

SECTION-... ..  
IN THE SUPREME COURT OF INDIA  
CIVIL/CRIMINAL/ORIGINAL/ APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CIV/CRL.) NO\_\_\_ OF 2018  
REVIEW/WRIT/TRANSFER PETITION (CIV/CRL.) NO. OF 2018  
APPEAL (CIV/CRL.) NO. OF 2018

Shylaja Vijayan, President National Ayyappa Devotees Association & Ors  
....Review Petitioners

IN THE MATTER OF:

Indian Young Lawyers Association and Ors. ....Petitioners  
VERSUS  
The State of Kerala & Ors .....Respondent

INDEX	SL.NO	PARTICULARS	COPIES	COUER FEES
	1.			
	2.			
	3.			
	4.			
	5.			
	6.			
	7.			
	8.			
	9.			
	10.			
	11.			
		TOTAL	Rs.	

FILED BY:

RABIN MAJUMDER  
Advocate-on-Record  
for the Petitioner  
AoR.Reg.No.1825  
New Delhi.Mob:09899259811  
nudelhilawfora@gmail.com

New Delhi.  
Filed on: 08/10/2018

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2018  
IN  
WRIT PETITION (CIVIL) OF 1987  
[Seeking review of the final judgment dated 28/09/2018 passed by this Hon'ble Court in Writ  
Petition (Civil) 373 of 2006 ]

Shylaja Vijayan, President National Ayyappa Devotees Association & Ors  
....Review Petitioners

IN THE MATTER OF:

Indian Young Lawyers Association and ors .....Petitioners  
VERSUS  
The State of Kerala & Or .....Respondent

OFFICE REPORT ON LIMITATION

1. The Review Petition is within time
2. The Review Petition is barred by time and there is a delay of \_\_\_ days in filing the same against order dated 28/09/2018 and application for seeking condonation of \_\_\_\_ days delay has been filed.
3. There is a delay of \_\_\_ days in refilling the petition and petition for condonation of \_\_\_ days delay in refilling has been filed.

Place: New Delhi

Dated: \_\_/10/2018

BRANCH OFFICER

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2018  
IN

WRIT PETITION (CIVIL) 373 OF 2006

[Seeking review of the final judgment dated 28/09/2018 passed by this Hon'ble Court in Writ  
Petition (Civil) 373 of 2006 ]

Shylaja Vijayan, President National Ayyappa Devotees Association & Ors & Ors  
....Review Petitioners

IN THE MATTER OF:

Indian Young Lawyers Association and Ors. ....Petitioners  
VERSUS

The State of Kerala & Ors. ....Respondent

WITH

IA.NO. \_\_\_\_\_ OF 2018

Application for exemption from filing copy of the impugned order dated 28/09/2018 in WP(C) No.  
373 of 2006

WITH

IA.NO. \_\_\_\_\_ OF 2018

Application seeking open Court hearing of the Review Petition

WITH

IA.NO. \_\_\_\_\_ OF 2018

Application seeking stay of impugned order dated 28.09.2018 in Writ Petition No. 363 of 2006

P A P E R – B O O K

[FOR INDEX KINDLY SEE INSIDE]

FILED BY::

New Delhi,

Filed on :\_\_/08/2018

RABIN MAJUMDER

Re-Filed on : \_\_/08/ 2018  
for the Petitioner  
AoR.Reg.No.1825  
New Delhi.Mob:09899259811  
nudelhilawfora@gmail.com

Advocate-on-Record

## RECORD OF PROCEEDINGS

SL.NO. DATE OF RECORD OF PROCEEDINGS PAGE(S)

1. ORDER DATED
2. ORDER DATED
3. ORDER DATED
4. ORDER DATED
5. ORDER DATED
6. ORDER DATED
7. ORDER DATED
8. ORDER DATED
9. ORDER DATED
10. ORDER DATED
11. ORDER DATED
12. ORDER DATED
13. ORDER DATED
14. ORDER DATED
15. ORDER DATED
16. ORDER DATED
17. ORDER DATED
18. ORDER DATED
19. ORDER DATED

## INDEX

Sl. No.	Particulars of documents	Page No. of part to which it belongs	Remarks		
	Part I				
	(Contents of paper book)	Part II			
	(Contents of file alone)				
(i)	(ii)	(iii)	(iv)	(v)	
1.					Index
2.					Listing Proforma
3.					Cover Page of Paper Book A2
4.					Index of Records A3-A4
5.					Defects list
6.					Note Sheet
7.					Synopsis with dates B-F
8.					Review Petition along with affidavits.1-
9.					Appendix:-
	'A'-				Article 137 & 145 of The Constitution of India
10.					IA.NO.....OF 2018
					Application for exemption from filing copy of the impugned order dated 28/10/2018 in WP(C) No. 373/2006
11.					IA.NO.....OF 2018

Application seeking open Court hearing of the Review Petition

12. IA.NO.....OF 2018

Application seeking stay of impugned order dated 28.09.2018 passed in Writ Petition No. 363 of 2006

13. F/M

14. Memo of Appearance

15. Authority Letters

16. Extract of resolution

## PROFORMA FOR FIRST LISTING

### SECTION -X

The case pertains to (Please tick/check the correct box):

- Central Act : Constitution of India  
 Section: Art. 32 of Constitution of India  
 Central Rule : (Title) NA  
 Rule No(s): NA  
 State Act : Kerala Hindu Places of Worship Act, 1965  
 Section: NA  
 State Rule : (Title)NA  
 Rule No(s):NA  
 Impugned Interim Order: NA  
 Impugned Final Order/Decree : NA  
 High Court: (Name): Na  
 Names of Judges: NA

Tribunal/Authority: Nil

Nature of matter:

Civil Criminal

2. (a) Petitioner/appellant No.1 : Shylaja Vijayan & Ors

e-mail ID:

(c) Mobile phone number: 9220703369

3, (a)Respondent No.1: The State of Kerala & Ors

(b) e-mail ID: NIL

(c) Mobile phone number: NA

4. (a) Main category classification: 24 (Appointments etc. of Constitutional Functionaries)

(b) Sub classification: 2407(Others)

5. Not to be listed before: NA

6. Similar/Pending matter: NA

7. Criminal Matters: NA

(a) Whether accused/convict has surrendered: Yes No

(b) FIR No.NA Date: NA

(c) Police Station: NA

(d) Sentence Awarded: NIL

(e) Sentence Undergone: nil

8. Land Acquisition Matters: Na

(a) Date of Section 4 notification: Na

(b) Date of Section 6 notification: NA

(c) Date of Section 17 notification: NA

9. Tax Matters: State the tax effect: NA

10. Special Category (first petitioner/appellant only): NA

Senior citizen 65 years SC/ST Woman/child Disabled Legal Aid case/In custody

11. Vehicle Number (in case of Motor Accident Claim matters): NA

12. Decided cases with citation: NA.

Date: \_\_\_th October, 2018

RABIN MAJUMDER

Advocate-on-Record

for the Petitioner

AoR.Reg.No.1825

New Delhi.Mob:09899259811

nudelhilawfora@gmail.com

## SYNOPSIS AND LIST OF DATES

- 1.
2. Hence the instant Review Petition (Civil).

### The List of Dates

\_\_\_08.2018 Instant Review Petition filed.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2018

IN

WRIT PETITION (CIVIL) 1303 OF 1987

[Seeking review of the judgment dated 28/09/2018 passed by this Hon'ble Court in Writ Petition (Civil) 373 of 2006]

1. Shailaja Vijayan, President National Ayyappa Devotees (Women's) Association, Sai Complex, Near Joggers Park, Mira Road East, Thane, Mira Road, Thane, Maharashtra – 401107

### ... REVIEW PETITIONER NO.1

2. R.R. Nair, General Secretary, National Ayyappa Devotees Association, E-504, Blue Fields, Pacific Enclave, G.L.Compound, Powai, Mumbai – 400 076

### ... REVIEW PETITIONER NO.2

3. Girija Panicker, 337/203 Bharatjyoti Co-Op. Hsg. Soc.Ltd., Sector 11, Shantinagar, Mira Road, Thane - 401107

4. Sheela Iyer, 301, Prapatgad CHS, Umelan, Umelan road, Vasai (W), Palghar – 401 202

5. Insha Nadar, Advocate

402, Manali Bhakti Apt., Kashmirira Mira road, Thane – 401 107

... REVIEW PETITIONER NO.3

... REVIEW PETITIONER NO.4

... REVIEW PETITIONER NO.5

IN THE MATTER OF

1. INDIAN YOUNG LAWYERS ASSOCIATION GENERAL SECRETARY MS. BHAKTI PASRIJA,  
GENERAL SECRETARY, 513, SECOND FLOOR, MAIN VIKAS MARG, SAKARPUR PART-II ,  
DISTRICT: DELHI.

2. BHAKTI PASRIJA,  
GENERAL SECRETARY AT INDIAN YOUNG LAWYERS ASSOCIATION S-513, 2ND FLOOR, MAIN  
VIKAS MARG, SAKARPUR PART II , DISTRICT: DELHI , , DELHI.

3. DR. LAXMI SHASTIRI  
ASSISTANT TREASURER AT SUPREME COURT BAR ASSOCIATION H. NO. 37/29, OLD  
RAJENDER NAGAR , DISTRICT: NEW DELHI , DELHI

4. PRERNA KUMARI  
F-135, NAR VIHAR II, , DISTRICT: SECTOR 34, NOIDA , UTTAR PRADESH

5. ALKA SHARMA,  
47 VASANT APARTMENTS, MAYUR VIHAR PHASE I EXT., DELHI

6. SUDHA PAL  
C-141, , DISTRICT: NEW ASHOK NAGAR, DELHI

Versus

1. 1 THE STATE OF KERALA CHIEF SECRETARY CHIEF SECRETARY GOVT. OF KERALA,  
DISTRICT: THIRUVANANTHAPURAM , KERALA

2. TRAVANCORE DEVASWOM BOARD PRESIDENT G. RAMAN NAIR,  
THIRUVANANTHAPURAM, KERALA

3. THE DEVASWOM COMMISSIONER DIVISIONAL ENGINEER  
TRAVANCORE DEVASWOM BOARD, DISTRICT: THIRUVANANTHAPURAM, , KERALA

4. THE CHIEF THANTHRI  
SABRIMALA TEMPLE, PATHANAMTHITTA, KERALA

5. THE DISTRICT MAGISTRATE  
PATHANAMTHITTA, KERALA

6. NAIR SERVICE SOCIETY, GENERAL, SECRETARY, PERUNNA, CHANGANACHERRY,  
KERALA

7. AKHIL BHARTIYA AYYAPPA SEVA SANGHAM, GENERAL SECRETARY, POST BOX NO.  
5146 FORT POST OFFICE, DISTRICT: THIRUVANANTHAPURAM, KERALA

8. AYYAPPA SEWA SAMITHI SECRETARY AYYAPPA MANDIR MARG, SECTOR 2, R.K.  
PURAM , DISTRICT: NEW DELHI

9. DILSHAD GARDEN AYYAPPA SEWA SAMITHI PRESIDENT  
PLOT NO. R-3, SHREE AYYAPPA MANDIR MARG, DISTRICT: DILSHAD GARDAN , , DELHI

10. AYYAPPA POOJA SAMITHI PRESIDENT, 1087/LIG HB COLONY, SECTOR 31, DISTRICT: GURGAON HARYANA
11. AYYAPPA SEWA SAMITHI PRESIDENT  
AYYAPPA MANDIR, SECTOR 21 , DISTRICT: GURGAON , , HARYANA
12. SREE DHARMA SASTHA SEWA SAMAJAM SECRETARY  
67, POCKET 8, SECTOR 8 , DISTRICT: ROHINI , , DELHI
13. AKHIL BHARATHIYA MALAYALEE SANGH, GENERAL SECRETARY  
H. NO. 202, PLOT NO. C81A, KH NO. 14A. MAHAVIR ENCLAVE , DISTRICT: PALAM , , DELHI
14. SHABRIMALA AIYAPPA SEVA SAMAJAM (REGD. NO. 226/2008) ALL INDIA GENERAL SECRETARY  
KESAVSMRITHI, KALLAR, KODAVU , DISTRICT: DISTRICT-POTHANAMTHITTA , , KERALA
15. KERALA KSHETHRA SAMARAK SHANA SAMITHI (REGD. NO. 142/77) STATE PRESIDENT  
KELAPPAJI, MANDIRAM KILIPARAMBU, DEVI TEMPLE PREMISE RAILWAY STATION LINK ROAD , DISTRICT: CALICUT , , KERALA
16. MATHURA SAMITHI OF KERALA KSHETHA SAMARAKSHANA SAMITHI (REGD. NO. 142/77) STATE PRESIDENT  
KELAPPAJI MANDIRAM KILIPARAMBU, DEVI TEMPLE PREMISES RAILWAY STATION LINK ROAD , DISTRICT: CALICUT , , KERALA
17. D.V. RAMANA REDDY  
ADVOCATE AT HIGH COURT OF TELANGANA C/O PUNYAMPOONKAVANAM, A.P. KENDRA 1-8 SIR KRISHNA ESTATES, BEASANT ROAD, GOVERNORPET , DISTRICT: VIJAYWADA , , ANDHRA PRADESH
18. K.K. SABU  
KAKKANATU HOUSE NEAR AYYAPPA SWAMI TEMPLE JODKAL (P.O.), KUNDAPUR THALUK , DISTRICT: DISTT-UDUPI , KARNATAKA
19. THE PANDALAM KOTTARAM NIRVAHAKA SANGHAM PANDALAM SECRETARY,  
VRINDAVANAM, PANDOLAN PLACE, KULANADA, P.O. PATHANAMTHITTA DISTRICT , , KERALA
20. KANTARU RAJEEVARU S/D/W/Thru:- LATE SHRI KANTARU KRISHNARU  
THAZHAMON MADOM MUNDENKAVU, CHENGANNOOR, ALAPPUZHA , , KERALA
21. SMT. REKHA SATHEETHNAM S/D/W/ Thru:- N. JAYAN  
GAYATHRI, LBS ROAD THIRUVANANKULAM, P.O. ERNAKULAM , , KERALA
22. ATHMA DIVINE TRUST, TRUSTEES, VENKATESH,  
80A, KONDASWAMY ROAD, , DISTRICT: RAM NAGAR , COIMBATORE , TAMIL NADU
23. RAHUL EASWAR S/D/W/Thru:- LATE EASWARAN NAMBOOTHRI  
PERIYAMANA ILLAM, E5 SAPPHIRE, TC 14/566 VIKAS BHAVAN, PO, NANDAVANAM, DISTRICT: TRIVANDRUM KERALA
24. SABRIMALA CUSTOM PROTECTION FORUM SECRETARY ALUVA, WEST ALUVA VILLAGE ALUVA TALUK, , DISTRICT: ERNAKULAM , , KERALA

....Respondents

REVIEW PETITION UNDER ARTICLE 13(2) AND 137 OF THE CONSTITUTION OF INDIA READ WITH ORDER-XLVII OF THE SUPREME COURT RULES, 2013, SEEKING REVIEW OF THE JUDGMENT AND ORDER DATED 28/09/2018 PASSED BY THIS HON'BLE COURT IN THE ABOVE WRIT PETITION.

TO

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

THE HUMBLE PETITION OF THE PETITIONERS ABOVE NAMED  
MOST RESPECTFULLY SHEWETH:

1. The Petitioners are citizens of India and are devotees of Lord Ayyappa. The Petitioners, nay, millions of devotees of Lord Ayyappa, are at dire straits. The judgment dated 28th September, 2018 passed by this Hon'ble Court in the above Writ Petition holding that their belief that the deity at Sabarimala is in the form of Naishtika Brahmachari (eternal celibate), distinct from the idols installed in thousands of other Ayyappa temples in different parts of the country and more particularly in Kerala, Tamil Nadu, Andhra Pradesh, Karnataka etc., where there are the largest number of Ayyappa devotees, is violative of the Constitution of India has sent shock

waves among millions of Ayyappa devotees. The Petitioners consulted many lawyers, eminent and not so eminent, but none of them could answer with any amount of authoritativeness what exactly is the legal procedure by which a judgment at the hands of this Hon'ble Court holding that a belief which the Petitioners and millions of Ayyappa devotees consider sacrosanct is unconstitutional could be rectified. The Petitioners beg to submit that Shri Mathews J. Nedumpara, whom they consulted, was categorical in his view about the judgment of this Hon'ble Court. The Petitioners are advised that a judgment of the instant nature is a gross abuse of a procedure named "Public Interest Litigation" (PIL), which was evolved in early 1980s to render justice to the poor, the illiterate and ignorant who on account of their poverty, illiteracy and other disadvantages, are unable to invoke the jurisdiction of this Hon'ble Court under Article 32 and of the High Courts under Article 226 of the Constitution.

2. PIL, despite the misnomer "Public Interest Litigation" was in the domain of pro bono litigation. PIL did not mean discovery of any new remedy; no new jurisprudence; it only meant relaxation of the concept of locus standi. The five remedies of writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari named in Article 32 of the Constitution were in existence even prior to the evolution of PIL, in pre-1980s. Article 32, though often named as public law remedies, is still in the realm of enforcement of private rights and, in the context of the said Article, for the enforcement of fundamental rights. What legendary Justices P.N. Bhagwati, Y.V. Chandrachud, Krishna Iyer et al meant was that where fundamental rights of an undertrial languishing in jail for years stands infringed as he has no means to access constitutional Courts because of his incarceration, poverty, illiteracy etc., any person acting pro bona could be allowed to represent him. PIL, despite the word "public", was in the realm for enforcement of private rights. Shakespeare had said "what is in a name", but in so far as PIL is concerned, the sole word "public" did great havoc. As time passed, not merely the common man, but even eminent lawyers and Judges came to believe, may be non-consciously, unconsciously, that any PILwalas can claim himself to be the de facto Attorney General (for, Attorney General alone is, in all common law jurisdictions, considered to be entitled to represent the public at large and could claim to act on their behalf). Thus came into existence a new era of jurisprudence which is contrary to, nay, in ignorance of the first principle of jurisprudence, unfortunate though.

3. The above Writ Petition, the judgment in which the Petitioners, nay, millions of Lord Ayyappa devotees complain of today, and seek reversal thereof, was instituted by an Association called Indian Young Lawyers' Association and certain individuals. Though lot could be said about the said Association and its legal character, the Petitioners refrain from going into those issues. Suffice is to say that neither the said Association nor other Petitioners therein averred that they are devotees of Lord Ayyappa; that they were denied their right to visit the temple at Sabarimala and that such denial has resulted in violation of their fundamental rights enshrined in Part III of the Constitution. In other words, there was no 'cause of action' at all in existence for invocation of the jurisdiction of this Hon'ble Court under Article 32. Ubi jus, ibi remedium – where there is a right there is a remedy – is a fundamental principle of law. The necessary corollary thereof is that if no rights are infringed, law will provide no remedy. Without there in existence a clear infringement of rights, and in the context of Article 32, fundamental rights, and without there being no room to seek any legal remedies, the question of the Petitioners in the above Writ Petition being entitled to invoke the jurisdiction of this Hon'ble Court under Article 32 did not arise at all. The above petition at the hands of the Indian Young Lawyers' Association and others, therefore, was liable to be dismissed in limine for want of pleading of violation of any fundamental right. However, unfortunate though, the Writ Petition happened to be zealously entertained by this Hon'ble Court; a Constitution Bench of five Hon'ble Judges came to be constituted and the case was heard for many days, if not weeks. To repeat, a petition which ought to have been thrown out at the threshold has been allowed to be entertained and resulted in a judgment which, the instant Review Petitioners believe and plead, has violated their fundamental right, their right to belief, faith and worship, as enshrined in the preamble to the Constitution; so too in Article 25 thereof, and millions of Lord Ayyappa devotees and, in particular, the womenfolk.

4. This Hon'ble Court in innumerable judgments has held that it is the sentinel qui vivi of the fundamental rights of the citizens of this country. However, by rendering the judgment dated 28th September, 2018 in the above Writ Petition, which is sought to be reviewed by this Review Petition, this Hon'ble Court has, it is submitted with utmost respect, violated the



fundamental rights of millions of people, the devotees of Lord Ayyappa. The Petitioners understand that this is not the first occasion where judicial orders have resulted in violation of fundamental rights of ordinary citizens. The Petitioners are advised that in the recent past there happened to be at least three judgments like the instant one which have violated fundamental rights of common men. One is the judgment in the NJAC case. A Nine-Judge Constitution Bench of this Hon'ble Court in the Judges-2 case had rewritten the Constitution and brought in the collegium system of appointment of Judges to the higher judiciary where the Judges appoint themselves leading to large scale complaint that the Judges while appointing themselves have mostly appointed the kith and kin, nephews and juniors of sitting and former Judges of the Supreme Court and High Courts, so too of celebrated lawyers, Chief Ministers, Governors et al, and a few first generation lawyers who are all politically connected or are close to big industrial houses. The Constitution (Ninety-ninth Amendment) Act, 2014 and the National Judicial Appointment Commission Act, 2014, which is the will of the people having unanimously passed by both the Houses of the Parliament and ratified by more than 21 States, were quashed by a Five-Judge Constitution Bench of this Hon'ble Court holding that any system of appointment where Judges do not have absolute primacy is unconstitutional, which literally meant that Judges appointing themselves is the basic structure of the Constitution. The said judgment meant violation of the fundamental right of thousands of ordinary lawyers for equal opportunity for elevation along with the elite class, the kith and kin, mentioned above. The two judgments referred to above were judicial legislations. The question is, if Courts were to decide matters concerning legislative, executive and fiscal policies, so too belief and faith of the people, and that too behind their back, without they being afforded an opportunity of hearing, then how such violation of fundamental rights by the judiciary can be remedied? The framers of the Constitution would not have imagined even in the wildest of their dreams that the concept of judicial review would be stretched to the extent as is the case today.

5. The next case of which the Petitioners beg to make a reference is Criminal Appeal No..416 of 2018 arising out of Special Leave Petition (Crl.) No.5661 of 2017 (Dr. Subhash Kashinath Mahajan v. State of Maharashtra & Anr., decided on March, 20, 2018) in which a Two-Judge Bench of this Hon'ble Court literally repealed the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Review Petitioners are not on the merits of the said Act, for, the public opinion is sharply divided on the subject, but the point which the Petitioners beg to raise is different. In the said case, Dr. Subhash Kashinath Mahajan had invoked the jurisdiction of the Bombay High Court and obtained anticipatory bail, though the said Act in express terms does not have a provision for anticipatory bail for a person accused of an offence thereunder. Being successful in securing anticipatory bail, Dr. Mahajan knocked at the door of the High Court for quashing the FIR against him. The High Court declined the relief pointing out that he could seek discharge before the trial Court. The said order of the High Court was taken in challenge before this Hon'ble Court. The only question before this Hon'ble Court was whether or not the High Court was right or wrong in declining to quash the FIR against Dr. Mahajan. However, the Petitioners beg to submit with utmost respect, this Hon'ble Court took upon to itself the role of a legislature. It appointed an amicus curie, undoubtedly an 'eminent lawyer', and rendered a judgment running into 89 pages holding that no arrest could be made without following the procedure in the guidelines prescribed, which meant judicial legislation. Pandemonium broke out; the Scheduled Castes and the Scheduled Tribes, who constitute 1/4th of the population and who, unfortunately, have no representation in the Supreme Court and in many of the High Courts, protested, took the issue to the streets, arson, torching of buses, destruction of public property on large scale, all, happened. The Parliament stepped in and enacted a law to nullify the effect of the judgment in Dr. Mahajan's case.

6. Yet, another case is the banning of Jallikattu in Tamilnadu. The decision of this Hon'ble Court was taken as an affront to the great tradition and culture of Tamilians. Millions took to the streets. Marina ground of Chennai came to be an ocean of people, protesting the orders of this Hon'ble Court. The judgment sought to be reviewed by this petition is of no less dimension and gravity. Kerala is the most literate State in the country; in terms of human development index, it stands at the top. The women worshippers of Lord Ayyappa believe that the idol of Lord Ayyappa at Sabarimala is that of Naishtika Brahmachari (eternal celibate), in the sense that Lord Ayyappa as a Brahmachari wanted to keep himself away from all sorts of mundane distractions and, therefore, has allowed the devotees to visit him during "Mandalakalam" and a few days of every Malayalam months. Rest of the time no worshippers are allowed; there are no poojas and

the faith is that Lord Ayyappa, nay, Lord Manikanthan, wanted to keep himself not being distracted by the presence of ladies of fertile ages. This is a faith and faith cannot be judged by scientific or rationale reasons or logic. The educated devotees of Kerala; so too rest of the world understood it as no kind of discrimination; the women devotees are allowed to enter thousands of other temples in Kerala, so too in the width and breadth of the country, and worship Lord Ayyappa.

7. Judicial review is a concept which has gained acceptance in the United States of America and other common law countries, including India. However, nowhere in the world millions march to the streets complaining about violation of their very fundamental right, say, for employment, to do business, or practice their custom, belief and faith as seen in the recent past in the cases of ban of Jallikattu, liquor vending shops within 500 metres of highways, women protesting in thousands against the order of the Court declaring that they have a right to enter Sabarimala, all on the ground that it violates their fundamental rights, their freedom to do business, profession, employment, their belief. Nowhere in the world people go to lawyers and seek a solution for violation of their fundamental rights by a judicial order rendered behind their back. This is a problem exclusively for India and it is a fallout of ignorance of fundamental principles of law by the so-called legal luminaries, including late venerable Nani Palkhiwala, the propounder of the doctrine of basic structure of the Constitution and the PIL jurisdiction which has converted the High Courts and the Supreme Court into legislature, executive and judiciary, all at once.

8. The concept of judicial review was very much in vogue prior to the promulgation of our Constitution. Even the validity of an Act or statutory instrument could be challenged on the ground that it is violative of the Government of India Act, 1935, the de facto Constitution, or any law enacted by the Central or Provincial legislature. It means that judicial review was by institution of a suit. The Founding Fathers would not have contemplated a scenario where the validity of an Act of Parliament or even constitutional provisions could be challenged by a proceeding under Article 32 or Article 226. If they had visualized that judicial review could be sought by institution of a suit in a Civil Court of competent jurisdiction, then no declaration or decree could be obtained unless the plaintiff were to plead that she or he is a person aggrieved and that there exists a cause of action. If the Indian Young Lawyers' Association and others, the Petitioners in the above Writ Petition, were to institute a suit, they would certainly have been required to plead that their fundamental or legal rights are infringed and that they are 'persons aggrieved'. And if they were to seek a relief for themselves, they would be required to file an application under Order I Rule 8(2) of the Civil Procedure Code (CPC). This Hon'ble Court in Charanjit Lal Choudhury v. Union of India & others, AIR 1951 SC 41, wherein the constitutional validity of the Sholapur Spinning and Weaving Company (Emergency Provisions) Act (XXVIII of 1950) was challenged, held that a remedy akin to a declaration cannot be granted under Article 32 and that a suit is the appropriate remedy. However, as time passed, since this Hon'ble Court literally became the siege of a few elite class of lawyers and Judges, a few families, petitions challenging the constitutional validity of an Act of Parliament/ statutory instrument came to be instituted and the issue of its maintainability was refused to be raised by the Attorney Generals and Law Officers. The fundamental principle that under Article 226 no declaration could be sought and the validity of an Act of Parliament or statutory instrument has to be challenged by institution of a suit came to be forgotten. Alas, if today, the Petitioners beg to submit, one were to take a plea that the appropriate procedure to challenge the constitutional validity of an Act of Parliament or a statutory instrument by a civil suit, it will be considered as ignorance of the constitutional law. The Founding Fathers did not visualize the Supreme Court as the first and final Court of litigation becoming an exclusive constitutional Court. Nothing could be more contrary to the provisions of the Constitution than the said proposition, which may on the face of it appear to be correct. Had the true scheme of the Constitution been followed and writs other than the five named in Article 32 been declined by the Supreme Court, the scenario as the present one where millions of common men and women taking to streets protesting against the judgments of the Supreme Court and High Courts rendered behind their back, without notice to and without hearing them, would not have arisen at all. To repeat, the scenario as the current one of thousands of Lord Ayyappa devotees on the streets of Kerala complaining that their fundamental rights are violated by the orders of the Supreme Court, that the Supreme Court has passed the order without notice to and without hearing them, would not have arisen.

9. As stated at the outset, the Review Petitioners sought legal opinion as to what is the remedy (procedure) for the great injustice caused to them. They are advised that there could possibly be three means, namely, (a) a petition for review of the judgment under Article 137 of the Constitution, (b) a petition under Article 32 or even under Article 226 of the Constitution for a declaration that the judgment in question is one rendered void ab initio (not per incuriam, which is a different concept) and (c) a suit before a Civil Court of competent jurisdiction for a declaration that the judgment is a nullity in so far as it has been rendered behind the back of the Petitioners and thousands of Lord Ayyappa devotees and has thereby violated their fundamental right, namely, liberty of thought, expression, belief, faith and worship, embodied in the preamble to the Constitution; so too Article 25 thereof. The Petitioners beg to delve into the three remedies (procedures) which they have been advised to take recourse to.

10. Article 137 of the Constitution reads thus:-

“137. Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.”

The Parliament has not made any law in terms of Article 137. However, the Supreme Court has framed rules in exercise of its power under Article 147 read with Article 137. It is only appropriate to extract the relevant part of the rules and the Petitioners beg to do so as infra:-

(To be quoted)

As could be manifest from the rules quoted above, they are akin to Order XLVII Rule 1 of the CPC. In terms of the rules above, no review could be sought on the ground that the majority opinion is erroneous. The reason is simple. A Court is free to err within its jurisdiction and its decision, howsoever erroneous it could be, will bind the parties to the cause. If a Court were to hold that 1+1 is 0, it is undoubtedly erroneous, but a judicial decision is binding not because it is correct but because the doctrine of res judicata, one of the fundamental principles of law on which the edifice of the rule of law is built, requires judicial decisions to be accepted as final, binding and authoritative. The Petitioners are not elaborating into the reasons given by the majority of Hon'ble Judges in the three separate judgments because an argument that the reasoning given by them are erroneous is not a legal ground for review, though to do so may be appealing to the common man.

11. Article 137 of the Constitution read with the rules framed by this Hon'ble Court, quoted above, entitle the Petitioners to seek a review of the judgment in the above Writ Petition because the said judgment is vitiated by errors apparent on the face of the record. 'Errors apparent on the face of the record' are always errors of law, the judgment sought to be reviewed being (a) without jurisdiction or in excess of jurisdiction, (b) in violation of the principles of natural justice and (c) in violation of express constitutional and statutory provisions or settled principles of law. The said judgment is without jurisdiction as the jurisdiction vested in this Hon'ble Court under Article 32 is for the enforcement of fundamental rights. The very title of Article 32 says: "Remedies for enforcement of rights conferred by this Part", namely, the fundamental rights enshrined in Part III of the Constitution. The writ Petitioner Indian Young Lawyers' Association, an inanimate entity, cannot plead any fundamental right; only a human being, an animate entity, can claim a fundamental right. In the above Writ Petition, the Indian Young Lawyers' Association was the first Petitioner and Dr. Laxmi Shastiri, Prerna Kumari, Alka Sharma and Sudha Pal were the other Petitioners. None of them, as is manifest from the judgment under review, and in particular the dissenting judgment of Hon'ble Ms. Justice Indu Malhotra, has a complaint of violation of any of their fundamental rights guaranteed under Part III of the Constitution; without asserting that their fundamental rights are violated, none of the remedies named in Article 32 could have been claimed or sought.

12. As has been reported by the Bar and Bench.com, one of the writ Petitioners, Prerna Kumari, wanted to withdraw the Writ Petition because:

“When I filed petition in this matter, I was not fully aware of the facts of this case. Further, I am not from Kerala. ... After I filed the case I received a letter from a woman devotee. The devotee told me that there are many Lord Ayyappa temples in Kerala where women are allowed to enter and can worship. Further, there are woman priests also in Kerala. Importantly, she told that women in Kerala are themselves not interested in entering the temple so why was I taking the initiative for

them? I then did some study and felt that I might have unintentionally hurt the sentiments of the devotees there. I realised that I was wrong. I came to know about many facts at a later stage. I tried to withdraw my petition but the Supreme Court had already been seized of the case. (Then) Chief Justice of India Dipak Misra even remarked in open court that the Court will hear the case even if the petitioners withdraw their petitions since it was a public interest litigation. ...”

If what is attributed to Ms. Prerna Kumari, as reported by Bar and Bench.com, is true, the Review Petitioners beg to submit that it is really very unfortunate. If this Hon'ble Court was told that the women devotees themselves are in support of the custom prevalent founded on the belief that Lord Ayyappa is a Naishtika Brahmachari and desires not to be visited by fertile women, it could have immediately dismissed the so-called PIL.

13. Section 4 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 and Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 made thereunder, which prohibited entry of women of the age group of 10 to 50 into the Sabarimala temple is a statutory embodiment of the belief and faith of the devotees of Lord Ayyappa. In matters of faith, Court has no jurisdiction; Court is incompetent to hold that X faith is rational or Y faith is irrational; there is no room for any rational or logical reason when it comes to matters of faith. The judgment under review is an interference with the faith and belief of millions of devotees of Lord Ayyappa, which the Court is not empowered to do and certainly not without notice to them and without hearing them. The judgment dated 28th September, 2018 is, therefore, one rendered void ab initio, the validity of which could be challenged “whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings” (see Kiran Singh v. Chaman Paswan, AIR 1954 SC 340). Therefore, the instant review will lie for a declaration that the judgment sought to be reviewed is one rendered void ab initio; so too will lie a suit in the Civil Court at Pathanamthitta, which the Petitioners beg to delve into separately below.

14. The judgment sought to be reviewed is liable to be declared as one rendered void ab initio, it being rendered behind the back of the Review Petitioners and millions of devotees of Lord Ayyappa. It is a fundamental principle of law that a judgment between A and B will bind A and B alone and that too in so far as the ‘cause of action’ which was placed before the Court for its adjudication. It will not bind C and D who were not parties to the proceeding. No Court is empowered to pass an order which has adverse civil consequences, which will amount to violation of fundamental rights such as faith and belief of people, as in the instant case, without notice to the persons affected thereby and without hearing them. The concept of audi alteram partem, hear the other side, or qui aliquid statuerit parte inaudita altera aequum liquid dixerit haud aequum secerit – he who decides without the other side being heard, although he may have said what is right, will not have done what is right (which has its origin even before Jesus Christ) is the very foundation of the concept of rule of law. The first 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 was so violated in the case of Jallikattu; so too on innumerable occasions, literally in all PILs, one banning liquor vending shops within 500 metres from highways etc. The judgment sought to be reviewed is liable to be declared as one rendered null and void for violation of the principles of natural justice, procedural in the sense that the Review Petitioners and other millions of devotees of Lord Ayyappa were not heard before the judgment was rendered, and substantive in the sense that the judgment has violated their freedom of faith and belief enshrined in Part III of the Constitution. The judgment under review is also liable to be declared as void for the simple reason that it is in violation of the very preamble to the Constitution which guarantees to all citizens liberty of thought, expression, BELIEF, faith and worship; so too Article 25.

15. As has been pleaded above, the judgment in the above Writ Petition could be challenged by the Petitioners and millions of devotees of Lord Ayyappa by a petition under Article 32 or Article 226 of the Constitution assuming that this Hon'ble Court under Article 32 and the High Courts under Article 226 are empowered to grant declaratory remedies on the very basis on which PILs in challenge of constitutional validity of even Constitution amendments are instituted and entertained by the Court. The Petitioners do not want to be seen to be contradicting themselves. The plea that a declaration that the judgment under review is unconstitutional and void inasmuch as it violated the fundamental rights of the Petitioners to believe in the Naishtika

Brahmachari (eternal celibate) status of Lord Ayyappa, which banned the entry of women of fertile age group to the Sabarimala temple, is sought on the very same premise on which this Hon'ble Court was pleased to declare the practice in vogue as unconstitutional, namely, that it has jurisdiction to grant declaratory remedies. If this Hon'ble Court in exercise of its jurisdiction under Article 32 read with Article 13(2) can declare any law, including a custom, as violative of Part III of the Constitution, then within that ambit its orders rendered in violation of the first principle of natural justice, namely, *audi alteram partem*, too shall fall.

16. The word "State" in Article 12 should undoubtedly take within its ambit the judiciary, as well. Otherwise, there is no means for the citizen for reversal of judicial orders which are in the realm of legislation, as in the instant case. If judicial review of judicial legislations is not permissible, then there could be no means to secure reversal of unjust judgments of Courts, except revolution, which cannot be countenanced at all. The judgment of the Nine-Judge Constitution Bench of this Hon'ble Court in *Naresh Shridhar Mirajkar v. State of Maharashtra*, AIR 1967 SC 1, which is the most authoritative decision in so far as judicial review of judicial orders is concerned, has no application to the instant case. In that case, there was no violation of fundamental rights, much less was it pleaded. In that case, this Hon'ble Court only held that no writ of certiorari will lie against the orders of a superior Court or of a co-ordinate Court. In short, if remedies other than the five writs named in Article 32 could be sought for in a petition under Article 32, nay, to be more specific, if a declaratory remedy could be sought for under the said Article, a petition under Article 32 will lie for a declaration that the judgment dated 28th September, 2018 passed by this Court in the above Writ Petition is unconstitutional and void.

17. Besides a review or a petition under Article 32, a suit will also lie for a declaration that the judgment dated 28th September, 2018 passed by this Court in the above Writ Petition is one rendered void ab initio, as has been held in *Kiran Singh v. Chaman Paswan* (cited supra); so too in *A.R. Antulay v. R.S. Nayak*, (1988) 2 SCC 602. The only limitation is that a proposition that an order of the Supreme Court could be challenged in a Civil Court, on its very face, will appear to the common man to be too preposterous.

18. The Review Petitioners, while asserting to represent themselves and themselves alone and claim no right to represent millions of Lord Ayyappa devotees aggrieved by the judgment of this Hon'ble Court, beg to submit that they are the leaders of a campaign seeking reversal of the judgment dated 28th September, 2018 passed by this Court in the above Writ Petition. The common man does not know much about the technicalities of law nor is he even concerned. For him what matters is that great injustice has been done to him and it should be corrected. Thousands of devotees of Lord Ayyappa, who have come together under the banner of the National Ayyappa Devotees' Association, have requested the Petitioners to file an appeal against the judgment of this Hon'ble Court probably unaware of the fact that no appeal will lie against an order of this Hon'ble Court, it being the highest Court of the land. Nonetheless, the voice of the common man that he must file an appeal has great significance because from a technical legal point of view a review will lie only on the ground of the judgment in question being vitiated by errors apparent on the face of the record and not on actual merit. The grounds on which a review will lie will not be even appealing to his emotions. For him the Court has come to a wholly unjust and erroneous conclusion and, therefore, the Court should be told that its decision is wrong for XY reasons, not being fully conscious of the limitations that no review will lie on the ground that a Judge has erred within his jurisdiction and a conclusion other than the one reached by him ought to have been arrived at.

19. The Petitioners believe that no legal luminary, not even the greatest of jurists or a Judge, can be a match to the common sense and wisdom of the masses. No judicial pronouncement even of the highest judicial tribunal in this country, this Hon'ble Court, nay, of the entire Supreme Court, can be a match for "the voice of the people" for, *vox populi vox Dei* - the voice of the people is the voice of God. The conclusions and the reasons therefore employed by the majority of Judges are wholly unfounded. The judgment under review is one rendered without taking into account the ground realities, namely, that millions of devotees of Lord Ayyappa, both women and men, consider the deity at Sabarimala as a 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 interaction 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, for, women in the non-fertile age group are allowed to visit the Sabarimala temple and the pilgrimage and the vow without which there could be no pilgrimage is a matter of faith which constitutes to be an essential practice of the worship of Lord Ayyappa. It did not mean any kind of discrimination; there is no question of any kind of untouchability which is prohibited in terms of Article 17; there is no question of affecting the dignity of women; it is a simple and pure matter of faith, not merely of men who are permitted to worship Lord Ayyappa as aforesaid, but even of women devotees.

20. A miniscule section of the public, particularly the elite class of English speaking population, lauds the judgment as a milestone in the liberation of women from the clutches of conservatism, discrimination, untouchability etc. This has meant a literal shockwave for millions of devotees of Lord Ayyappa who are highly educated, scholarly and even those who work for the emancipation of the plight of the womenfolk. The 1st Review Petitioner, in all humility, asserts that she has been working for the welfare of slum dwellers, unorganized/ unskilled workers, contract labourers etc. She is a social activist. Hailing from Kerala, she is living in Mumbai and had camped at Kannur District, which is ravished by landslides in the recent devastating floods in Kerala, among families who have lost their bread winners to offer them succour. The 2nd Review Petitioner is having Leftist leaning; currently he is working for the betterment of slum dwellers. The notion that the judgment under review is revolutionary, one which removes the stigma or the concept of dirt or pollution associated with menstruation, is unfounded. It is a judgment welcomed by hypocrites who were aspiring for media headlines. On the merits of the case, as well, the said judgment is absolutely untenable and irrational, if not perverse.

## G R O U N D S

Grounds in support of the reliefs sought for are fairly elaborated in the statement of facts above and hence are not repeated. The Review Petitioners respectfully submit that paragraphs 1 to 20 hereinabove may be read and treated as the grounds in support of the instant Review Petition. Nonetheless, to meet the stipulation of the rule of this Hon'ble Court that grounds of review should be separately stated, the Review Petitioners beg to state that:

- (A) the judgment dated 28th September, 2018 in the above Writ Petition is vitiated by errors apparent on the face of record, one rendered without jurisdiction, one rendered in violation of the Petitioners' belief in the Naishtika Brahmachari of Lord Ayyappa and thus in violation of the right to belief of the Petitioners; so too one rendered in violation of the first principle of natural justice, namely, audi alteram partem, and one rendered in violation of express constitutional provisions which guarantees liberty of thought, expression, belief, faith and worship, embodied in the preamble to the Constitution; so too Article 25 thereof;
- (B) since no appeal will lie from a judgment of this Hon'ble Court, this Hon'ble Court being the final Court of appeal, the scope of this application under Article 137 cannot particularly be confined to the grounds available for review as embodied in the Supreme Court Rules, quoted above, which is nothing but akin to Order XLVII Rule 1 CPC, which will mean that a review could be sought only on the ground of discovery of new and important matter or evidence, or where a judgment or order is vitiated by 'errors apparent on the face of record';
- (C) this Hon'ble Court being the highest Court of the land and no appeal lies from its orders, in the grounds for review, the merits of the case, namely, that the conclusions arrived at by the Hon'ble Judges are erroneous, ought to be allowed to be raised. The instant Review Petition, therefore, ought to be entertained as an appeal and this Hon'ble Court be pleased to allow re-appreciation of facts, evidence and law, which (the right of appeal) this Hon'ble Court has held, in A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602, to be construed as an integral part of the right to live under Article 21 of the Constitution.
- There is yet another reason why the court shall not confine itself to the grounds on which ordinarily a review is permissible, because in ordinary cases where a review of a judgment is sought, the parties to the litigation have had an opportunity to partake in the hearing of the case. However, in the instant case the petitioners, so too the millions of devotees whose fundamental right of belief and faith are infringed have had no opportunity in the adjudication of the above

case. For them the review is the first opportunity to plead, to assert their rights and seek enforcement thereof. Therefore, unlike the interveners who were parties in the above writ petition who may not be able to seek a full re-consideration of the case, the petitioners who were not parties have an absolute right to be heard on facts and law in the open court.

## PRAYERS

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to take recourse to the procedure of review and:

- (a) review its judgment and order dated 28th September, 2018 in Writ Petition No.373 of 2016 on the ground that it is unconstitutional and void inasmuch as it is vitiated by errors apparent on the face of the record; that it is without jurisdiction or in excess of jurisdiction, that it is in violation of the principles of natural justice and that it is in violation of express constitutional provisions;
- (b) pass appropriate orders afresh after hearing the Review Petitioners and others who are adversely affected by the said judgment;
- (c) pass any such other order or orders/directions as this Hon'ble Court may deem fit and proper in the interest of justice and in particular, stay the operation of the judgment pending final hearing and disposal of the above review petition

DRAWN BY

FILED BY

(Mathews J. Nedumpara)  
Advocate,  
Chamber No.47, G.L.Sanghi Block  
Supreme Court of India  
New Delhi-110001  
Mob. 09820435428, 9769110823

## APPENDIX-'A'

[UNDER RULE 3(1)(d)(iii) OF ORDER XXI OF THE SUPREME COURT RULES,2013]

Articles 137 and 145 of the Constitution of India

“Review of judgments or orders by the Supreme Court.

137. Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

“Rules of Court, etc.

145. (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—

- (a) rules as to the persons practising before the Court;
- (b) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;
- (c) rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;
- [(cc) rules as to the proceedings in the Court under 1[article 139A];]
- (d) rules as to the entertainment of appeals under 2sub-clause (c) of clause (1) of article 134;

- (e) rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;
- (f) rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;
- (g) rules as to the granting of bail;
- (h) rules as to stay of proceedings;
- (i) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;
- (j) rules as to the procedure for inquiries referred to in clause (1) of article 317.

Rules of Court, etc.

(2) Subject to the 1[provisions of \*\*\* clause (3)], rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) 3[22\*\*\* The minimum number] of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.”

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2018  
IN

WRIT PETITION (CIVIL) 373 OF 2006

[Seeking review of the final judgment dated 28/09/2018 passed by this Hon'ble Court in Writ  
Petition (Civil) 373 of 2006]

Shylaja Vijayan, President of National Ayyappa Devotees Association & Ors  
....Review Petitioners

IN THE MATTER OF:

Indian Young Lawyers Association and ors .....Petitioners  
VERSUS

The State Of Kerala & Ors. ....Respondent

AN APPLICATION FOR EXEMPTION FROM FILING COPY OF THE IMPUGNED ORDER DATED  
28/09/2018 IN WRIT PETITION (CIVIL) 373 OF 2006 AND COPY OF THE ORIGINAL  
PROCEEDINGS

To,  
The Hon'ble Chief Justice of India  
And His Companion Judges of the  
Hon'ble Supreme Court of India.

The humble petition of the petitioner above named



MOST RESPECTFULLY SHEWETH

1. The present review petition is in challenge of the common order and judgment DATED 28/09/2018 passed by this Hon'ble Court in IN WRIT PETITION (CIVIL) 373 OF 2006 whereby the fundamental rights of the petitioners are infringed.

2. That the facts and grounds set out in Review Petition be read as a part of this application as the same are not repeated here for the sake of brevity.

3. It is submitted that the impugned order was passed by this Hon'ble Court on 28.09.2018. The said order and judgment is voluminous, running into 411 pages and is a reportable judgment. As the said judgment is widely reported, and further, running into more than \_\_\_ pages, there is no practical purpose served to reproduce the same, apart from making the instant review petition bulky, and causing avoidable financial burden and utility of precious resources. Hence the review petitioner may please be exempted from filing the copy of the impugned common judgment and order dated 28.09.2018, passed by this Hon'ble Court in WRIT PETITION (CIVIL) 373 OF 2006

4. Further the instant review petitioners were not party to the original proceedings, and hence are not in possession of any of the original files.

P R A Y E R

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

a) exempt the Petitioner from filing copy of the impugned common judgment and order dated 28.09.2018, passed by this Hon'ble Court in WRIT PETITION (CIVIL) 373 OF 2006 and copy of the original proceedings;

b) pass such other order or orders as this Hon'ble Commission may deem fit and proper under the facts and circumstances of the case.

FILED BY::

RABIN MAJUMDER

Advocate-on-Record

for the Petitioner

AoR.Reg.No.1825

New Delhi.Mob:09899259811

nudelhilawfora@gmail.com

New Delhi.

Drawn on: \_\_.02.2018

Filed on: \_\_.02.2018

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

REVIEW PETITION (CIVIL) NO. \_\_\_\_\_ OF 2018

IN

WRIT PETITION (CIVIL) 373 OF 2006

[Seeking review of the final judgment dated 28/09/2018 passed by this Hon'ble Court in Writ Petition (Civil) 373 of 2006]

Shylaja Vijayan & Ors

....Review Petitioners

IN THE MATTER OF:

Indian Young Lawyers Association and ors .....Petitioners

VERSUS

The State Of Kerala & Ors.

.....Respondent

APPLICATION SEEKING HEARING OF THIS  
REVIEW PETITION IN THE OPEN COURT

TO

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

THE HUMBLE APPLICATION OF PETITIONER ABOVENAMED

MOST RESPECTFULLY SHEWETH

1. The present review petition is in challenge of the common order and judgment DATED 28.09.2018 passed by this Hon'ble Court in IN WRIT PETITION (CIVIL) 373 OF 2006 whereby the Constitution was literally amended under the pretext of interpretation.

2. That the facts and grounds set out in Review Petition be read as a part of this application as the same are not repeated here for the sake of brevity.

3. The impugned judgment is dated 28.09.2018. The instant petitioners were not party to the said proceedings, nor served with any notice of the above while passing the impugned orders, even though it adversely effected their constitutional and legal rights, including their Fundamental Rights. Hence the petitioners had no avenue to take part in the above proceedings, nor was permitted to be heard in any meaningful way. This Hon'ble Court by order dated 30.12.2016, in the writ petition No. 20/2018, while dismissing the same, made the observation that the petitioners therein do have the option to seek the review of the said judgment dated 16.10.2018, in WP(C) No.13/2015, though they were not party to the original proceedings. The said order is annexed as Annexure- P2 to the above review petition(in page Nos. \_\_ to \_\_).

4. The Petitioners are constrained to file the instant Petition for the declaratory remedies sought for therein since the declaratory and mandatory remedies sought for is generally welcomed under Article 32 of the constitution, when the challenge is against the infringement of Fundamental Rights by the judicial orders itself, though constitutionally that is the right remedy/ procedure.

5. This Hon'ble Court heard the distinguished Counsels for the Petitioners in the above original proceedings to the full pleasure of their souls. The petitioners have no grievance on that count. They are the men of great learning, erudition, knowledge and experience. However in support of the NJAC, there were equally eminent celebrity Lawyers led by Attorney General. However, to err is human and the lesson which the history teaches us is that eminent men, even his holiness the Pope, the Arch Bishops and Chief Justices err and fail. It is said even the Homer nods at times. Errareest human is today reckoned to be a truth universally, even his holiness the Pope is fallible. The learned Attorney General, Solicitor General and the distinguished team of Lawyers with him, however erred calamitously in failing to point out to this Court that the PILs in challenge of the express constitutional provision are not maintainable, thus, there exists no lis, the controversy is in the realm of legislative/ executive policies in the matter of selection and appointment of judges. Thus arose the mischief out of the judges 2, judges 3 cases, which had meant re-writing of the constitution and providing for a mechanism of appointment of the judges of the Supreme Court and High Courts in a manner diametrically opposite to the manner in which it was provided for in the Constitution under Article 124 and 217. Since the petitioner's rights were grossly involved, the Fundamental, Constitutional, legal and equitable as well, and they were not served with any notice to the above proceedings, and not allowed to be represented or defend themselves and their rights, as aforesaid, came to the petitioner's notice and they the had no opportunity to correct the aberrations caused to their rights. The whole hearing of the case has gone haywire and the core issue, the preliminary issue, the question as to the very maintainability of the WP, the very justifiability of the issues, the very jurisdiction of this Court to decide whether or not the said Acts are constitutional, is lost sight of. THE Ld. Attorney General at once conceded the maintainability instead of challenging it. The senior advocates who ventured into making the law of the land through the writ proceedings never ventured to point out quoting Horace "parturient montes, nascetur ridiculus mus" - mountains are in labour and what is brought out is a ridiculous mouse. It was never pointed out relying on Anisminic Ltd v Foreign Compensation Commission, [1969] 2 AC 147, [1969] 2 WLR 163, that the issue involved here is a jurisprudential question which is 'going to' the very jurisdiction and competence of the Court to embark upon the correctness or otherwise of the constitutional provision as enacted by the constituent assembly in exercise of its wisdom of which no one has complained of any violation of fundamental right and, thus, not justiciable. There were no meaningful venture to point out that the doctrine of impingement of the basic structure could be pressed into service only where fundamental rights are violated. If there is no plea that fundamental rights are violated, no question of invoking the doctrine of basic structure arises. Keshavananda Bharathi laid down a preposition that fundamental rights can be curtailed but it cannot be entirely emasculated or abrogated. The quintessence of the parity of the Constitution is primarily reaffirmation of the substantive law in the realm of a subject 'right to life, liberties and freedom'. The doctrine of basic structure is not in the realm of substantive law. It is in the realm of adjectival law. Rule of law is in the realm of adjectival of law. You need an impartial, independent, just and fair justice delivery system, just laws and good Judges for the enforcement of remedies in the realm of substantive law, namely,

preservation of life, liberty, freedom properties, estate, title, etc. This is how the humble Petitioner would in all humility beg to state to have understood the doctrine of basic structure.

6. The petitioners were unheard, and no notice were issued as well. A fair notice and hearing was denied to the petitioners and the petitioners believe that the general perception, so well rooted, that only celebrated Lawyers alone are heard to the cheer of their heart is true. Apart from some celebrated senior advocates, nobody was heard and in the deliberance on the merits of the case there is no whisper whatsoever about the contentions of ordinary lawyers and the common people whom they represented at all, not even a word.

7. Hence the petitioners had no avenue to challenge the same during the proceedings. Neither they were under notice to partake in the proceedings. But, by way of the said judgment sought to be reviewed, the review petitioners' rights are adversely affected. The review petitioners does not have notice till date of the above proceedings. The judgment of the court binds the parties to the proceedings and not the world at large. Whereas, when the judgment passed is not in personam, but in rem, which the binds the whole world, and the generations to come to determine their rights and legal remedies, they can not be denied the first principle of natural justice, 'Audi alteram partem'. The enactment of any legislative body can be corrected for it's infringement of rights for the generations of present or future either by way of judicial proceedings or by way of political process. The remedies and procedures are open. Hence it is equally applicable to the judicial legislations also. The impugned judgment is a judgment in rem, binding the whole world, and is a judicial legislation, virtually amending the constitution, infringing the rights of the petitioners.

8. The only way the injustice which has resulted in failing to afford the common men, including the instant review petitioners is to allow a fair hearing in the open court and in failing to take notice of this contention could be undone is to hear the petitioners in the open court. Hence the accompanying application for hearing the Review Petition in the open Court of the instant issue which is of transcendental, monumental and primordial importance.

#### PRAYER

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

- a) allow this Application and hear the accompanying Review Petition in open Court ; and
- b) pass any such other order or orders/directions as this Hon'ble Court may deem fit and proper in the interest of justice.

FILED BY::

RABIN MAJUMDER  
Advocate-on-Record  
for the Petitioner  
AoR.Reg.No.1825  
New Delhi.Mob:09899259811  
nudelhilawfora@gmail.com  
New Delhi.  
Drawn on: \_\_.08.2018  
Filed on: \_\_.08.2018  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
REVIEW PETITION (CIV) NO.            OF 2018  
IN  
WRIT PETITION (CIVIL) NO. 373 OF 2006

Shylaja Vijayan & Ors

....Review Petitioners

IN THE MATTER OF:

Indian Young Lawyers Association and ors        .....Petitioners

VERSUS

The State Of Kerala & Ors.

.....Respondent