Lawyers Association
Through its General Secretary,
Ms. Bhakti Pasrija,
S-513, Second Floor,
Main Vikas Marg,
Sakarpur Part-II
Delhi-II
2. Ms. Bhakti Pasrija
General Secretary,
Indian Young Lawyers Association,
S-513, Second Floor,
Main Vikas Marg,
Sakarpur Part-II
Delhi-II
3. Dr. Laxmi Shastiri,
Assistant Treasurer,
Supreme Court Bar Association,
H.No. 37/29,
Old Rajender Nagar,
New Delhi.
4. Ms. Perna Kumari
F-135, Nar Vihar-II
Sector-34
NOIDA
5. Ms. Alka Sharma,
47, Vasant Apartments,
Mayur Vihar Phase -I Extn.
Delhi 110091.
6. Ms. Sudha Pal
C-141,
New Ashok Nagar
Delhi-110096

...Petitioners

Versus

1. The State of Kerala
Through the Chief Secretary,
Govt. of Kerala

Thiruvananthapuram.
Kerala

✓ 2. Travancore Devaswom Board,
Through its President,
G. Raman Nair,
Thiruvananthapuram.
Kerala

3. The Devaswom Commissioner,
Travancore Devaswom Board,
Thiruvananthapuram,
Kerala

4. The Chief Thanthri,
Sabarimala Temple,
Pathanamthitta,
Kerala.

5. The District Magistrate,
Pathanamthitta,
Kerala.

Respondents

**WRIT PETITION UNDER ARTICLE 32 OF
THE CONSTITUTION OF INDIA**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THIS HON'BLE COURT

THE HUMBLE PETITION OF THE PETITIONERS

MOST RESPECTFULLY SHOWETH:

1. This is a writ petition filed in *public interest* under article 32 of the Constitution of India seeking writ of mandamus commanding the Government of Kerala, Dewaswom Board of Travancore, Chief Thanthri of Sabarimala Temple and the District Magistrate of Pathanamthitta and their officers to ensure entry of female devotees

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between the age group of 10 to 50 at the Lord Ayyappa Temple at Sabarimala (Kerala) which has been denied to them on the basis of certain anti-Hindu ill conceived Hindu custom or usage as reported in certain news papers including an article written by Barkha Dutt, Managing Editor of NDTV published in Hindustan Times on 1.7.2006 and an article written by Shravani Pandit published in an English daily "The Times Of India" (New Delhi Edition) as on July 1, 2006; and consequently, challenging the validity of rule 3(b) of Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 framed in exercise of powers conferred by section 4 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 (wherein under women were not allowed to enter temple premises at such time during which they were not by custom or usage allowed to enter a place of worship) for being violative of Articles 14, 15, 25 and 51A(e) of the Constitution of India.

2. That the petitioner no.1 is a registered association of young lawyers practicing in the Supreme Court of India and different High Courts. It consists of both male and female members. The petitioner no. 2 is the General Secretary of this association and is also member of the Executive Committee of the Supreme Court Bar Association. The petitioner no. 3 is the Assistant Treasurer of the Supreme Court Bar Association. The petitioner no. 4 is the member of the Executive Committee of the Supreme Court Bar Association while petitioner no.5 is the member of the Supreme Court Bar Association. The Petitioner no.6 is the former member of Executive Committee of the Supreme Court Bar Association. The Petitioners are all actively involved in social developmental activities especially activities related

to upliftment of women and helping them become aware of their rights.

3. That the petitioners have come to know through certain news paper reports including articles written by Barkha Dutt, Managing Editor of NDTV (published in Hindustan Times on 1.7.2006), by Sharvani Pandit (published in an English daily "The Times Of India" (New Delhi Edition) as on July 1, 2006) and by Vir Sanghvi (published in Sunday Hindustan Times on 2.7.2006) that at the Lord Ayyappa Temple at Sabarimala (Kerala) female devotees between the age group of 10 to 50 have been denied entry and their touching the feet of Lord Ayyappa has been taken as desecration of the Hindu Deity. It has been reported that this practice has been followed on the basis of certain anti-Hindu ill conceived Hindu custom or usage not recognized in Hindu religion which places female in very high esteem and regard and where female deities like Durga, Sarswati and Lakshmi, Jaimata Di are worshipped as mothers. Contrary to this Hindu religion, its customs and traditions, attempt has been made to prosecute an Kannada actress namely Ms. Jaimala for desecrating the Hindu Deity when she had disclosed that she had visited the sanctum sanctorum in 1987 and touched the feet of the presiding deity Lord Ayyappa 20 years back which as per the priests amounted to desecration. The priests there carried special ceremony in order to purify the Deity. On the other hand, within 25 days of this incident, the petitioners have been informed that through a news item published on 25.7.2006 in "Hindustan Times" which reads as under:

"SEX SLUR FELLS SABARIMALA PRIEST

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Thiruvananthapuram, July 24: Sabarimala shrine seems to be hurtling into one controversy after another. And the latest one is why far be unholyest of them all. Supreme priest Mohanaru Kantaru has been sacked for his alleged involvement "in a sex racket".

In a strange twist, it wasn't the police who went to Kantaru but the priest who approached them, with a complaint that he'd been abducted by some people and forced to pose with a woman of dubious character. The Ernakulam police found out that the priest's story was fabricated and that he'd visited the woman's flat of his own accord. "About six months back, this woman was arrested for immoral trafficking. We have evidence he visited her house at least 20 times," DIG A. Padma Kumar told a leading Malayalam Channel.

The DIG added that Kantaru probably made up the kidnap theory after his neighbours objected to his visiting the woman and tried to manhandle him. The police will file a formal complaint against the priest on Tuesday."

The True copies of articles written by Barkha Dutt, Managing Editor of NDTV (published in Hindustan Times on 1.7.2006), by Sharvani Pandit (published in an English daily "The Times Of India" (New Delhi Edition) as on July 1, 2006) and by Vir Sanghvi (published in Sunday Hindustan Times on 2.7.2006) are annexed herewith and marked as **Annexures P-1 to P-3** while a news paper report published in Hindustan Times as on 25.7.2006 is annexed herewith and marked as **Annexure P-4** to this Petition.

5. That the most surprising part of this practice is that it is carried under the State through a statutory Board. It is submitted that the Lord Ayyappa Temple at Sabarimala is managed by a statutory Board created under the Travancore Cochin Hindu Religious Institutions Act

XVth of 1950 passed by the State Legislature of Kerala in the year 1950. The temple is partially funded by public money-the State of Kerala gives the Temple Board Rs. 8 lakhs every year in grants. Surely this makes the temple accountable to comply with the basic constitutional standards of equality. The Board so constituted comprises of President and two Members. The President and one Member is nominated by the Hindu members of the Council of Ministers while the other Member is nominated from the Hindu Members of State legislature. The term of the President and Members is for a period of four years. It has a secretariat and its headquarters is at Nanthancode, Thiruvananthapuram headed by the Secretary of the Board.

The Board has been entrusted with the task of administering 1194 temples in the erstwhile princely State of Travancore comprised in the state of Kerala. It was earlier administered by the ruler of Travancore prior to the integration of the Princely states of Travancore and Cochin in 1949. The Constitution of the Board was based on the Covenant entered in to by the Maharaja of Travancore in May 1949 and concurred and guaranteed by the Government of India.

5. That as per the false legend circulating about Lord Ayyappa he was born out of the union of Lord Shiva and Mohini (an incarnation of Lord Vishnu). The abandoned baby was adopted by King Rajasekhara of Pathalarn in Kerala. But when a son was born to the royal couple the queen tried to kill Ayyappan by sending him to get the milk of a tigress. Ayyapan saw through the deceit and survived, but has

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harboured a deep distrust against women ever since then. This is cited by the temple authorities as the reason why women are barred from entering or worshipping at the temple. The other false legend circulating about Lord Ayyappa was that he was a lifelong bachelor who made the hill top his home after a vow of celibacy and hence it was believed that the touch of a woman is enough to desecrate him and amounts to sacrilege. In order to justify this anti-Hindu discriminatory practice, the temple authorities have sought to justify the ban on the ground that in order to be worthy of offering prayers at the Ayyappa temple in Sabarimala the devotees have to undertake a 41 day penance-abstaining from non-vegetarian food, swearing and sexual relations and then have to undertake the arduous journey through the dense, insects and wild animals ridden forests of the Sabarimala hills which is considered too harsh a task for a woman. Another justification has been given by the Temple authorities is that by allowing women to mix with male pilgrims it would create a law and order problem.

However, the actual reason behind this practice was male chauvinism percolated in their behaviour through use of force prescribing male dominated ethos for weaker sex in their daily routines. It also appears to be the influence of other religion where women are prohibited from places of worship. It is clear from another reason for this practice as cited by the Temple authorities is that Women who have attained puberty are barred from the temple as it is believed that their menstrual blood would stain the sacred spirit. These are the grounds on which entry is denied to women.

It is humbly submitted that Govt. *qua* statutory Board has failed

to address the problem of gender inequality and discrimination on the grounds of sex and the infringement of the Fundamental Right to Freedom Of Religion enshrined under Article 25 of the Constitution of India which allows freedom of conscience and the right freely to propagate religion subject to public order, morality, and health and to other provisions of this Part. Since this practice is not only immoral but also against Articles 14 & 15 of the Constitution of India and therefore such the management has no right to claim this right under Article 25 & 26 of the Constitution of India. Again what Articles 25 & 26 guarantees is freedom to practice religion and since this practice does not fall in Hindu religion and therefore they cannot carry such anti-Hindu practice in the name of Hindu religion. They have to justify that this practice falls within the ambit of Hindu religion.

6. That on legal research made by the petitioners it has been found that this socio-religious malady is due to rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 framed in exercise of powers conferred by section 4 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 wherein under women were not allowed to enter temple premises at such time during which they were not by custom or usage allowed to enter a place of worship. Although this progressive enactment had been passed by the State of Kerala with a view to permit entry of all sections of Hindu society including those belonging to Schedule Castes and Schedule Tribes but while exercising rule making power conferred under section 4 of the Act, unintentionally they have permitted ban on entry of women which were not allowed as per any custom or usage. It is on the basis of this rule, the Division Bench of

High Court of Kerala in S. Mahendran Vs. The Secretary, Travancore Devaswom Board, Thiruvananthpuram and Ors. reported in AIR 1993 Kerala 42 (alongwith an application for Impleadment filed by Indian Federation of Women Lawyers, Kerala Branch) has not only upheld this practice of banning the entry of women in places of worship but also issued directions directing that the women of this age shall not be allowed in this Temple. The Hon'ble High gone to the extent of directing the State of Kerala to provide all necessary assistance including police assistance. The relevant extract of this judgment is quoted as under:

“In the light of the aforesaid conclusions we direct the first respondent; the Travancore Devaswom Board, not to permit women above the age of 10 and below the age of 50 to trek the holy hills of Sabarimala in connection with the pilgrimage to the Sabarimala temple and from offering worship at Sabarimala Shrine during any period of the year. We also direct the third respondent, Government of Kerala, to render all necessary assistance inclusive of police and to see that the directions which we have issued to the Devaswom Board is implemented and complied with.”

The true copies of Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 dated 31.12.1965 Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 dated 19.07.1966 and the judgment of Division Bench of High Court of Kerala in S. Mahendran Vs. The Secretary, Travancore Devaswom Board, Thiruvananthpuram and Ors. reported in AIR 1993 Kerala 42 are annexed herewith and marked as **Annexure P-5** to **P-7** to this Petition.

7. That as back as in the 1954, the seven judges Bench of this Hon'ble Court in the Commissioner, Hindu Religious Endowments, Madras Vs Shri Lakhshmindra Thirtha Swamiar of Sri Shirur Mutt reported in 1954 SCR 1005 has delved upon the scope of Articles 25 & 26 of the Constitution of India guaranteeing religious freedom to everyone under Article 25 and to religious denomination under Article 26 of the Constitution of India. In the said judgment the seven Judges Bench held that what is protected under Articles 25 and 26 of the Constitution of India is the essential part of the religion which is to be ascertained from the basic tenets of any religion. The relevant extract of this judgment at page 1025 is quoted as under:

“The contention formulated in such broad terms cannot, we think, be supported. In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or, that there should be daily recital of daily text or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Art. 26 (b).”

8. That it is humbly submitted that discrimination in matters of entry to Temples is neither a ritual nor a ceremony associated with Hindu religion. The Hindu religion does discriminate against women. Rather

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on the other hand, as per Hindu religion women are at higher pedestal in comparison to men. Such discrimination is totally anti-Hindu. However, the High Court of Kerala in S. Mahendran case (supra) has held this ban as an integral part of Hindu religion.

The relevant extract of this judgment on this point is quoted as under:

“That leads us to the further question as to whether preventing women of the age group of 10 to 50 from entering the Sabarimala Temple is a matter of religion. A religion cannot only lay down a code of ethical rules, but it can also prescribe rituals, observances, ceremonies and modes of worship. These observances and rituals are also regarded as integral parts of religion. If the tenets of religion lay down that certain ceremonies are to be performed at certain times in a particular manner, those ceremonies are matters of religion and are to be enforced as a religious belief.”

It is humbly submitted that the aforesaid proposition is not only against the basic tenets of Hindu religion but also against the judgment of the seven judges Bench of this Hon'ble Court in the Commissioner, Hindu Religious Endowments, Madras Vs Shri Lakhshmindra Thirtha Swamiar of Sri Shirur Mutt. It may be submitted that matters relating to entry of Hindus are neither ritual nor part of ceremony. The religious denomination can only regulate the entry in the temples or restrict the entry in *garb grah* without any discrimination where only priests could enter but cannot ban entry making discrimination on the basis of sex.

9. That in order to prevent banning of entry of certain sections of the society specially those of Harijans in Hindu Temples in Kerala, the

State of Kerala passed Hindu Places of Public Worship (Authorization of Entry) Act 1965, was passed. Section 3 of the Act provides that :-

“Every place of public worship which is open to classes of Hindus or no Hindu of whatsoever section or class shall, in any manner, be prevented, obstructed or discouraged from entering such place of public worship, or from worshipping or offering prayer there at, or performing any religious service therein, in the like manner and to the like extent as any other Hindu of whatsoever section or class may so enter, worship, pray or perform”.

It is submitted that in exercise of powers conferred by section 4 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, Regulations have been framed wherein under rule 3(b) of of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules,1965 women were not allowed to enter temple premises at such time during which they were not by custom or usage allowed to enter a place of worship. This rule is not only contrary to the parent Act but also against Articles 14, 15, 25 and 51A(e) of the Constitution. in view of this provision contained in Section 3 of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act 1965, the Prevention of entry of women in Sabarimala temple amounts to discrimination and offends the Act. The relevant extract of this rule is quoted as under:

“Rule 3: The classes of persons mentioned here under shall not be entitled to offer worship in any place of public worship or bath in or use the water of any sacred tank, well, spring or water course appurtenant to a place of public worship whether situate within or outside precincts thereof, or any sacred place

including a hill or hill lock, or a road, street or pathways which is requisite for obtaining access to the place of public worship.

.....
(b) Women at such time during which they are not by custom and usage allowed to enter a place of public worship.”

10. That the petitioner has therefore been advised to challenge the validity of this rule 3(b) of Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules,1965 wherein under women were not allowed to enter temple premises at such time during which they were not by custom or usage allowed to enter a place of worship. This rule, it is submitted had been heavily relied by the Kerala High Court in S. Mahendran case (supra), by making the following observations:

“Moreover the right conferred under Section 3 is subject to the restrictions imposed in R.3. Women who are not by custom and usage allowed to enter a place of public worship shall not be entitled to enter or offer worship shall not be entitled to enter or offer worship in any place of public worship. That amounts to reasonable restrictions and the entry in Sabarimala temple is prohibited only in respect of women of a particular age group and not women as a class.”

It is submitted that rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules,1965 had not been challenged as there are no findings in the judgment.

11. That it may be stated that the Constitution Bench of this Hon'ble Court in the case of Sri Venkatramana Devaru & Ors. v. State of Mysore & Ors.(1958) SCR 895 at page 920 has categorically held that the religious denomination cannot completely exclude the members of

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any community. They can restrict their entry in certain rituals. Justice Venkatarama Aiyar observed that the right recognized by Art.25(2)(b) must necessarily be subject to some limitations or regulations, and one such limitation or regulation must arise in the process of harmonizing the right conferred by Art.25(2)(b) with that protected by Art.26(b). The relevant extract of this judgment at page 920 is quoted as under;

“We have held that the right of a denomination to wholly exclude members of the public from worshipping in the temple though comprised in Art.26(b), must yield to the overriding right declared by Art.25(2)(b) in favour of the public to enter into a temple for worship. But where the right claimed is not one of general and total exclusion of the public from worship in the temple at all times but of exclusion from certain religious services, they being limited by the rules of the foundation to the members of the denomination, then the question is not whether Art.25(2)(b) overrides that right so as to extinguish it, but whether it is possible-so to regulate the rights of the persons protected by Art 25(2)(b) as to give effect to both the rights. if the denominational rights are such that to give effect to them would substantially reduce the right conferred by Art.25(2)(b), then of course, on our conclusion that Art.25(2)(b) prevails as against Art.26(b), the denominational rights must vanish. But where that is not the position, and after giving effect to the rights of the denomination what is left to the public of the right of worship is something substantial and not merely the husk of it, there is no reason why we should not so construe Art.25(2)(b) as to give effect to Art.26(b), and recognize the rights of the denomination in respect of matters which are strictly denominational, leaving the rights of the public in other respects unaffected.’

12. That the Hon'ble High Court of Kerala, disregarding all propositions of law laid by the Apex Court on the scope of Articles 25 & 26 of the

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Constitution by making an erroneous appreciation of these judgments then concluded as under:

“(1) The restriction imposed on women aged above 10 and below 50 from trekking the holy hills of Sabarimala and offering worship at Sabarimala Shrine is in accordance with the usage prevalent from time immemorial.

(2) Such restrictions imposed by the Devaswom board is violative of Articles 15, 25 and 26 of the Constitution of India.

(3) Such restrictions are also not violative of the provisions of Hindu Place of Public Worship (Authorization of Entry) Act, 1965 since there is no restriction between one section and another section or between one class and another class among the Hindus in the matter of entry to a temple whereas the prohibition is only in respect of women of a particular age group and not women as a class.”

13. That it is humbly submitted that as per the information received by the petitioner from the Court Informative Centre at Supreme Court, no special leave petition has been filed before this Hon'ble Court against this judgment dated 5.4.1991 of the Kerala High Court in O.P. No.9015 of 1990-S. Thus on such crucial issues this Hon'ble Court did not give its views and the judgment of Kerala High Court has attained finality where writ has not been only dismissed but direction has been issued to State of Kerala to give police assistance ensuring that no woman enters in the temple.

14. That it is submitted that as per language of Article 25 of the Constitution all persons are *equally* entitled to freedom of conscience and the right freely to profess, practice and propagate religion. The expression “equally” is very significant which gives right to worship

to everyone equally. The relevant of article 25 of the Constitution is quoted as under:

Article. 25: Freedom of conscience and free profession, practice and propagation of religion- (1) Subject to public order, morality and health and to the other provisions this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.”

15. That, on the other hand, Article 26 is not only limited to religious denomination but also to “any section thereof” which includes the section of women also. For the purpose of appreciating the scope of Articles 26 of the Constitution the same is quoted as under:

Article.26: Freedom to manage religious affairs- Subject to public order, morality and health, every religious denomination or any section thereof shall have the right –

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law.

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Thus, right under Article 26 is not limited to only religious denomination only but also to any of its section including the class of women.

16. That it is submitted that in case of conflict between the right of religious denomination and that of individual, it is the individual's right which is to be given preference.
17. That it is humbly submitted that this practice is not only against the Hindu religion, customs, tradition and culture but also against the spirit of our Constitution which prohibits any kind of discrimination against women. The most disgraceful part of this story is that when an Actress disclosed that she had worshipped Lord Ayyappa at Sabarimala, the management conducted rituals to purify the Temple which is totally anti-Hindu practice where women are not only allowed to have equal right to worship but are given special entry enabling them to offer prayers. There is no ritual, practice, custom, or tradition in Hindu religion which discriminate against women. On the other hand, in Hindu religion there is practice of worshipping Goddesses like Durga, Lakshmi and Saraswati. The whole incident has shocked the devotees of Hindu religion specially women who are so disgracefully treated in a State which has boasted of achieving 100% literacy. These articles so published therefore requires immediate attention of this Hon'ble Court for the purpose of investigation and inquiry.
18. That although the temple has displayed its progressive nature by allowing people from other faiths to worship at the temple, even allowing people belonging to the Dalit community to offer prayers at the temple it has not done enough to fight discrimination on the basis

of gender. Let alone be given entry into the sanctum sanctorum, women are not even allowed within the eight kilometers thick forests surrounding the temple.

19. That it is submitted that the religious practices and customs had changed during the last 55 years particularly after 1950, the year in which the renovation of the temple took place after the "fire disaster". Even while the old customs prevailed, women used to visit the temple. The Maharaja of Travancore accompanied by Maharani and Divan had visited the temple in 1115 M.E.. There was thus no prohibition for women to enter the temple in olden days. Many female worshippers had gone to the temple within the age group of 10 to 50 for the first rice-feeding ceremony of their children (Chottonu). A change in the old custom and practice was brought about by installing a flag staff (Dhwajam) in 1969. The practice of breaking coconuts on the 18 steps was discontinued and worshippers were allowed to crack the coconuts only on a stone placed below the eighteen sacred steps (Pathinettaam Padi). When the Thantris' have brought about such important changes then the rigidity in not letting the women of the age group of 10 to 50 inside the temple seems to be absurd.

20. That the petitioner is now left with no remedy except to move this Hon'ble Court for immediate relief. The petitioner has not filed any such writ petition ever before any High Court nor before this Hon'ble Court and is invoking the extra ordinary original jurisdiction of this Hon'ble Court under Article 32 of the constitution for the first time *inter alia* on the following amongst other

GROUNDS

- A. BECAUSE a statutory Board created under an statute cannot violate constitutional provisions contained in Articles 14, 15 & 25 and is duty bound to give effect to 51A (e) of the Constitution of India which casts a fundamental constitutional to renounce practices derogatory to the dignity of women. Thus, apart from ensuring gender equality it has renounce such practices which is derogatory to women. It is submitted that the Lord Ayyappa Temple at Sabarimala is managed by a statutory Board created under the Travancore Cochin Hindu Religious Institutions Act XVth of 1950 passed by the State Legislature of Kerela in the year 1950 which is partially funded by public money-the State of Kerala giving the Temple Board a grant of Rs. 8 lakhs every year.

- B. BECAUSE as back as in the 1954, the seven judges Bench of this Hon'ble Court in the Commissioner, Hindu Religious Endowments, Madras Vs Shri Lakhshmindra Thirtha Swamiar. of Sri Shirur Mutt reported in 1954 SCR 1005 has held that what is protected under Articles 25 and 26 of the Constitution of India is the *essential part* of the religion which is to be ascertained from the basic tenets of any religion. It is submitted that discrimination in matters of entry to Temples is neither a ritual nor a ceremony associated with Hindu religion. The Hindu religion does discriminate against women. Rather on the other hand, as per Hindu religion women are at higher pedestal in comparison to men. Such discrimination is totally anti-Hindu. The religious denomination

can only regulate the entry in the temples or restrict the entry in *gurb grah* without any discrimination where only priests could enter but cannot ban entry making discrimination on the basis of sex.

However, the High Court of Kerala in *S. Mahendran* case (*supra*) has held this ban as an integral part of Hindu religion. It is humbly submitted that the proposition as laid down by High Court of Kerala is not only against the basic tenets of Hindu religion but also against the judgment of the seven judges Bench of this Hon'ble Court in the *Commissioner, Hindu Religious Endowments, Madras Vs Shri Lakhshmindra Thirtha Swamiar of Sri Shirur Mutt.*

C. BECAUSE the Constitution Bench of this Hon'ble Court in the case of *Sri Venkatramana Devaru & Ors. v. State of Mysore & Ors.*(1958) SCR 895 at page 920 has categorically held that the religious denomination cannot completely exclude the members of any community. They can restrict their entry in certain rituals. Justice Venkatarama Aiyar observed that the right recognized by Art.25(2)(b) must necessarily be subject to some limitations or regulations, and one such limitation or regulation must arise in the process of harmonizing the right conferred by Art.25(2)(b) with that protected by Art.26(b).

D. BECAUSE this socio-religious malady is due to rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules,1965 framed in exercise of powers conferred by section 4 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 wherein under women were

not allowed to enter temple premises at such time during which they were not by custom or usage allowed to enter a place of worship. Although this progressive enactment had been passed by the State of Kerala with a view to permit entry of all sections of Hindu society including those belonging to Schedule Castes and Schedule Tribes but while exercising rule making power conferred under section 4 of the Act, unintentionally they have permitted ban on entry of women which were not allowed as per any custom or usage.

It is on the basis of this rule, the Division Bench of High Court of Kerala in S. Mahendran Vs. The Secretary, Travancore Devaswom Board, Thiruvananthpuram and Ors. reported in AIR 1993 Kerala 42 (alongwith an application for Impleadment filed by Indian Federation of Women Lawyers, Kerala Branch) has not only upheld this practice of banning the entry of women in places of worship but also issued directions directing that the women of this age shall not be allowed in this Temple. The Hon'ble High gone to the extent of directing the State of Kerala to provide all necessary assistance including police assistance.

E. BECAUSE this rule 3(b) of Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules,1965 is violative of Articles 14, 15, 25 & 51A of the Constitution of India wherein under women were not allowed to enter temple premises at such time during which they were not by custom or usage allowed to enter a place of worship. The Hon'ble High Court of Kerala has committed manifest error by relying this rule in their judgment

while justifying the ban. It may be submitted that rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 had not been challenged as there are no findings in the judgment.

- F. BECAUSE as per language of Article 25 of the Constitution all persons are *equally* entitled to freedom of conscience and the right freely to profess, practice and propagate religion. The expression "equally" is very significant which gives right to worship to everyone equally. Similarly, Article 26 is not only limited to religious denomination but also to "any section thereof" which includes the section of women also. It is submitted that in case of conflict between the right of religious denomination and that of individual, it is the individual's right which is to be given preference.
- G. BECAUSE it is submitted that the religious practices and customs had changed during the last 55 years particularly after 1950, the year in which the renovation of the temple took place after the "fire disaster". Even while the old customs prevailed, women used to visit the temple. The Maharaja of Travancore accompanied by Maharani and Divan had visited the temple in 1115 M.E.. There was thus no prohibition for women to enter the temple in olden days. Many female worshippers had gone to the temple within the age group of 10 to 50 for the first rice-feeding ceremony of their children (Chottonu). A change in the old custom and practice was brought about by installing a flag staff (Dhwajam) in 1969. The practice of breaking coconuts on the 18 steps was discontinued and worshippers were allowed to

crack the coconuts only on a stone placed below the eighteen sacred steps (Pathinettaam Padi). When the Thantris' have brought about such important changes then the rigidity in not letting the women of the age group of 10 to 50 inside the temple seems to be absurd.

- H. BECAUSE it is humbly submitted that Govt. *qua* statutory Board has failed to address the problem of gender inequality and discrimination on the grounds of sex and the infringement of the Fundamental Right to Freedom of Religion enshrined under Article 25 of the Constitution of India which allows freedom of conscience and the right freely to propagate religion subject to public order, morality, and health and to other provisions of this Part. Since this practice is not only immoral but also against Articles 14 & 15 of the Constitution of India and therefore such the management has no right to claim this right under Article 25 & 26 of the Constitution of India. Again what Articles 25 & 26 guarantees is freedom to practice religion and since this practice does not fall in Hindu religion and therefore they cannot carry such anti-Hindu practice in the name of Hindu religion. They have to justify that this practice falls within the ambit of Hindu religion.
- I. BECAUSE the articles on non-entry of women in the Sabarimala temple written by one Barkha Dutt in the English daily "The Hindustan Times" on and Shravani Pandit published in English Daily "The Times Of India" (New Delhi Edition) as on July 1, 2006 reflects upon very disturbing facts wherein it has been reported that with a view to avoid the

deseccration of Lord Ayyappa the entry of women between age of 10 and 50 years within the temple premises are not allowed . The article so published requires immediate attention of this Hon'ble Court for the purpose of investigation and inquiry.

- J. BECAUSE the State is duty bound to protect the Fundamental Rights of the citizens irrespective of caste, creed, race, sex and religion. It has failed to provide gender equality and protect the right to Freedom of Religion.
- K. BECAUSE it is not a feature of Hindu religious practice to bar women from taking part in religious ceremonies. Rather banning their entry amounts to anti-Hindu custom not permissible in Hindu religion. In Hindu religion women are allowed to offer prayers and worship at temples irrespective of whether they are menstruating or not.
- L. BECAUSE the theory that women cannot worship at the altar of lord Ayyappa as he is a bachelor does not hold good as women are allowed to enter the temples of other deities who have adopted bachelorhood, case in point being Lord Hanuman who was a lifelong bachelor.
- M. BECAUSE the temple is partially funded by public money-the State of Kerala gives the Temple board Rs. 8 lakhs every year in grants. Surely this makes the temple accountable to comply with the basic constitutional standards of equality.
- N. BECAUSE the argument that women are incapable of undertaking the 41 day penance and making the arduous trek to the temple through the dense and hilly terrain infested with wild animals and insects is based in gender inequality and

discrimination on the basis of sex as it implies that women cannot do what men can.

O. BECAUSE the practice of exclusion of women from worshipping lord Ayyappa is not universal .In Kolar district of Karnataka there is a temple of Lord Ayyappa where the priest in-charge of the temple is a woman named Shantha Kumari.Apart from being a woman she is also a dalit.All the rituals and ceremonies of sabarimala are followed by this temple and women are allowed to worship here though they have to take permission.

P. BECAUSE a precedent has been set in 2004 where women were not allowed inside Sawai Madhopur's Ghushmeshwar Mahadev Temple but eventually they were allowed to enter after a ruckus was created when the then Rajasthan Education Minister Ghanshyam Tiwari and his wife performed puja inside that temple.Hence there have been instances where temples which have barred women from entering have later removed such restrictions.

PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to

- a) Issue any appropriate writ or direction commanding the Government of Kerala, Dewaswom Board of Travancore, Chief Thanthri of Sabarimala Temple and the District Magistrate of Pathanamthitta and their officers to ensure entry of female devotees between the age group of 10 to 50 at the Lord Ayyappa Temple at Sabarimala (Kerala)

which has been denied to them on the basis of certain anti-Hindu ill conceived Hindu custom or usage as reported in certain news papers including an article written by Barkha Dutt, Managing Editor of NDTV published in Hindustan Times on 1.7.2006 and an article written by Shravani Pandit published in an English daily "The Times Of India" (New Delhi Edition) as on July 1, 2006; and consequently, challenging the validity of rule 3(b) of Kerela Hindu Places of Public Worship (Authorisation of Entry) Rules,1965 framed in exercise of powers conferred by section 4 of the Kerela Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 (wherein under women were not allowed to enter temple premises at such time during which they were not by custom or usage allowed to enter a place of worship) for being violative of Articles 14, 15, 25 and 51A(e) of the Constitution of India; and/or

- b) Issue any appropriate writ or direction quashing rule 3(b) of Kerela Hindu Places of Public Worship (Authorisation of Entry) Rules,1965 framed in exercise of powers conferred by section 4 of the Kerela Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 (wherein under women were not allowed to enter temple premises at such time during which they were not by custom or usage allowed to enter a place of worship) for being violative of Articles 14, 15, 25 and 51A(e) of the Constitution of India; and/or
- c) Issue any appropriate writ or direction commanding the State Govt. of Kerala and the Travancore Devaswom Board to investigate and inquire into the disturbing news so mentioned in prayer (a) ; and/or
- d) Issue any appropriate writ or direction commanding the Respondents to deploy adequate police personnel in order to ensure

the safety of the women pilgrims at the Ayyappa temple at Sabarimala.

- e) Issue any appropriate writ or direction laying judicial guidelines in matters of gender inequality related to religious practices in places of worship.
- f) Pass any other order or orders which may be deemed fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IS DUTY BOUND SHALL EVER PRAY.

Drawn & Filed By:

RAVI PRAKASH GUPTA
PETITIONER-PERSON

Drawn on : 28.07.2006
Filed on : 28.07.2006