

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
REVIEW PETITION No. of 2018
In
WRIT PETITION NO. 373 OF 2006**

(Arising out of Impugned final Judgment and order 28.09.2018
passed by this Hon'ble Court in Writ Petition No. 373 of 2006)

IN THE MATTER OF:-

ALL KERALA BRAHMINS ASSOCIATION,
(also known as 'KERALA BRAHMANA SABHA').

.... Review Petitioner

Versus

INDIAN YOUNG LAWYERS ASSOCIATION AND ORS.

...Respondents

WITH

I.A. No. of 2018

in

Application for permission to Review Petition

AND

I.A. No. of 2018

In

Application for Oral Hearing

PAPER BOOK

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SYNOPSIS

The present Review Petition is being filed in an atmosphere where spontaneous demonstrations of Ayyappa devotees have broken not only all across the State of Kerala but also throughout the country as well as amongst the significant number of Ayyappa devotees all across the World. The said Review Petition is being filed by the All Kerala Brahmins Association known as the 'Kerala Brahmana Sabha' against the majority judgment dated 28.09.2018 passed by this Hon'ble Court in Writ Petition (Civil) No: 373 of 2006-titled as '*Indian Young Lawyers Association &Ors v State of Kerala &Ors*'. The review petitioner herein, had preferred an Application for Intervention as party respondent in Writ Petition (Civil) No: 373 of 2006, which was registered as I.A.No: 10525 of 2018 and which was filed on 19.01.2018. As the impugned judgment disposes of the intervention applications, the review petitioner who is vitally affected by the impugned judgment seeks to file the present Review Petition, along with an application for permission to file the same.

LIST OF DATES

SL NO.	DATES	EVENTS
01.	1949	Princely States of Travancore and Cochin were integrated leading to promulgation of an Ordinance 4/ 1124 in respect of administration of Padmanabhaswamy Temple and Devaswom both incorporated and unincorporated. It interalia provided that management of the Devaswom shall continue to be carried on as hereto before.
02.	01.08.1949	A further Ordinance titled ' <i>The Hindu Religious Institutions Ordinance, 1124</i> ' was promulgated directing the Devaswom Board to arrange for the conduct of daily worship, ceremonies and festivals in every temple according to its usage.
03.	1950	Soon, Travancore Cochin Hindu Religious Institutions Act, 1950 was passed in order to regulate more than 1000 temples in the State of Kerala. Under this enactment, a board of 3 members had to be constituted called 'Travancore Devaswom Board'. The Board comprises of 3 members 1 President and 2 members. The President and 1 of the 2 members are nominated from the Hindu Members of the Council of Ministers, while the other member is nominated from the Hindu Members of the State Legislature. The term of the President and members is for a period of 4 years. It has its Secretariat and HQ at Nanthancode, Thiruvananthapuram.

04. 1950 The Ayyappa Temple at Sabarimala was destroyed.
05. 31.12.1965 The Hindu Places of Public Worship (Authorization of Entry) Act, 1965 was passed by the State Legislature.
06. 19.07.1966 In exercise of the powers conferred under section 4 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 regulations were framed and under Rule 3 (b) of the Kerala Hindu Places of Worship (Authorisation of Entry) Rules 1965, women were not allowed to enter the temple premises at such time during which they were not by custom or usage allowed to enter a place of worship.
07. 05.04.1991 The Hon'ble High Court in the matter titled '*S.Mahendran v The Secretary, Travancore Devaswom Board, Thiruvananthapuram &Ors*' reported in AIR 1993 Ker 42 concluded as follows:-
(i) *The restriction imposed on women aged above 10 and below 50 years from trekking the holy hills of Sabarimala and offering worship at Sabarimala shrine is in accordance with the usage prevalent from time immemorial.*
(ii) *Such restrictions imposed by the Devaswom Board are not in violation of Art 15, 25 and 26 of the Constitution of India;*
(iii) *Such restrictive practices are also not in violation of Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 since there is no*

restriction between 2 sections or between 2 classes amongst Hindus in the matter of Entry to a temple whereas the prohibition is only in respect fo women of a particular age group and no women as a class'

08. 28.07.2006 Writ Petition(C) No:373 of 2006 was filed.
09. 19.01.2018 Review petitioner herein, preferred an Application for Intervention as party respondent in Writ Petition (Civil) No: 373 of 2006, which was registered as I.A.No: 10525 of 2018 and which was filed on 19.01.2018.
10. 28.09.2018 This Hon'ble Court held by a 4:1 majority that the practice of restricting entry to women aged between 10-50 years to be unconstitutional.
11. 13.10.2018 As the impugned judgment disposes of the intervention applications, the review petitioner who is vitally affected by the impugned judgment seeks to file the present Review Petition, along with an application for permission to file the same.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

REVIEW PETITION No. of 2018

In

WRIT PETITION NO. 373 OF 2006

IN THE MATTER OF:-

1. Indian Young Lawyers Association
Through its General Secretary,
Ms. Bhakti Pasrija

[REDACTED]
[REDACTED]
[REDACTED]

2. Ms Bhakti Pasrija
General Secretary
Indian Young Lawyers Association

[REDACTED]
[REDACTED]
[REDACTED]

3. Dr. Laxmi Shastri
Assistant Treasurer
Supreme Court Bar Association
H.No.37/29, Old Rajender Nagar
New Delhi

4. Ms. Purna Kumari
F-135, Nar Vihar-II
Sector-34, Noida
Uttar Pradesh

5. Ms Alka Sharma
47-Vasanty Apartments
Mayur Vihar Phase-I Extension
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
Thiruvananthpuram, Kerala
2. Travancore Devaswom Board
Through its President,
G. Raman Nair,
Thiruvananthpuram,
Kerala
3. The Devaswom Commissioner
Travancore Devaswom Board,
Thiruvananthpuram,
Kerala
4. The Chief Thanthri
Sabarimala Temple
Pathanamthitta,
Kerala
5. The District Magistrate
Pathanamthitta,
Kerala

Respondents

And In the matter of Review Petition:

1. ALL KERALA BRAHMINS ASSOCIATION,
(also known as 'KERALA BRAHMANA
SABHA')
Head office,
UstavaMattom Buildings,
Fort, Thiruvananthapuram,
Kerala State.

Review
Petitioner/Applicant

Versus

1. Indian Young Lawyers Association
Through its General Secretary,
Ms. Bhakti Pasrija
[REDACTED]
[REDACTED]
[REDACTED]

2. Ms. Bhakti Pasrija
General Secretary
Indian Young Lawyers Association

[REDACTED]
[REDACTED]
[REDACTED]

3. Dr. Laxmi Shastri
Assistant Treasurer
Supreme Court Bar Association

[REDACTED]
[REDACTED]

4. Ms. Prerna Kumari

[REDACTED]
[REDACTED]
Uttar Pradesh

5. Ms. Alka Sharma

[REDACTED]
[REDACTED]
[REDACTED]

6. Ms. Sudha Pal

[REDACTED]
[REDACTED]

Contesting
Respondents

**REVIEW PETITION UNDER ARTICLE 137 OF THE
CONSTITUTION OF INDIA READ WITH ORDER XL RULE 1 OF
THE SUPREME COURT RULES, 1966 ON BEHALF OF ALL
KERALA BRAHMINS ASSOCIATION**

To,

THE HON'BLE THE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES OF
THE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present Review Petition is being filed by the All Kerala Brahmins Association known as the 'Kerala Brahmana Sabha' against the majority judgment dated 28.09.2018 passed by this Hon'ble Court in Writ Petition (Civil) No: 373 of 2006-titled as '*Indian Young Lawyers Association &Ors v State of Kerala &Ors*'. The review petitioner herein, had preferred an Application for Intervention as party respondent in Writ Petition (Civil) No: 373 of 2006, which was registered as I.A.No: 10525 of 2018 and which was filed on 19.01.2018. As the impugned judgment disposes of the intervention applications, the review petitioner who is vitally affected by the impugned judgment seeks to file the present Review Petition, along with an application for permission to file the same. A copy of the intervention application filed by the review petitioner herein and the Officer Report indicating the date of filing of the Intervention Application is annexed hereto and marked as **Annexure-'P-1'** and **Annexure-'P-2'**.

2. It is most respectfully submitted that the majority judgment of the Constitution Bench dated 28.09.2018 passed by this Hon'ble Court suffers from several serious errors apparent on the face of the judgment and records and as such merits interference under Review Jurisdiction. It is submitted that such serious and apparent errors have resulted in a grave miscarriage of justice in so far as the actual devotees of Lord Ayyappa are concerned. Review Petitioner's are the Vanitha Vibahag of the Kerala Brahmana Sabha and was formed to promote activities of the Kerala Brahmana Sabha and help it to achieve its aims and objectives. Another significant aspect that impels the review petitioner herein to approach this Court by way of the present petition is because Lord Ayyappa is the ruling diety of the petitioner's community. The members of the petitioner have since time immemorial scrupulously adhered to the traditions.

3. It is most respectfully submitted that the errors which are apparent on the face of the judgment are set out herein below as Grounds for review and are taken without prejudice to one another.

4. Grounds

4.1 The Writ Petition was filed by 5 women placing reliance upon two articles, one article by Sharvani Pandit published in "*The Times of India*" (New Delhi Edition) and the other by BarkhaDutt (who was then Managing Editor of NDTV 24*7) published in Hindusthan Times and praying for directions from the State of Kerala, Devaswom Board, Chief Tantri of Sabarimala Temple and District Magistrate of Pathanmthitta to ensure entry of female devotees between the age group of 10 to 50 years. It is humbly submitted that the said articles lacked any historical basis and displayed a poor understanding of the temple practices in so far as it sought to link the restriction on entry of women belonging to a certain age group with the issue of Gender Discrimination.

4.1.1 It is significant to note that there was no averment regarding the petitioner's being devotees of Lord Ayyappa. The writ petition further did not contain any averment that they even harboured a remote desire to visit the Sabarimala Temple. Further, the said issue throws factual aspects which cannot be adjudicated in a writ petition under Article 32 of the Constitution of India. In point of fact, no evidence much less any effort to produce the same was made by the writ petitioners to support the claims made in the Writ Petition.

4.1.2 In the present case, judicial notice has also to be taken of events that transpired post pronouncement of judgment in the instant case, which clearly demonstrate that overwhelmingly large section of women worshippers including the review petitioners herein

are supporting the custom of prohibiting the entry of women between the age group of 10 and 50 years at Sabarimala Temple. Granting of reliefs prayed for in the Writ Petition that too at the instance of third parties, who did not bother to mention whether they were devotees and harboured a desire to go to the Hill Temple, completely ignoring the opposition by a large section of staunch women worshippers is erroneous.

4.1.3 It is overlooking such fundamental aspects relating to locus (maintainability) that this Hon'ble Court vide its majority judgment (with the exception of Justice Nariman) allowed the Writ Petition and this would tantamount to an error apparent on the face of the record leading to grave miscarriage of justice in so far as millions of devotees of Lord Ayyappa. This would be clearly evident from a mere perusal of the judgments rendered by the majority (except Justice Nariman), which are fraught with errors in law and erroneous assumptions on facts that the practice in question stemmed from notions of impurity attached to the biological process of menstruation. On the contrary, this aspect of maintainability has been dealt with by the lone dissenting judge in her dissent.

4.2 It is submitted that the impugned judgment was rendered behind the back of the review petitioners and millions of devotees of Lord Ayyappa and therefore it cannot bind the devotees as it ignores the fundamental principle that a judgment between X and Y can bind them alone and cannot by any stretch of imagination be construed as binding upon Z, especially when it disregards the beliefs, customs held by a large number of women worshippers that too without issuing a public notice to the persons affected thereby. In other words, the impugned judgment has been passed contrary to the fundamental principle of natural justice that all Courts and Judicial Bodies shall hear the parties who are likely to be adversely affected by their order has been violated in the instant case. It is submitted that the impugned judgment has been rendered in violation of the

preamble to the Constitution of India which guarantees to all citizens, liberty of thought, belief, faith and worship.

4.2.1 Ordinarily, review of a judgment is sought by the parties to the litigation, who have had an opportunity to partake in the hearing of the case. However, in the instant case the petitioners as well as scores of other devotees whose fundamental right of belief and faith have been seriously impacted have had no opportunity in the adjudication of the above case.

4.2.2 Further, the majority judgment is completely bereft of any discussion as to whether religious beliefs can be tested on the touchstone of rationality. The said aspect is dealt with in considerable detail in the lone dissenting judgment. It is most respectfully submitted that the failure of the majority judges to consider this matter is an error apparent on the face of the judgment leading to grave miscarriage of justice.

4.2.3 In point of fact, the said majority judgment is one rendered without taking into account the ground realities viz. that devotees consider the diety at Sabarimala as Naishtika Brahmachari, whose Darshan is permissible only to those who take a vow for 41 days, which includes not merely abstention from sex, but living in isolation from the rest of the family, refraining from interacting with women in daily life etc and thus the pilgrimage to Lord Ayyappa temple at Sabarimala is a class in itself, founded on faith, which will mean no discrimination of women except those women within the age group of 10 to 50 years.

4.3 Errors Apparent on the Face of the Judgment leading to grave miscarriage of Justice in the Majority Opinion

The said opinion has been rendered inter alia under the following heads:

(i) Devotees of Lord Ayyappa do not constitute a 'Religious Denomination';

(ii) Whether restriction on entry of women is an essential practise of Hindu Religion:-

(iii) Provisions of 1965 Act and Rule 3 (b) of the 1965 Rules;

4.3.1 Devotees of Lord Ayyappa do not constitute a Religious Denomination: It is submitted that the said finding has been arrived at by an erroneous application of law. It is significant to note that the Constitution does not define the word 'religious discrimination'. This suggests that the constitution makers leaned in favour of flexibility rather than rigidity. This is because they were aware of the inherent limitations in attempting to define the contours of what might constitute a religious denomination. To hold that the devotees of Sabarimala Temple do not constitute a religious denomination merely because they do not fit in with the western notions of religious denomination would be self-defeating.

(i) It is most respectfully submitted that the fundamental requirements of a religious denomination are (i) Spiritual Organisation (ii) common bond and the existence of unique practices which flow from its beliefs. Sabarimala Temple fulfils each of the said requirements. Moreover, it is unique in as much as it is a Temple based on Tantra philosophy and the tantric school is very different although it comes within the Hindu Fold. This is evidenced by the fact that the Chief Tantri placed reliance on the Tantra Samucchaya, which does not find mention anywhere in the Opinion of Judges. It is therefore a denominational temple under Article 26 of the Constitution of India, its practices, including the practice in question is protected by the proviso to section 3 of the 1965 Act.

(ii) It is most humbly submitted that the Opinion merely proceeds on the basis that since Sabarimala Temple is essentially

Hindu Temple, its followers are Hindus. If this logic is applied then word 'Hindu Religious Denomination' will be rendered superfluous as they are essentially subsumed in the word 'Hindu'. Such an approach is clearly not sustainable in the eye of law and is therefore an error apparent on the face of the judgment leading to grave miscarriage of justice.

4.3.2 Whether restriction on entry of women is an essential practise of Hindu Religion :-The Majority judgment at page 112 proceeds on the basis that since the devotees of Lord Ayyappa do not constitute a separate religious denomination, it leads to mathematical certainty that the devotees of Lord Ayyappa are the followers of Hindu Religion. It is on the basis of this fundamentally erroneous premise that the issue of whether restriction on entry of women is an essential practice of Hindu Religion was framed and dealt with. The Judgment has unnecessarily widened the scope by going into the question of whether the practise in question is an essential aspect of Hindu Religion instead of confining the scope to the question as to whether the said practice is an essential aspect of the Sabarimala Temple. (See paragraph 122). It is respectfully submitted that the Court ought not to have taken a broad-brush approach in a matter which impacts millions of devotees of Lord Ayyappa. In applying the broad-brush approach, the Court has completely ignored the diverse practices, traditions and schools which exist within the Hindu faith. In arriving at the aforesaid conclusion, the Hon'ble Court has completely disregarded the examples of the Hindu Temples dedicated to Female diety's, where restrictions are placed on the entry and participation of men in the Temple and its practices.

(i) The finding entered by the Court that there is no scriptural or textual evidence to support the practice of the Sabarimala Temple is clearly erroneous in as much it has been

rendered without considering much less even making an attempt to consider the scripture specifically relating to the history and traditions of the Ayyappa Temple viz. BoothanathaUpakhyanam. Another grave flaw is that the Court did not deem it fit to go into opinions of people who are well versed with the scriptures before holding that the practice in question is not an essential aspect.

(ii) It is submitted that the majority opinion in question placed undue reliance upon stand adopted by the Travancore Devaswom Board before the High Court of Kerala in the Mahendran matter to hold that the practise of restriction of entry of women was a mere custom with some aberrations. It is submitted that the reliance placed upon the stand of the Travancore Devaswom is wholly incorrect as the Travancore Devaswom Board has no say in the religious practises of the Temple as its only concern is regarding secular administration of the Temple. The sole authority of the temple in relation to its religious practices is the Chief Tanthri. In fact, the Chief Tantri's stand was not even adverted to in the Majority opinion. The conclusion is further incorrect in view of several colonial era records and scriptures that describe in detail about the uniqueness of the Temple and its practices. This is an error apparent on the face of the judgment leading to grave miscarriage of justice.

(iii) The Opinion of the majority also fails to adequately consider the underlying reason why the practice in question is prevalent solely in the Sabarimala Ayyappa Temple and not in other Ayyappa Temples in Kerala. The underlying reason is directly related to the form of the diety in the various Ayyappa Temples. In most Ayyappa temples, the diety exists in the form of Dharma Sastha, in some temples (like in AchankovilSreeDharmasastha Temple) he exists in the form of a Grihasha i.e. a householder with two consorts viz. Poorna and Pushkala. It is only in the Sabarimala Temple that the diety is in the form of a '*Naishtika Brahmachari*'. The restriction on the entry of women in a particular age group essentially stems the

nature of the diety and the bonafide belief based on scriptures and is in no way related to notions of impurity and pollution associated with the biological process of menstruation.

(iv) Conflation of two distinct arguments in relation to the basis for restriction of entry of women in the age group of 10 to 50 viz. restriction based on menstrual blood and restriction based on form of diety. It is submitted that Thanthri's affidavit referred to in the Opinion clearly states that it is the celibate form of the diety that is the primary basis of the practice. Restriction based on menstrual blood is traceable to the treatise that codifies practices related to Tantric Temples namely ThanthraSamuchhaya, which is expressly referred to by the Chief Thanthri, according to which there is an express prohibition against spilling blood, be it menstrual or on account of injuries. Restriction based on the form of diety has its basis in the scriptures viz. BhootanathaUpakhyanam, which is referred to by the Thanthri, both in his affidavit before this Hon'ble Court and before the High Court in the Mahendran matter. Even assuming the restriction based on menstrual blood fails, the restriction based on the form of diety would still stand as it can by no stretch of imagination be construed as discriminatory. The non-consideration of these factors in the majority renders the same liable to a review on the ground of errors on the face of the impugned judgment leading to grave miscarriage of justice.

4.3.3 Analysis of the 1965 Act and Rule 3 (b) of the 1965 Rules:-

The discussion in the majority opinion under this head is on the premise that as the devotees of Lord Ayyappa do not constitute a religious denomination, proviso to section 3 of the 1965 Act does not apply to them and therefore the practice of the Temple cannot be protected under the proviso to section 3 of the 1965 Act. It is submitted that the purport of section 3 must be viewed in the context

of Article 25 (2) (b) and its interplay with religious practices under Article 25 (1) since section 3 is effectively a statutory counterpart to Article 25 (2) (b) of the Constitution of India. The object of Article 25 (2) (b) read with section 3 of the 1965 Act cannot by any stretch of imagination be construed as being for homogenising religious diversity in Hindu traditions and beliefs. It is most respectfully submitted that the restriction on entry of women in the age group 10 to 50 is directly relatable to the form of the diety and does not stem from any discriminatory practice and therefore Article 25 (2) (b) and Section 3 of the 1965 Act have no application.

(i) It is further submitted that Article 25 (2) (b) of the Constitution of India and Section 3 of the 1965 Act are both gender neutral and neither of the provisions refer to gender when they refer to '*section or class*' of Hindus, which is evident from the definition provided in section 2 (c) of the 1965 Act which states that '*section or class*' includes any division, sub-division, caste, sub-caste, sect or denomination whatsoever. In fact, it is submitted that absence of reference to gender in the said provisions points to the fact that it was consciously left out to preserve the diversity in Hindu Religious Practices. Therefore, the finding in so far as it links 'restriction on entry of women in a particular age group' with 'gender discrimination' is clearly erroneous.

(ii) It is submitted that in interpreting Rule 3 (b), the reference to women must be deemed to include men in view of the diverse traditions of temples in Kerala, especially those which subscribe to Tantric beliefs and are not governed by Agama Shastras. This is so especially in view of the fact that there are several temples where the diety is a woman and restrictions are placed on men for entry and participation in the rituals. By striking down the entire Rule, the majority view has set at naught the diversity in Temple Practices in Kerala without examining the basis for such practices or understanding the peculiar history of temples in that religion.

(iii) It is submitted that Rule 3 is merely a codification of the pre-existing practices and customs of Kerala Temples, which are drawn from the text *ThanthraSamuchhaya* i.e. practices in question were not introduced for the first time by virtue of the said Rule. Therefore, the petitioner's challenge to Rule 3 (b) and impugned notification must be understood in the said backdrop. Article 25 (2) enables only the legislature to pass any laws for the purposes and objects specifically enumerated therein. In other words, it is most respectfully submitted that this Hon'ble Court cannot exercise any power under Article 25 (2) in so far as section 3, Rule 3 or the impugned notification is concerned. Simply put, examination will be confined to the constitutionality of Rule 3 (b) and the impugned notification on the anvils of Article 25 (1) and Article 26 only and not under Article 25 (2) (b) of the Constitution of India. Another aspect is that since Rule 3 (b) merely codifies pre-existing practices, Article 14 or 15 (1) cannot be invoked to challenge a pre-existing practice merely because it has been codified by the State. Therefore, in examining the constitutionality of the Rule, the analysis would have to be limited to Article 25 (1) and Article 26 of the Constitution of India. Non-consideration of these aspects in the Majority opinion is an error apparent on the face of the judgment leading to grave miscarriage of justice.

3.4 That the substance of the Learned Judge's (Justice Chandrachud) majority opinion is that in all scenarios qua religious institutions, preminence ought to be given to the right of the individual. It is most respectfully submitted that this is a fundamentally flawed premise since the right under Article 25 (1) is expressly subject to other provisions of Part-III, which includes the right of religious denomination under Article 26 of the Constitution of India. Rights of individuals under Article 25 (1) are subject to the rights of other individuals under Article 25 (1) to preserve the traditions and usages of the religious institution, especially those

traditions and practices which are central to the character and identity of the place of worship. This nuance finds no mention in the Opinion of Justice Chandrachud.

(i) The Learned Judge in his majority opinion concludes that exclusion of women with reproductive capabilities has nothing to do with the celibate nature of the Diety at the Sabarimala Temple and is therefore not an essential religious practice eventhough the petitioner produced not even a shred of evidence in relation to the same. In fact the respondents in the writ petition had placed considerable material in terms of scriptural evidence (BhoothanathaUpanakhyanam) etc to show that the practice in question has been going on from time immemorial. However, Learned Judge at para 51, 52 and 53 ignores all relevant material produced by the respondents, while narrating the aberrations in the observance of the practice. At paras 54 and 55, there is no discussion about the tantric nature of the temple and the celibate form of the diety. The issue has been examined solely from the prism of individual dignity without any reference to examples of temples where similar restrictions are placed on men with respect to their entry and participation in festivals celebrating female dieties. The said Opinion adopts an ostrich like attitude and fails to factor the ground realities as to the reason for the aberrations. The opinion failed to appreciate that aberrations could be result of the propensity of some individuals who were in control either in the Travancore Devaswom Board to please or indulge influential people or the State's interference in the religious practices of the temple. In fact the said opinion fails to advert to such possibilities. In any view, such aberrations can by no stretch of imagination be treated as proof of non-existence of the rule. Non-consideration of this aspect in the Opinion is an error apparent on the face of the judgment.

(ii) The majority opinion of the Learned Judge erred in holding that diety has a legal personage only for the purpose of suing or being sued and that the said legal personage cannot be extended for the purposes of enjoyment and assertion of fundamental rights as a living / juristic person under Article 25 (1) and Article 21 of the Constitution of India. In the discussion, diety's character was sought to be equated with that of a body corporate. It is most humbly submitted the comparison is incorrect and does not countenance the fact that in the case of a diety, religious belief accords it the status of a living person and is very different from the vesting of juristic character in a body corporate. In point of fact, the judgment has questioned a fundamental aspect of the Hindu belief which considers its dieties as living persons. Beliefs have the force of law in so far as the religious practices are concerned. Thus the belief that there exists Lord Ayyappa as a living person translates to the said living diety enjoying rights under Article 25 (1) asserted through the Chief Thanthri, his devotees. As the diety is a living person under the law, the Diety (through the Chief Thanthri and his devotees) has a fundamental right to practice his faith and his vow of Naishtika Brahmacharya under Article 25 (1) of the Constitution of India. Therefore, this is an error apparent on the face of judgment which has lead to grave miscarriage of justice.

(iii) It is submitted that the majority opinion erred in not balancing the rights under Article 13 and 25 (1) having regard to the crucial element of diversity without treating individual rights alone as paramount.

4.5 The Majority Opinion failed to appreciate the distinction between the "pilgrims" and "devotees". The 'pilgrim' is person who travel to holy place for religious reasons; Muslim pilgrims on their way to Mecca , Christian pilgrims visiting Lourdes. Whereas a "devotee" is a person who admires and is very enthusiastic. He can

be even a devotee of a particular God. It is not necessary that he should visit any temple. It is his state of affairs. Whereas a 'pilgrim' is a person who believes in a temple located in particular place. The fact that Muslim pilgrims go to Mecca itself is an example of it. The State has got a duty to facilitate the concerns and every day basic needs of the pilgrims. The facilities offered to tourists and pilgrims are different. The worshippers to the temple need the purity they require while visiting temples. The ambience required for tourists who visit a temple and worshippers are different. A devotee may go as a tourist to any temple where permitted. But not to certain places where only those who come on pilgrimage are allowed. Pilgrimage are sacred journey. They require a different environment. A pilgrimage to temple enables the devotee to live within the context of a sacred narrative. Devotees will become pilgrims if they got to a particular temple. In that circumstances they have to follow different custom and usage followed in such temples.

4.5.1 The custom or usage followed in each temple for differs:-

- (i) In Kerala men are not allowed to wear pants inside the temple. They have to wear Dhothis'. Whereas females have not such restriction. But in temples in northern there is no such restriction.
- (ii) Shirts have to be removed to enter certain temples. But no such restriction to women. Such type of restrictions not imposed on temples outside the Kerala.
- (iii) Ladies of all ages are not permitted in SadaUdayarTemple ,Thirunelveli, in Tamil Nadu there is a complete ban for ladies. In Kidangoor in Kottayam District idol is that of BalaSubrahmonian and thus grown ladies are not

permitted to have darshan of the deity standing directly in front of the Sreekovil.

- (iv) Certain temples close and open at particular time. It differs from temple to temple. For example Sabarimala does not open on all days. Whereas temples like Thirupathy closes only for two hours at night. Certain temples in northern India follow a different practice of opening and closing.
- (v) The poojas performed at temples differ. The Ganapathy Homam performed in Sabarimala differs in all aspects.
- (vi) In temples like Pazhani (Tamil Nadu) and Thirupathi (Andhra Pradesh) the devotees donate their hair by complete shave at the temple. But no such facility is available in similar temples in other parts of the country and world.

4.5.2 Like that, the Sree Dharma Sastha has many forms like Sree Ayyappa, Sree Bhuthanathan, Sree Hariharaputhra Swamy, Vettaykkorumakan, Ayyanar etc. Though all of them pertains to Lord Dharmasastha, the concept of the deity at each temple is different. Hence various types of puja karmas, nivedyams, conventions etc. are ordained and put into practice since time immemorial.

4.5.3 The finding that there is no identified group called Ayyappan is incorrect. The male worshipers who come to Sabarimala temple are a class. They maintain 41 days of *Vratham* (41-day penance). The said *Vratham* normally begins on the first day of the Malayalam month of Vrischikam in mid November. The said persons is normally described as "Ayyappan". He will not consume non-

vegetarian food or drink liquor. He conducts pooja in his house and visits temple on all occasions. He maintains celibacy. In order to get identified as Ayyappan he wears black dress, both shirt and dhoti (pants), so that others can identify him as Ayyappan who is on the way to pilgrimage to Sabarimala. Even ladies who come to the temple wear black dresses so as to ensure that they are pilgrims who follow the above rule. What is protected by the said Rule 3 (b) is the pilgrims rights which was followed, recognized under law from 1965 to 2018. The same cannot be disturbed on the ground that it discriminates and violates Art. 14 of the Constitution of India.

4.5.4 From the above it is discernible that the practice followed in each temple differs. All these customs does not restrict the pilgrims coming to that particular temple. Non-consideration of these vital aspects have lead to grave miscarriage of justice.

4.6 Further, the practise of not permitting females between the age group of 10 to 50 is held to be exclusionary without any discussion, especially in the milieu of the argument to the contrary advanced. It is respectfully submitted that it is merely a restriction and not a ban. The reason for the restriction lies in the form of the diety which is that of a permanent celibate. Thus, the restriction of worship tantamounting to a total of 40 years of the life of a female does not amount to exclusion from worship. As such, the restriction based on age of a female is not a restriction which amounts to discrimination on the ground only of 'sex'. In other words, the restriction is not solely based on the ground of gender but is more importantly based on the form of the Lord manifested in the Idol, which is that of a '*Naishtika Brahmachari*'.

4.7 The best person to know about the view of the general public is the legislature . Government has not decided to amend the said Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 allowing women to enter the Sabarimala. There is a presumption that every law made by the Government is valid unless set aside by the competent court. In this case also state Government which has brought the law is bound to support it. But strangely the Government of Kerala, for political reasons has changed its stand and supported the petitioners. If the Government of Kerala is of the opinion that the said practice should change then they ought to amend the said Act of 1965 or the Rules. Therefore, the present Government's affidavit based on Marxism principle, who do not believe in God and temple worship, cannot be accepted and acted upon for determining the issue which is of the pilgrims.

4.8 It is submitted that the majority judgments are completely bereft of any discussion on the reasons why the High Court judgment in Mahendran matter passed under Article 226 of the Constitution of India, would not constitute as res-judicata for the present proceedings under Article 32 of the Constitution of India. In any event, it is final on the facts adjudicated and its correctness may be considered only on the questions of law. This has been specifically adverted to by the lone dissenting judge in her dissent at page 63.

4.9 It is most respectfully submitted that the Majority Opinions does not correctly appreciate that Hindu Religious Gods have distinct forms ascribed to them and their worship at home and temples are ordained to achieve certain means of attaining salvation. Further, the majority opinions completely overlook the fact that Hindu dieties have both physical, temporal and philosophical form. Worship of each of these forms is unique and not all forms are worshipped by all persons. In point of fact, this is specifically laid down in the Venkataramana Devaru's case. The Sabarimala temple is

one of its kind in the country, where the diety is in the form of a 'Naisthika Brahmachari' and the restriction stems from a bonafide religious belief that the diety will not like the presence of young females and hence the females aged between 10 and 50 years are restricted from entering the temple. Failure of the majority to deal with this important aspect is an error apparent on the face of the majority judgment leading to grave miscarriage of justice.

4.10 It is submitted that the discrimination allegedly practiced by the Sabarimala Temple is unrelated to any common sense meaning of the term, as women can always worship Swami Ayyappa in their homes or in hundreds of other temples across India. To claim one wants to worship Swami Ayyappa and not have respect for what he stands for is the worst form of hypocrisy. More so, when Hinduism does not restrict your choices of god in any manner, whatsoever.

4.11 The judgments relied on by the Majority are where the Government put restrictions under law and the same were upheld. This is a case of Court removing a restriction imposed by law. It is true that Sec. 4 (1) of the Act does not make any discrimination against any Hindu on the ground that he/she belongs to a particular section. The women for the case has no restriction to pray Lord Ayyappa, but only restriction is to enter the Sabarimala temple. This Hon'ble Court ought to have found that Rule 3 (b) was enacted to enable the said pilgrims who go to Sabarimala who maintain celibacy who believe in it.

4.11.1 In northern India, in *Ajmeer* in Rajasthan there is a shrine of Hazarat Mouddinchishti where thousands of Hindus and Muslims will assemble to offer prayers. In Sabarimala also there is a Muslim Mosque popularly called as "VavarPalli" where all the Hindus go before they go to Sabarimala. There is no restriction of any kind in

even other communities entering Sabarimala. The only restriction is to women of all community between the age of 10 and 50 which was being followed for the last half century.

5. The Review Petitioner humbly submits that it has not filed any other Review Petition in this Hon'ble Court against the majority judgment of four Hon'ble Judges dated 28.09.2018 passed by this Hon'ble Court in Writ Petition (Civil) No: 373 of 2006-titled '*Indian Young Lawyers Association &Ors v State of Kerala &Ors*'.

PRAYERS

For the reasons as stated hereinabove, it is humbly and respectfully prayed that this Hon'ble Court may be pleased to:-

- (a) pass an order allowing the present review petition on all aspects filed against the majority judgment of four Hon'ble Judges dated 28.09.2018 passed by this Hon'ble Court in Writ Petition (Civil) No:373 of 2006-titled as '*Indian Young Lawyers Association &Ors v State of Kerala &Ors*' and restore the Writ Petition and dispose the same after hearing the parties;
- (b) pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

DRAWN & FILED By,

**SANAND RAMAKRISHNAN
ADVOCATE FOR THE REVIEW PETITIONER**

DRAWN ON:

FILED On: 13.10.2018