

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

[ORDER XLVII RULE 1]

REVIEW PETITION

(Under Article 137 of the Constitution of India)

REVIEW PETITION (CIVIL) No. _____ OF 2018

(Against the order dated 28.09.2018 of this Hon'ble Court, in
Writ Petition (Civil) No.373 of 2006)

IN THE MATTER OF:

PEOPLE FOR DHARMA ... PETITIONER

VERSUS

STATE OF KERALA AND ORS. ... RESPONDENTS

WITH

I.A. No. of 2018

Application for permission to hear the Review Petition in open court

PAPER BOOK

(FOR INDEX KINDLY SEE INSIDE)

VOL. – I

ADVOCATE FOR THE PETITIONER: **SUVIDUTT M.S.**

FILED ON: **08.10.2018**

INDEX

S.No.	Particulars of Documents	Page No. of part of which it belongs		Remarks
		Part I (Contents of Paper Book)	Part II (Contents of file alone)	
(i)	(ii)	(iii)	(iv)	(v)
1.	O/R on Limitation	A	A	
2.	Listing Proforma	A1 - A2	A1 - A2	
3.	Cover Page of Paper Book		A3	
4.	Index of Record of Proceeding		A4	
5.	Limitation Report prepared by Registry		A5	
6.	Defect List		A6	
7.	Note Sheet		NS1 to	
8.	List of Dates			
9.	True copy of the impugned Judgment dated 28.09.2018 passed by this Hon'ble Court at New Delhi, in W.P.(C) No.373 of 2006			
(Continued in Vol-II from Page -)				

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (CIVIL) No. OF 2018

IN THE MATTER OF:

PEOPLE FOR DHARMA ... PETITIONER

VERSUS

STATE OF KERALA AND ORS. ... RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Petition is/ are within time.
2. The Petition is barred by time and there is delay ofNil.... days in filing the same against order dated 28.09.2018 and petition for condonation of ...Nil..... days delay has been filed.
3. There is delay ofNil..... days in refilling the petition and petition for condonation ofNil.... Days delay in refilling has been filed.

BRANCH OFFICER

NEW DELHI

DATED: 08.10.2018

PROFORMA FOR FIRST LISTING

SECTION: PIL

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

- Central Act : Constitution of India
- Section : Article 14, 21, 25 & 26
- Central Rule : N/A
- Rule No(s) : N/A
- State Act : Kerala Hindu Places of Public Worship (Authorization of Entry) Act, 1965
- Section : Section 3
- State Rule : N/A
- Rule No(s) : N/A
- Impugned Interim Order : N/A
- Impugned Final Order/Decree : 28.09.2018
- High Court : N/A
- Name of Judges : Dipak Misra J., Khanwilkar J., Rohinton Nariman J., Dr.Chandrachud J. & Indu Malhotra J.
- Tribunal/Authority : N/A
1. Nature of Matter : CIVIL CRIMINAL
- 2 (a) Petitioner/Appellant No.1 : People for Dharma
- (b) e-mail ID : N/A
- (c) Mobile Phone Number : N/A
- 3 (a) Respondent No.1 : State of Kerala
- (b) e-mail ID : N/A
- (c) Mobile Phone Number : N/A
- 4 (a) Main category classification : 08
- (b) Sub-classification : 0812
5. Not to be listed before : N/A
6. Similar/Pending Matter : No similar matter pending

7. **CRIMINAL MATTERS** : N/A
- (a) Whether accused/convict has surrendered? : Yes No
- (b) FIR No. : N/A
- (c) Police Station : N/A
- (d) Sentence Undergone : N/A
8. **LAND ACQUISITION MATTERS** : N/A
- (a) Date of Section 4 Notification : N/A
- (b) Date of Section 6 Notification : N/A
- (c) Date of Section 17 Notification : N/A
9. **TAX MATTERS** : N/A
10. **SPECIAL CATEGORY** : N/A
(First Petitioner/ Appellant only)
- Senior Citizen > 65 Years
- SC/ST
- Woman/Child
- Disabled
- Legal Aid Case
- In Custody
11. Vehicle number (in case of Motor Accident Claim matters) : N/A
12. Decided cases with citation : N/A

Date: 08.10.2018

AOR for Petitioner (s)/ Appellant(s)
SUVIDUTT M.S.
Registration No: **2401**
Email: suvidutt@yahoo.com
Mob: 9999778751

SYNOPSIS

1. The Petitioner herein, People for Dharma, was an Intervenor in the Writ Petition whose Intervention was numbered I.A. No.30/2016 in W.P. (C) No.373/2006 and the same was allowed by the order dated 20.02.2017. The Petitioner herein is a registered Trust which represents women devotees of Lord Ayyappa from Kerala and the world over who support the "Ready to Wait" campaign of the Petitioner. The said campaign was launched in 2016 by the Petitioner in support of the practice of the Sabarimala Ayyappa Temple which restricts the entry of women who belong to a procreative age group. The Petitioner's Counsel, Mr. J. Sai Deepak, was heard extensively in the hearings before the Constitution Bench in the Writ Petition and Written Submissions along with relevant documentary evidence and judgements in support of the position of the Petitioner herein was also filed. Accordingly, the Petitioner herein has the *locus* to file the present Petition seeking review of the majority view of Judgement delivered on September 28, 2018 by the Constitution Bench. It is pertinent to note that on the final date of hearing in the Writ Petition i.e. on August 1, 2018, two of the female Writ Petitioners had submitted to the Hon'ble Bench that they wished to withdraw their support to the Writ Petition since after arguments they understood that the practice of the Temple is not based on misogyny or gender discrimination or notions of menstrual impurity.
2. On September 28, 2018, four separate opinions were delivered as part of the Judgement, one by former Chief

Justice of India Hon'ble Mr. Justice Dipak Misra and Hon'ble Mr. Justice A. M. Khanwilkar (allowing the Writ Petition), one by Hon'ble Mr. Justice Rohinton F. Nariman (concurring with the former CJI), one by Hon'ble Mr. Justice D.Y. Chandrachud (concurring with the former CJI), and one by Hon'ble Ms. Justice Indu Malhotra (the sole dissenting opinion). The Petitioner herein seeks review of the majority view. The Written Submissions and the scriptural evidence placed on record on behalf of the Petitioner herein have been extensively cited in the sole dissenting Opinion of Justice Indu Malhotra who has agreed with the position of the Petitioner herein and has concluded as follows:

- i. That the Writ Petitioner lacks the *locus* to challenge the practice of the Temple;
- ii. That in view of the *in rem* judgement of the Division Bench of the Kerala High Court, all issues raised in the Writ Petition has been finally and conclusively decided by the judgement of the Kerala High Court and therefore *res judicata* applies;
- iii. That the practice of the Temple does not fall within the meaning of untouchability under Article 17;
- iv. That the right of an individual under Article 14 does not override the right to preserve religious traditions and practice of devotees under Article 25(1);
- v. That constitutional morality does not mean testing religious practices on the anvils of rationality or secular logic;
- vi. That the practice of the Temple is informed directly by the celibate form of the Deity, and not alleged notions of menstrual impurity;

vii. That devotees of Lord Ayyappa constitute a religious denomination within the meaning of Article 26;

viii. That the Temple is not a State-funded Temple since it does not receive funds from the consolidated fund of India and

ix. Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965 is not *ultra vires* Section 3 of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act 1965 since it falls squarely within the ambit of the proviso to Section 3.

3. While the dissenting Opinion takes a restrained approach to interference with religious practices and examines in detail the scriptural and historical evidence placed on record by those who support the practice of the Temple, in stark contrast, the majority view is largely the result of the fundamental erroneous premise, namely that the restriction placed on entry of women of a certain age group (hereinafter referred to as "the practice") is an exclusionary practice which is based upon a biological factor exclusive to the female gender. It is humbly submitted that it has been the case of the Petitioner herein and other Parties which support the Temple's position all along, based on clear and cogent documentary evidence, that the practices, traditions and customs of the Sri Sabarimala Ayyappa Temple (hereinafter referred to as "the Temple") in Kerala are based on and draw from the celibate nature, namely *Naisthika Brahmacharya* of the Deity in that Temple, and not on perceived notions of menstrual impurity as claimed by the Writ Petitioner.

4. This is precisely why extensive evidence was led by the Petitioner herein along with its Written Submissions so as to dispel the menstrual myth which is the very foundation of the Writ Petitioner's challenge to the practice of the Temple. Minus this myth, for which the Writ Petitioner has led no evidence barring articles by journalists who too do not cite credible evidence to support their claims, the case of the Writ Petitioner has no merit in it whatsoever. This is apart from the fact the Writ Petitioner has no *locus* to challenge the practice of the Temple. A clear perusal of the opinions rendered as part of the majority view shows that, apart from legal and factual errors which are apparent on the fact of the record, the factually erroneous assumption that the practice of the Temple is based on notions of menstrual impurity has materially contributed to the majority view. Accordingly, the Petitioner herein seeks review of the majority view on the following grounds:

A. That the majority view erred in not considering the evidence placed on record which demonstrates that the practice of the Temple is a direct consequence of the celibate form of the Deity and the rules of Naishtika Brahmacharya which apply to the Deity;

B. That the majority view ought to have upheld the *in rem* judgement of the Division Bench of the Kerala High Court and dismissed the Writ Petition on grounds of constructive *res judicata*;

C. That the majority view erred in concluding that in all circumstances, the right of an individual must prevail over

the rights of other individuals in a public place of worship notwithstanding its effects on the traditions and practices of the place of worship and the rights of devotees who believe in and wish to preserve the practices and traditions of the place of worship;

D. That the majority view has erred in concluding that the devotees of Lord Ayyappa do not constitute a religious denomination within the meaning of Article 26;

E. That the majority view erred in concluding that the practice of the Temple amounts to untouchability under Article 17;

F. That the majority view erred in concluding that the practice of the Temple violates Section 3 of the 1965 Act;

G. That the majority view erred in concluding that Rule 3(b) of the 1965 Rules is *ultra vires* Section 3 of the 1965 Act since the Rule applies equally to men in relation to temples which place restrictions on their entry into certain Temples;

H. That the majority view has failed to appreciate the spirit of the notifications of 1955 and 1956 which prescribe the Impugned practice since the majority has ignored the principle behind the restriction and has focused only on the age-based proscription;

I. That the majority view will have the effect of eroding the diversity in religious practices across the board in all faiths since its approach places the individual over and above the traditions and practices of places of worship, whether or not they enjoy the status of a denominational place of worship.

5. In view of the above-enumerated grounds of review, following are the substantial questions of fact and law which arise for consideration by this Hon'ble Court:

A. Whether the majority view of the Constitution Bench erred in not considering the evidence placed on record to demonstrate that the practice of the Temple has a direct and integral nexus with the celibate form of the Deity in the Sabarimala Ayyappa Temple?

B. Whether the majority view erred in not holding that in light of the binding judgement of the Division Bench of the Kerala High Court under Article 226 which applies *in rem*, the Writ Petition is barred by *res judicata*?

C. Whether the majority view of the Constitution Bench erred in taking the view that even in relation to public places of worship whose traditions and practices are protected by Article 25(1), an individual who calls into question the traditions of the Temple must prevail over the rights of other devotees who seek to protect the traditions?

D. Whether the majority view of the Constitution Bench erred in not considering the diversity in religious practices in public places of worship within the Hindu fold, and by approaching the issue through the prism of discrimination?

E. Whether the majority view erred in concluding that the devotees of Ayyappa do not constitute a religious denomination within the meaning of Article 26?

- F. Whether the majority view erred in concluding that a practice based on the celibate nature of the Deity and the Tantric traditions of the Temple amount to untouchability?
- G. Whether the majority view erred in striking down the notifications as well as Rule 3(b) without considering the traditions and practices protected by Article 25(1), and Article 26 where applicable?

LIST OF DATES & EVENTS

DATES	EVENTS
1949	The princely State of Travancore and Cochin was integrated with the Union of India. After the integration of the princely State of Travancore and Cochin, an Ordinance was promulgated by the Rajpramukh as Ordinance 4/1124 in respect of the administration of Padmanabhaswamy Temple and Devaswoms both incorporated and unincorporated. The Ordinance provided that the management of the Devaswom shall continue to be carried on as hereto before.
01.08.1949	A further Ordinance has been issued titled "The Hindu Religious Institutions Ordinance, 1124." Sec. 31 of the said Ordinance directed the Devaswom Board to

arrange for the conduct of the daily worship, ceremonies and festivals in every temple according to its usage.

1955 First notification was issued by the Travancore Devaswom Board under Section 31 of the Travancore-Cochin Hindu Religious Institutions Act, 1950 prescribing age group of women whose entry into the Sabarimala Ayyappa Temple shall be restricted

1956 Second Notification was issued by the Travancore Devaswom Board under Section 31 of the Travancore-Cochin Hindu Religious Institutions Act, 1950 prescribing age group of women whose entry into the Sabarimala Ayyappa Temple shall be restricted

31.12.1965 In exercise of powers conferred u/s 4 of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act, 1965 regulations were framed and u/r 3 (b) of the Kerala Hindu Places of Public Worship (Authorization 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.

05.04.1991 The Division Bench of the Hon'ble High Court of Kerala in the case of S. Mahendran v. The Secretary, Travancore Devaswom Board, Thiruvananthapuram and Ors. AIR 1993 Ker 42 concluded that:

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

(2) Such restrictions imposed by the Dewaswom Board are not in violation of Art (s) 15, 25 and 26 of the Constitution of India.

(3) Such restrictive practices are also not in violation of Kerala Hindu Places of Public Worship (Authorization of Entry) Act, 1965 since there is no restriction b/w 2 sections or b/w 2 classes amongst Hindus in the matter of entry to a temple whereas the prohibition is only in respect of women of a particular age group and no women as a class."

01.07.2006 The Petitioner relied on an article by Sharvani Pandit which was published in an English daily 'The Times of India' (New

Delhi edition). It is submitted that the article has no basis and the same ought not to be relied upon as it has no factual or legal basis and is bereft of any research regarding the custom, tradition, practices and rituals followed by the temple since ages.

The Petitioner based on an article by Barkha Dutt, then Managing Editor NDTV 24*7 published in Hindustan Times again conveyed certain misinformed facts by accusing the Temple of gender discrimination. It is submitted that the said article has been written without any historical basis and under a poor understanding of the temple practices and the said piece of article can at best be described as a figment of author's imagination and therefore such literary works did not constitute any evidence.

02.07.2006 The Petitioner, relying on another similar article by Vir Sanghvi has been published on 02.07.2006 in Hindustan Times replicating the earlier articles written by Shravani Pandit and Barkha Dutt and formed a prejudiced opinion on a false notion of gender inequality w/o

understanding the prevalence of various similar customs across many other religions.

28.07.2006 A PIL bearing Writ Petition (Civil) No.373/2006 was filed under Art 32 of the Constitution challenging the practice of exclusion of women of the age group 10 – 50 from entering the Lord Ayyappa temple at Sabarimala as unconstitutional. While Rule 3(b) of the 165 Rules was challenged, the Notifications were not.

2016 The Petitioner herein, whose members are women devotees of Lord Ayyappa from Kerala and all over the world, launched a campaign known as the "Ready to Wait" in support of the Temple's practice of restricting women of a procreative age group. The campaign was launched to demolish the myth that the practice is based on notions of menstrual impurity, which in fact it is based on the celibate nature of Lord Ayyappa in the Sabarimala Temple. Since the female devotees felt the need to oppose the Writ Petition, the Petitioner herein filed an application for intervention and the same was numbered as I.A.No.30/2016

20.02.2017 This Hon'ble Court allowed all the intervention and impleading applications in Writ Petition (Civil) No.373/2006 and framed the following questions for the purpose of reference to the Constitution Bench:

"1. Whether the exclusionary practice which is based

upon a biological factor exclusive to the female gender amounts to "discrimination" and thereby violates the very core of Articles 14, 15 and 17 and

not protected by „morality“ as used in Articles 25 and 26 of the Constitution?

2. Whether the practice of excluding such women constitutes an "essential religious practice" under Article 25 and whether a religious institution can assert a claim in that regard under the umbrella of right to manage its own affairs in the matters

3. Whether Ayyappa Temple has a denominational character and, if so, is it permissible on the part of a 'religious denomination' managed by a statutory board and financed under Article 290-A of the Constitution of India out of the Consolidated Fund of Kerala and Tamil

Nadu to indulge in such practices violating constitutional principles/ morality embedded in Articles 14, 15(3), 39(a) and 51-A(e)?

4. Whether Rule 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules

permits 'religious denomination' to ban entry of

women between the age of 10 to 50 years?

And if so, would it not play foul of Articles 14 and 15(3) of the Constitution by restricting entry of women on the ground of sex?

5. Whether Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 is ultra vires the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 and , if treated to be intra vires, whether it will be violative of the provisions of Part III of the Constitution?"

28.09.2018 The Hon'ble Supreme Court of India held by a 4:1 majority the practice of the temple in restricting women aged between 10-50 years to be unconstitutional. It is

pertinent to mention that the Hon'ble Justice Indu Malhotra wrote the sole dissenting judgment holding the practice to be constitutional and legally valid.

08.10.2018 Aggrieved by the majority view of the Judgment delivered by the Hon'ble Supreme Court, the Petitioner herein seeks to set aside the Judgement *vide* this Review Petition.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

[ORDER XLVII RULE 1]

REVIEW PETITION

(Under Article 137 of the Constitution of India)

REVIEW PETITION (CIVIL) No. _____ OF 2018

IN THE MATTER OF:

POSITION OF PARTIES

Before this Hon'ble Court

- | | | |
|--------|---|-----------------|
| 1. | People For Dharma
5 E, Bharat Ganga
Apartments,
Mahalakshmi Nagar,
4 th Cross Street,
Adambakkam,
Chennai,
Tamil Nadu – 600 088 | Petitioner |
| VERSUS | | |
| 1. | The State of Kerala
Through Chief Secretary
Govt. Of Kerala,
District:
Thiruvananthapuram,
Kerala | Respondent No.1 |
| 2. | Travancore Devaswom Board
Through President G. Raman
Nair,
Thiruvananthapuram,
Kerala | Respondent No.2 |
| 3. | The Devaswom Commissioner
Divisional Engineer
Travancore Devaswom Board,
District:
Thiruvananthapuram, | Respondent No.3 |

- Kerala
4. The Chief Thanthri
Sabrimala Temple,
Pathanamthitta,
Kerala Respondent No.4
 5. The District Magistrate
Pathanamthitta,
Kerala Respondent No.5
 6. Nair Service Society
Through General Secretary,
Perunna,
Changanacherry,
Kerala Respondent No.6
 7. Akhil Bhartiya Ayyappa Seva
Sangham
Through General Secretary,
Post Box No. 5146 Fort Post
Office,
District:
Thiruvananthapuram,
Kerala Respondent No.7
 8. Ayyappa Sewa Samithi
Through Secretary,
Ayyappa Mandir Marg,
Sector 2, R.K. Puram,
District: New Delhi,
Delhi Respondent No.8
 9. Dilshad Garden Ayyappa
Sewa Samithi
Through its President,
Plot No. R-3,
Shree Ayyappa Mandir Marg,
District: Dilshad Gardan,
Delhi Respondent No.9
 10. Ayyappa Pooja Samithi
Through its President, Respondent No.10

- 1087/Lig Hb Colony,
Sector 31, District: Gurgaon,
Haryana
11. Ayyappa Sewa Samithi Respondent No.11
Through its President
Ayyappa Mandir,
Sector 21, District: Gurgaon,
Haryana
12. Sree Dharma Sastha Sewa Respondent No.12
Samajam
Through its Secretary
67, Pocket 8, Sector 8,
District: Rohini,
Delhi
13. Akhil Bharathiya Malayalee Respondent No.13
Sangh
Through its General Secretary
H. No. 202, Plot No. C81A,
Kh No. 14A.,
Mahavir Enclave,
District: Palam,
Delhi
14. Shabrimala Aiyappa Seva Respondent No.14
Samajam
(Regd. No. 226/2008)
All India General Secretary,
Kesavsmrithi,
Kallar, Kodavu,
District: District-
Pothanamthitta,
Kerala
15. Kerala Kshethra Samarak Respondent No.15
Shana Samithi
(Regd. No. 142/77)
Through its State President
Kelappaji, Mandiram

- Kiliparambu, Devi Temple
Premise Railway Station Link
Road,
District: Calicut,
Kerala
16. Mathura Samithi Of Kerala Respondent No.16
Kshetha Samarakshana
Samithi
(Regd. No. 142/77)
Through its State President
Kelappaji Mandiram
Kiliparambu,
Devi Temple Premises,
Railway Station Link Road,
District: Calicut,
Kerala
17. D.V. Ramana Reddy Respondent No.17
Advocate At High Court Of
Telangana
C/O Punyamponkavanam,
A.P. Kendra 1-8 Sir Krishna
Estates,
Beasant Road,
Governorpet,
District: Vijaywada,
Andhra Pradesh
18. K.K. Sabu Respondent No.18
Kakkanatu House Near
Ayyappa Swami Temple
Jodkal (P.O.),
Kundapur Thaluk,
District: Distt-Udupi,
Karnataka
19. The Pandalam Kottaram Respondent No.19
Nirvahaka Sangham
Pandalam Secretary

Vrindavanam,
Pandolan Place Kulanada,
P.O. Pathanamthitta District,
Kerala

20. Kantaru Rajeevaru Respondent No.20
S/D/W/Thru:- Late Shri
Kantaru Krishnaruru,
Thazhamon Madom
Mundenkavu,
Chengannoor, Alappuzha,
Kerala
21. Smt. Rekha Satheethnam Respondent No.21
S/D/W/Thru:- N. Jayan
Gayathri, Lbs Road
Thiruvanankulam, P.O.
Ernakulam , , Kerala
22. Athma Divine Trust Trustee, Respondent No.22
S. Venkatesh
80A, Kondaswamy Road,
District: Ram Nagar,
Coimbatore,
Tamil Nadu
23. Rahul Easwar Respondent No.23
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 Respondent No.24
Forum
Through its Secretary,
Aluva, West Aluva Village
Aluva Taluk,

- District: Ernakulam,
Kerala
25. Indian Young Lawyers Association
Respondent No.25
Through its General Secretary
Ms. Bhakti Pasrija
General Secretary,
Ms. Bhakti Pasrija S-513,
Second Floor, Main Vikas
Marg, Sakarpur Part-II,
District: Delhi,
Delhi
26. Bhakti Pasrija
Respondent No.26
General Secretary
All Indian Young Lawyers
Association S-513, 2nd Floor,
Main Vikas Marg, Sakarpur
Part II, District: Delhi,
Delhi
27. Dr. Laxmi Shastiri
Respondent No.27
Assistant Treasurer At
Supreme Court Bar
Association,
H. No. 37/29,
Old Rajender Nagar,
District: New Delhi,
Delhi
28. Prerna Kumari
Respondent No.28
F-135, Nar Vihar II,
District: Sector 34,
Noida,
Uttar Pradesh
29. Alka Sharma
Respondent No.29
47 Vasant Apartments,
Mayur Vihar Phase I Ext.,
Delhi

30. Sudha Pal Respondent No.30
C-141,
District: New Ashok Nagar,
Delhi
(Respondent No.1 to No.5 and from No.6 to No.30 are Pro
Forma Respondents)

AND IN THE MATTER OF:

IN THE MATTER OF:

POSITION OF PARTIES

Before this Hon'ble Court

- | | |
|--|-----------------|
| 1. Indian Young Lawyers
Association
Through its General Secretary
Ms. Bhakti Pasrija
General Secretary,
Ms. Bhakti Pasrija S-513,
Second Floor, Main Vikas
Marg, Sakarpur Part-II,
District: Delhi,
Delhi | Petitioner No.1 |
| 2. Bhakti Pasrija
General Secretary
All Indian Young Lawyers
Association S-513, 2nd Floor,
Main Vikas Marg, Sakarpur
Part II, District: Delhi,
Delhi | Petitioner No.2 |
| 3. Dr. Laxmi Shastiri
Assistant Treasurer At
Supreme Court Bar
Association,
H. No. 37/29,
Old Rajender Nagar,
District: New Delhi,
Delhi | Petitioner No.3 |

4. Prerna Kumari
F-135, Nar Vihar II,
District: Sector 34,
Noida,
Uttar Pradesh
Petitioner No.4
5. Alka Sharma
47 Vasant Apartments,
Mayur Vihar Phase I Ext.,
Delhi
Petitioner No.5

VERSUS

1. The State of Kerala
Through Chief Secretary
Govt. Of Kerala,
District:
Thiruvananthapuram,
Kerala
Respondent No.1
2. Travancore Devaswom Board
Through President G. Raman
Nair,
Thiruvananthapuram,
Kerala
Respondent No.2
3. The Devaswom Commissioner
Divisional Engineer
Travancore Devaswom Board,
District:
Thiruvananthapuram,
Kerala
Respondent No.3
4. The Chief Thanthri
Sabrimala Temple,
Pathanamthitta,
Kerala
Respondent No.4
5. The District Magistrate
Pathanamthitta,
Kerala
Respondent No.5
6. Nair Service Society
Through General Secretary,
Respondent No.6

- Perunna,
Changanacherry,
Kerala
7. Akhil Bhartiya Ayyappa Seva Sangham Respondent No.7
Through General Secretary,
Post Box No. 5146 Fort Post Office,
District:
Thiruvananthapuram,
Kerala
8. Ayyappa Sewa Samithi Respondent No.8
Through Secretary,
Ayyappa Mandir Marg,
Sector 2, R.K. Puram,
District: New Delhi,
Delhi
9. Dilshad Garden Ayyappa Sewa Samithi Respondent No.9
Through its President,
Plot No. R-3,
Shree Ayyappa Mandir Marg,
District: Dilshad Gardan,
Delhi
10. Ayyappa Pooja Samithi Respondent No.10
Through its President,
1087/Lig Hb Colony,
Sector 31, District: Gurgaon,
Haryana
11. Ayyappa Sewa Samithi Respondent No.11
Through its President
Ayyappa Mandir,
Sector 21, District: Gurgaon,
Haryana
12. Sree Dharma Sastha Sewa Samajam Respondent No.12

Through its Secretary
67, Pocket 8, Sector 8,
District: Rohini,
Delhi

13. Akhil Bharathiya Malayalee Sangh Respondent No.13

Through its General Secretary
H. No. 202, Plot No. C81A,
Kh No. 14A.,
Mahavir Enclave,
District: Palam,
Delhi

14. Shabrimala Aiyappa Seva Samajam Respondent No.14

(Regd. No. 226/2008)
All India General Secretary,
Kesavsmrithi,
Kallar, Kodavu,
District: District-
Pothanamthitta,
Kerala

15. Kerala Kshethra Samarak Shana Samithi Respondent No.15

(Regd. No. 142/77)
Through its State President
Kelappaji, Mandiram
Kiliparambu, Devi Temple
Premise Railway Station Link
Road,
District: Calicut,
Kerala

16. Mathura Samithi Of Kerala Kshetha Samarakshana Samithi Respondent No.16

(Regd. No. 142/77)
Through its State President

Kelappaji Mandiram
Kiliparambu,
Devi Temple Premises,
Railway Station Link Road,
District: Calicut,
Kerala

17. D.V. Ramana Reddy Respondent No.17
Advocate At High Court Of
Telangana
C/O Punyampoornkavanam,
A.P. Kendra 1-8 Sir Krishna
Estates,
Beasant Road,
Governorpet,
District: Vijaywada,
Andhra Pradesh
18. K.K. Sabu Respondent No.18
Kakkanatu House Near
Ayyappa Swami Temple
Jodkal (P.O.),
Kundapur Thaluk,
District: Distt-Udupi,
Karnataka
19. The Pandalam Kottaram Respondent No.19
Nirvahaka Sangham
Pandalam Secretary
Vrindavanam,
Pandolan Place Kulanada,
P.O. Pathanamthitta District,
Kerala
20. Kantaru Rajeevaru Respondent No.20
S/D/W/Thru:- Late Shri
Kantaru Krishnaruru,
Thazhamon Madom
Mundenkavu,
Chengannoor, Alappuzha,

- Kerala
21. Smt. Rekha Satheethnam Respondent No.21
S/D/W/Thru:- N. Jayan
Gayathri, Lbs Road
Thiruvananthapuram, P.O.
Ernakulam , , Kerala
22. Athma Divine Trust Trustee, Respondent No.22
S. Venkatesh
80A, Kondaswamy Road,
District: Ram Nagar,
Coimbatore,
Tamil Nadu
23. Rahul Easwar Respondent No.23
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 Respondent No.24
Forum
Through its Secretary,
Aluva, West Aluva Village
Aluva Taluk,
District: Ernakulam,
Kerala

**PETITION UNDER ARTICLE 137 OF THE CONSTITUTION
OF INDIA READ WITH ORDER XLVII OF SUPREME COURT
RULES 2013**

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
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH

1. The present Petition by the Petitioner organization named People for Dharma, whose Intervention Application was numbered as I.A. No.30/2016 in W.P. (C) No.373/2006 and the same was allowed by the order of this Hon'ble Court dated 20.02.2017, seeks review of the Judgement dated September 28, 2018 (hereinafter referred to as "the Judgement") delivered by a Constitution Bench of this Hon'ble Court in Writ Petition (Civil) No. 373 of 2006. Four separate opinions were delivered, one by former CJI Hon'ble Mr. Justice Dipak Misra and Hon'ble Mr. Justice A. M. Khanwilkar ("Opinion A"), one by Hon'ble Mr. Justice Rohinton F. Nariman (Opinion B- concurring with the former CJI), one by Hon'ble Mr. Justice D.Y. Chandrachud (Opinion C- concurring with the former CJI), and one by Hon'ble Ms. Justice Indu Malhotra (Opinion D-the sole dissenting opinion). The present Petition seeks review of the majority view (Opinions A-C) which allowed the Writ Petition. The detailed errors of law and facts apparent on the face of the record in each opinion of the majority view, on the basis of which review is being sought, are enumerated in the ensuing portions of the present Petition.
2. At the outset, it is humbly submitted that the majority view is largely the result of the fundamental erroneous premise of the five questions which were framed for the purpose of

reference to the Constitution Bench *vide* Order dated October 13, 2017, namely that the restriction placed on entry of women of a certain age group (hereinafter referred to as "the practice") is an "*exclusionary practice which is based upon a biological factor exclusive to the female gender*", which is evident from the express language of Question No. 1 framed for reference. It is humbly submitted that it has been the case of the Petitioner herein all along, based on clear and cogent documentary evidence, that the practices, traditions and customs of the Sri Sabarimala Ayyappa Temple (hereinafter referred to as "the Temple") in Kerala are based on and draw from the celibate nature, namely *Naisthika Brahmacharya* of the Deity in that Temple, and not on perceived notions of menstrual impurity as claimed by the Writ Petitioner. This is precisely why the five questions framed for reference were recast by the Petitioner herein in its Written Submissions so as to dispel this myth which is the very foundation of the Writ Petitioner's challenge to the practice of the Temple. Minus this myth, for which the Writ Petitioner has led no evidence barring articles by journalists who too do not cite credible evidence to support their claims, the case of the Writ Petitioner has no merit in it whatsoever. This is apart from the fact the Writ Petitioner has no *locus* to challenge the practice of the Temple. A clear perusal of the opinions rendered as part of the majority view shows that, apart from legal and factual errors which are apparent on the fact of the record, the factually erroneous assumption that the practice of the Temple is based on notions of menstrual

impurity has materially contributed to the majority view. This by itself necessitates a review of the Judgement. To support this, the factual and legal errors apparent on the face of the record in each of the opinions of the majority view are discussed in detail hereinbelow.

**A. ERRORS APPARENT ON THE FACE OF THE RECORD
IN OPINION A**

3. While Opinion A captures the submissions made on behalf of parties and some of the intervenors, it does not capture any of the submissions made on behalf of the Petitioner herein despite the fact that oral submissions made of the Petitioner herein were heard extensively and detailed Written Submissions were filed. The discussion in the Opinion A begins at Paragraph 88 on Page 56 of the Opinion. In Opinion A, the analysis has been undertaken under the following heads:

- i. Followers of Lord Ayyappa do not constitute a religious denomination- Paragraphs 88-96
- ii. Enforceability of Fundamental Rights under Article 25(1) against the Travancore Devaswom Board- Paragraphs 97-111
- iii. Whether the exclusionary practice is an essential practice as per Hindu religion- Paragraphs 112-126
- iv. Analysis of the 1965 Act and Rule 3(b) of the 1965 Rules- Paragraphs 127-143
- v. Conclusions- Paragraph 144

The errors apparent on the face of the record in the each of the above-mentioned heads of Opinion A under are set out below.

Whether the exclusionary practice is an essential practice as per Hindu religion- Paragraphs 112-126

4. In Paragraph 112 of Opinion A, the discussion has proceeded on the basis that since the devotees of Lord Ayyappa do not constitute a separate religious denomination, it leads to the mathematical certainty that the devotees of Lord Ayyappa are followers of Hindu religion. On the basis of this assumption that devotees of Lord Ayyappa do not constitute a religious denomination within the meaning of Article 26, which is factually and legally incorrect, Opinion A asks whether the practice of the Temple constitutes an essential practice under the Hindu religion. In other words, as opposed to confining the discussion to whether the practice is essential to the Temple in question, bearing in mind the character of the Deity in that Temple and its history (notwithstanding the fact that it is a Hindu Temple), Opinion A has incorrectly broadened the scope of the discussion to whether such practice is essential to the Hindu religion. This is again evident from Paragraph 122. The enquiry ought to have been whether the practice is essential to the identity of the Sabarimala Ayyappa Temple, and not whether it is essential to Hindu religion since the latter approach completely ignores and does grave injustice to the diverse practices, traditions and schools which exist within the Hindu faith. Unlike Abrahamic faiths, there is no one Book which codifies and homogenizes the various beliefs and practices which exist in the Hindu fold. Despite this material difference

which distinguishes the Hindu faith from other faiths, Opinion A tests the practice on the anvils of its essentiality to the Hindu religion as opposed to its essentiality to the nature of the Deity in the Sabarimala Ayyappa Temple. Further, Opinion A has also not considered the various examples placed before the Hon'ble Court by the Petitioner herein of Hindu Temples dedicated to Female Deities which place restrictions on entry and participation of men. If the *ratio* of Opinion A were to be applied to such Temples, it would have the effect of rendering unconstitutional, albeit wrongly so, their practices as well. Clearly, the majority view has the effect of abrahamizing the core of the Hindu faith, namely diversity, and altering its identity.

5. Further, in Paragraph 122, Opinion A has concluded that there is no scriptural or textual evidence to support the practice of the Sabarimala Ayyappa Temple, without referring to or considering the scripture which specifically relates to the history and traditions of the Ayyappa Temple, namely *Bhoothanatha Upakhyanam*, which was placed before the Hon'ble Court by the Petitioner herein. This is an error apparent on the face of the record, apart from the fact that Opinion A does not apply the law on essential religious practices. From the *Shirur Mutt* decision to the *Shayara Bano* judgement, this Hon'ble Court has undertaken a detailed and rigorous analysis of the applicable scripture or text in examining the essentiality of a religious practice to either a faith or a religious institution. Unfortunately, no such examination has been undertaken in Opinion A.

6. Critically, without undertaking any such analysis with respect to the basis and history of the practice, in Paragraphs 124 and 125 Opinion A contains a summary conclusion, relying on the position taken by the Travancore Devaswom Board before the Kerala High Court, that the practice is a mere custom with some aberrations. This conclusion is patently factually incorrect in view of the several colonial records and the scripture that applies to the Temple. Importantly, the Travancore Devaswom Board has no say in the religious practices of the Temple since its sole mandate is the secular administration of the Temple. The Chief Thanthri of the Temple is the sole authority on the religious practices of the Temple, and there is no reference to the Thanthri's position anywhere in Opinion A. It is evident that on the central question of the basis of the practice and its essentiality to the nature of the Deity in the Temple, neither has the law been applied nor have the facts been examined in accordance with the law.

7. Opinion A has also failed to consider the fact that the reason why the practice is observed only in the Sabarimala Ayyappa Temple and not in other Ayyappa Temples in Kerala and outside of Kerala is because the Deity exists as a Naishthika Brahmachari only in the Sabarimala Ayyappa Temple. In the other four major Ayyappa Temples and other Temples across the country, He exists in the form of Dharma Sastha, not a Naishthika Brahmachari. This is evident from the very names of the Temples, namely Kulathupuzha Sastha Temple, Aryankavu Sastha Temple, Achankovil Sree

Dharmasastha Temple, Erumely Sree Dharmasastha Temple. Importantly, in the Achankovil Sree Dharmasastha Temple, He exists in the form of a *grihastha*, a Householder with two consorts, namely *Poorna and Pushkala*. These facts only reinforce and demonstrate the fact that the central reason for the restriction placed on the entry of women with reproductive capabilities in the Sabarimala Ayyappa Temple is directly traceable to the celibate form of the Deity and not to some misplaced sense of menstrual impurity. Had the restriction been based on menstrual considerations, the entry would have been prohibited only on the specific days of the monthly cycle like most other Temples, which it is not because the restriction is not based on menstrual impurity. The non-consideration of these facts in the majority view renders the Judgement liable to be reviewed.

Enforceability of Fundamental Rights under Article 25(1) against the Travancore Devaswom Board-
Paragraphs 97-111

8. Under this head, Opinion A has premised the discussion on the assumption that the Travancore Devaswom Board falls within the definition of "State" under Article 12 and therefore, according to Opinion A, Article 25(1) can be asserted against the Board. The assumption is patently erroneous since the Travancore Devaswom Board, if it is State, cannot interfere with the religious practices of the Temple. The Board is in charge only of secular administration of the Temple. The Chief Thanthri is the sole authority on the religious practices of the Temple, and not the Board.

Therefore, the argument that the Board as the State cannot enforce the practice which is allegedly discriminatory, is fundamentally flawed since the Board is merely enforcing the practice as part of its administrative duties in accordance with the religious practices as spelt out by the Chief Thanthri. This position remains undiluted even if the Board were to be treated as a non-State autonomous body, since religious practices continue to be within the sole purview of the Chief Thanthri.

9. With respect to Article 25(1), *arguendo* devotees of Lord Ayyappa do not constitute a religious denomination, merely because the Temple is a public place of worship it does not take away the rights of the Chief Thanthri and the devotees under Article 25(1) to preserve the practices of the Temple, especially those which are essential to its identity and the Deity's form and nature. The rights of the Chief Thanthri and devotees, including the women devotees of the Petitioner herein, under Article 25(1) are not contingent on the devotees enjoying rights under Article 26 and therefore, must be dealt with in considering the rights asserted by the Writ Petitioner. Unfortunately, there is no discussion Opinion A on balancing these competing rights. That there is an internal balancing that the case calls for, does not find mention anywhere in Opinion A. On one hand are the rights of the Chief Thanthri and the devotees who wish to preserve the practice which is essential to the form of the Deity and the character of the Temple and on the other hand, are the rights of the Writ Petitioner who has not professed faith in

the Deity or its traditions anywhere in the Writ Petition. In such a situation, the rights of the Chief Thanthri and the devotees (including women devotees) who put faith in the practice and its nexus to the celibate form of the Deity must prevail over the rights asserted by the Writ Petitioner. This position remains unaffected even if it is assumed that Articles 14, 15 and 17 apply to the case, which they do not.

10. The other apparent error in Opinion A is the assumption in Paragraph 104 that the restriction based on age of women is provided under Rule 3(b) of the 1965 Rules. The restriction is nowhere to be found in Rule 3(b), but is instead to be found in the Notification issued by the Travancore Devaswom Board in October 1955 and November 1956 i.e. much before the 1965 Rules came into being. Given this undisputed position, there is no discussion in Opinion A which explains as to how the Notifications of 1955 and 1956 are covered by Rule 3(b) of 1965 Rules. Opinion A has not discussed the fact that the Writ Petitioner has challenged Rule 3(b), but not the Notifications which prescribe the age limit. Further, there is no discussion whatsoever in Opinion A as to how the practice of the Temple, which is not based on menstruation but is based on the celibate nature of the Deity in the Sabarimala Ayyappa Temple, is remotely related to Rule 3(b). Unless it is established through cogent evidence that the practice of the Temple is based on considerations of menstrual impurity, there is nothing to support the Writ Petitioner's claim that the practice indeed falls under Rule 3(b) since the said Rule is a

general Rule that applies to all Temples in Kerala, which is not specific to the Sabarimala Ayyappa Temple.

Analysis of the 1965 Act and Rule 3(b) of the 1965

Rules- Paragraphs 127-143

11. The discussion under this head in Opinion A is based on the premise that since devotees of Lord Ayyappa do not constitute a religious denomination, the 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. Without prejudice to the arguments of the Petitioner herein on the issue of religious denomination, it is submitted that *de hors* the proviso to Section 3 and Article 26, the mandate of Section 3 must be understood in the context of Articles 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). Article 25(2)(b) was introduced to abolish the evil of caste-based untouchability and to facilitate the entry of Dalits into Temples. Even assuming that the history, the intent and the express use of "sections" and "classes" of Hindus are capable of being stretched to include "gender", its effect on diversity of religious practices must be considered before arriving at the conclusion that the practice of the Sabarimala Ayyappa Temple is indeed discriminatory. The object of Article 25(2)(b) and consequently the object of Section 3 could have never been to homogenize religious diversity in Hindu traditions and beliefs. Where entry or access is prohibited based on the form of the Deity and not on caste-based or

gender-based discrimination, Article 25(2)(b) and Section 3 have no application. That neither Article 25(2)(b) nor Section 3 refer to gender when they refer to "section or class" of Hindus 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". There is no reference to gender whatsoever since it was consciously left out to preserve the diversity in Hindu religious practices. If this were not the case, all religious practices which venerate women in places of public worship too could be struck down for being discriminatory. Therefore, to mechanically apply Sections 3 and 4 of the 1965 Act is to mechanically apply Article 25(2)(b) without appreciating its direct consequences on religious diversity and rights under Article 25(1). If the practice is observed in the Sabarimala Ayyappa Temple and not in other Temples, surely it must be attributed to the form of the Deity in that Temple and not to gender-based discrimination. Unfortunately, a truncated approach to religious practices has resulted in the conclusion of discrimination as opposed to appreciation of diversity.

12. It is further 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. In other words, to conclude that the use of "women" in Rule 3(b) is a reference to women alone is to misconstrue the context of its use. Therefore, since Rule 3(b)

equally applies to men and restrictions placed on the entry of men into certain Temples, the Rule is not discriminatory. In fact, by striking down the entire Rule, the majority view has voided the diversity in Temple practices in Kerala without examining the basis for such practices or understanding the peculiar history of Temples in that region.

Followers of Lord Ayyappa do not constitute a religious denomination- Paragraphs 88-96

13. In arriving at the conclusion that devotees of Lord Ayyappa do not constitute a religious denomination within the meaning of Article 26, not only has the law been erroneously applied, but requirements not mandated by any judgement have been applied to the devotees of Lord Ayyappa. It is submitted that while the Constitution does not define a religious denomination, it could be said that for all practical purposes a religious denomination could be approximated to a "cult" in its non-pejorative sense. The Oxford Dictionary defines cult as a system of religious veneration and devotion directed towards a particular figure or object. It is impossible to conclude after examining the history, beliefs, practices and traditions of the Sabarimala Ayyappa Temple that it does not constitute a religious denomination or a cult. There is no discussion in Opinion A on this aspect. The Opinion merely proceeds on the basis that since the Temple is a Hindu Temple, its followers are Hindus. Going by this logic, all Hindu religious denominations necessarily form part of the Hindu fold and therefore must be stripped of their status as religious denominations. This would equally apply to other

faiths. Clearly, such an approach is unsustainable and requires review since it is bound to have grave implications for other religious denominations as well.

14. It is submitted that the Constitution does not itself define a religious denomination and therein lies the wisdom of the makers of the Constitution. The absence of the definition itself is an indication that the Constitution makers discouraged a rigid, fixed and mechanical approach to the concept and definition of a religious denomination. This is because, in their wisdom, they were aware of the limitations in prescribing the boundary conditions or contours of what constitutes a religious denomination for all time to come, given this country's immense appetite for innovation and ingenuity in religion and spirituality. Therefore, to deny the status of a religious denomination to the Sabarimala Temple and the devotees of Lord Ayyappa merely because they do not conform to Abrahamic notions of religious denominations, is to defeat the very object of the absence of a definition and to abrahamize the core of the Hindu faith, which is unconstitutional.

15. It is reiterated that the sheer uniqueness of the Sabarimala Temple, its history and the practices associated with the Temple, make it a fit case for treatment as a religious denomination. The fundamental requirements of a religious denomination are: a spiritual organization, a common bond, and the existence of unique practices which flow from its beliefs. Each of these requirements is fulfilled by the Sabarimala Temple and its devotees. Therefore, the

Sabarimala Temple is a denominational Temple under Article 26 and enjoys rights under Article 26. Had this not been the case, it is possible to kill the very idea of a religious denomination by taking a philosophical approach that all paths lead to the same divinity. However, such an approach would defeat the constitutional mandate of Article 26, which is to protect the distinct nature of each path. Since the Temple is a denominational Temple, its practices, including the practice in question, are protected by the proviso to Section 3 of the 1965 Act.

16. Finally, what Opinion A has failed to consider in its analysis of the issue of Article 26 is that the Sabarimala Ayyappa Temple is a Temple based on the Tantra philosophy, which automatically makes it a religious denomination since the Tantra school is different in its tenets, although it falls within the Hindu fold. This is also evidenced by the fact that the Chief Thanthri has placed reliance on Thanthra Samucchaya, a treatise related to Tantric practices, in explaining the practices of the Sabarimala Ayyappa Temple. This nuance does not find mention anywhere in Opinion A. It is, therefore, evident from the above facts and submissions, that Opinion A suffers from factual and legal errors which are apparent on the face of the record, rendering the majority view liable to be reviewed.

B. PATENT ERRORS IN OPINION B

17. In so far as the conclusions with respect to Article 26 in Paragraphs 26 and 27 of Opinion B is concerned, the Petitioner reiterates its submissions made with respect to

Opinion A on the said issue. Consequently, the proviso to Section 3 applies to devotees of Lord Ayyappa and therefore to the Sabarimala Ayyappa Temple. In so far as the validity of the practice is concerned, *de hors* the application of the proviso to Section 3 and Article 26, it is submitted by the Petitioner herein that the Thanthri's affidavit, which is referred to in Opinion B clearly states that it is the celibate form of the Deity that is the primary basis of the practice. The confusion in the instant case arises from conflation of two distinct arguments, both of which have different origins. Under the first argument, the restriction based on menstrual blood is traceable to the treatise that codifies practices related to Tantric Temples, namely *Thanthra Samucchaya* which is referred to by the Chief Thanthri, which forbids any spilling of blood in the Temple, including on account of injuries, on account of its Tantric beliefs. Clearly, even this restriction is not based on notions of menstrual impurity. Under the second argument, the restriction on women of a certain age is based on the celibate form of the Deity, which the Thanthri's affidavit refers to and is corroborated by the previous Thanthri's position before the Kerala High Court and the scripture that relates to the Sabarimala Ayyappa Temple, namely *Bhoothanatha Upakhyanam*. What is important to note is that even if the first argument based on menstrual blood is completely removed from the calculus, the restriction based on the second argument still stands and is based solely on the celibate form of the Deity, which is not discriminatory in light of similar restrictions placed on men in

Temples dedicated to Female Deities. Unfortunately, Opinion B conflates the two arguments, which is an apparent factual error leading to an incorrect application of the law.

18. As regards the finding with respect to Rule 3(b), the Petitioner herein relies on its submissions with respect to Opinion A. On the issue of application of Articles 14, 15(1), 15(2) and 17 to rights under Article 25(1) and their application to Rule 3(b), which is referred to in Paragraphs 21.8 and 29 of Opinion B, it is submitted that Rule 3 is a codification of the pre-existing practices and customs of Kerala Temples which are drawn from the text *Thanthra Samucchaya*. In other words, the practices were not introduced for the very first time through State intervention, but were merely codified by the Rule. Therefore, the Writ Petitioner's challenge to Rule 3(b) and the notifications must be understood in this backdrop. Viewed in this backdrop it becomes evident that Article 25(2) enables *only the legislature* to pass any laws for the purposes and objects specifically enumerated thereunder. Therefore, this Hon'ble Court cannot exercise any power under Article 25(2) in so far as Section 3, Rule 3 or the impugned notifications are concerned. Simply stated, this Hon'ble Court can examine the constitutionality of Rule 3(b) and the impugned notification on the anvils of Article 25(1) and Article 26 only but not under Article 25(2). Further, since Rule 3(b) merely codifies the 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. Also, the said

Articles cannot be invoked against the religious practices of a non-State entity such as the Temple. Consequently, to examine the constitutionality of the Rule and the notification, the Court has to limit its analysis only to Articles 25(1) and 26 and the essential religious practices test must be applied, which in this case would establish that the practice of the Sabarimala Ayyappa Temple is based on the celibate nature of the Deity. As regards, Article 15(2), as pointed out by Mr. Parasaran, it does not apply to a religious place of worship owing to its express absence in the provision for good reason which is captured in the Constituent Assembly Debates. Finally, as demonstrated by Mr. Parasaran, citing the history of Article 17, the provision was meant only to prohibit and deter caste-based untouchability and not any other practice which is based on gender since it would interfere with diversity of Hindu religious practices.

19. As for taking oral evidence, this Hon'ble Court in *Real Estate Agencies v State of Goa* (2012) 12 SCC 170 had clearly held that a Writ Court can receive oral evidence if the facts of a case warrant the taking of such evidence. Also, under Order IX Rule 5 of the Supreme Court Rules, affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove. Conversely, those facts which go beyond personal knowledge must be proved by leading documentary or oral evidence. In the facts of this case, given the issues at stake, the majority view ought to have directed taking of further documentary and oral evidence as opposed

to arriving at summary findings which affect the rights of the devout under Article 25(1).

20. In Paragraph 9 of Opinion B, in discussing the concurring judgement of Justice Rajagopala Ayyangar in *Shirur mutt*, wherein Justice Ayyangar opined that Article 25(2)(b) applies only to social welfare and reform but not to religious practices, it has been observed in Opinion B that this is the view of only Justice Ayyangar but not of the rest of the concurring Judges in *Shirur mutt*. Going by this logic, there is no single view or reasoning which all members of the majority in the Impugned Judgement have unanimously agreed upon, which could mean that there is no majority view.

21. It is evident from the above facts and submissions, that Opinion B suffers from factual and legal errors apparent on the record, rendering the majority view liable to be reviewed.

C. PATENT ERRORS IN OPINION C

22. The spirit of Opinion C is best understood from Paragraphs 6-18 wherein it discusses the supposed thematic continuity between Articles 14, 15 and Article 25(1). While all three Articles mandate equal treatment of individuals by the State regardless of their religious beliefs, among other things, individualism cannot be used as the sole or primary prism to understand the position of individuals within a particular religion under Article 25(1) since the latter is a function of the beliefs and practices of the faith. To ignore this nuance would lead to homogenising all religious practices of all faiths based solely on the consideration of equality and on the

presumption that all differential treatment is necessarily unequal treatment and therefore amounts to discrimination. Had this been the position of law, this Hon'ble Court could have simply invoked Articles 14 and 15 in the context of religious practices to homogenise all practices merely because they treat men and women differently in different circumstances. Critically, to treat individual liberty as the shining star of all fundamental rights even in the context of public places of worship which have a right to preserve their traditions and practices is to completely render rights under Article 25(1) subservient to the whim of an individual. Therefore, this very premise of Opinion C calls for review because it renders nugatory the right to preserve traditions and practices under Article 25(1). Importantly, the position adopted in Opinion C has two grave consequences- first, religious institutions which do not enjoy the status of a denominational institution under Article 26 are entirely at the mercy of individuals in so far as preservation of their traditions and practices is concerned, and second, even those institutions which enjoy a denominational character under Article 26 are not better off compared to those which do not fall under Article 26. Effectively, by treating the individual's right as the be all and end all of the "constellation of fundamental rights", Opinion C has abridged the rights of those individuals and institutions who wish to preserve long-cherished religious practices. Nothing could be more catastrophic to the rights guaranteed under Article 25(1). This alone warrants a review of the Judgement since its

effects go far beyond the Sabarimala Temple and its effects are there to see in the case of the Sabarimala Temple where the basis of the practice has been misunderstood to arrive at the baseless conclusions of patriarchy and gender discrimination.

23. To view religious practices and traditions which enjoy the protection of Article 25(1) entirely through the prism of the individual would lead to excessive state interference with religious beliefs which goes against the grain of the Constitution and is therefore violative of the Constitutional morality. This would allow Courts and the Executive to re-write the fundamentals of every faith, which was never the intent of the framers of the Constitution. Constitutional morality also requires all arms of the State, including the judiciary, to respect the limits imposed on them by the Constitution in relation to interference with religious practices. Therefore, the reformative levers provided to the State, including the judiciary, in the Constitution must be invoked only in the specific circumstances envisaged by the Constitution and in the manner spelt out by the Constitution. In the context of the present case what this means is that Article 25(2) cannot be invoked by this Hon'ble Court to examine the validity of the religious practices of the Sabarimala Ayappa Temple since Article 25(2) only enables the legislature to pass laws and not the judiciary.
24. The substance of Opinion C is that in all contexts and in respect of all religious institutions, it is the right of the individual which must always prevail over all other rights.

This is fundamentally flawed since the rights under Article 25(1) are expressly subject to other provisions of Part III which includes the rights of a religious denomination under Article 26. Therefore, unless a case of blatant and unreasoned discrimination is made out, the rights of individuals are subject to the rights of a religious denomination where a place of worship (public or private) qualifies as a denominational religious institution within the meaning of Article 26. Further, even where a public place of worship does not attract Article 26, the rights of individuals under Article 25(1) are still 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 Opinion C. In Paragraph 49, where Opinion C discusses the engagement of essential practices with constitutional values, it has reiterated that the individual's right must prevail even over essential religious practices. To paraphrase the gist of Opinion C, other than the right of an individual, nothing is sacred anymore.

25. In Paragraph 50, Opinion C concludes without examining the evidence placed on record by the Petitioner herein that exclusion of women with reproductive capabilities has nothing to do with the celibate nature of the Deity at the Sabarimala Temple and is therefore, not an essential religious practice. In Paragraph 51, while narrating the aberrations in the observance of the practice, there is no

reference to the scripture or colonial records which evidence the observance of the practice as a rule from time immemorial. There is no discussion in the opinion whatsoever as to how the Board's control of the Temple and the State's interference with the religious practices of the Temple to indulge influential individuals have resulted in these aberrations, which cannot be treated as proof of non-existence of the rule. Clearly, this is an error apparent on the face of the record which warrants a review of the Opinion.

26. As regards a scriptural basis for the practice, there is no reference in Paragraphs 52 and 53 of the Opinion C to *Bhoothanatha Upanakhyanam*, which has been referred to and relied upon in the dissenting opinion of Justice Indu Malhotra. Without referring to the scripture and other texts which spell out the rules of *Naishthika Brahmacharya*, Opinion C has concluded that the practice of the Temple is not an essential religious practice or that the practice has non-religious reasons. Again, in Paragraphs 54 and 55, there is no examination of the tantric nature of the Temple, the celibate form of the Deity and the restriction placed on women of a "procreative age group". The issue has been approached solely from the standpoint of individual dignity without any reference to examples of Temples of similar nature where restrictions exist on men with respect to their entry and participation in festivals celebrating Female Deities.

27. As regards the discussion on Article 26 contained in Paragraphs 58-69, the Petitioner herein places reliance on its foregoing submissions on this issue. As for the discussion in Paragraphs 70-82 on the applicability of Article 17 to the practice, Opinion C specifically takes note of the observations of Professor K T Shah on Pages 97 and 98 of his opinion wherein professor Shah warned against misuse by busy bodies and lawyers of the lack of definition of untouchability. Despite taking note of this note of caution and the specific history of caste-based untouchability whose eradication was the object of Article 17 and which resulted in the Protection of Civil Rights Act, 1955, Opinion C has proceeded to expand the scope of Article 17 to bring the practice of the Sabarimala Temple within its ambit. This does grave injustice to the history of the Temple which has allowed members of all faiths to enter its premises and which requires its devotees to pay respects to a mosque on the way to the Temple. It is indeed unfortunate that a restriction which is based on Tantric philosophy's conception of male and female energies and their respective vitalities, has been reduced to untouchability. This alone calls for a review of Opinion C.

28. In understanding the error in Opinion C's discussion on Rule 3(b) from Paragraph 83, the following must be borne in the facts of this case. It must be appreciated that Section 3 of the 1965 Act is the statutory counterpart of Article 25(2)(b) and the proviso to Section 3 is the statutory counterpart to Article 26. As submitted earlier, "section or class" as used in the proviso to Section 3 does not include gender but is a

reference only to divisions, sects, sub-sects and castes. Rule 3 is a combined application of Articles 25(1) and 26 since it codifies pre-existing religious practices which are protected as traditions/essential religious practices under Article 25(1) and where applicable, they are protected as essential religious practices of a religious denomination under Article 26. The notifications issued by the Travancore Devaswom Board in 1955 and 1956 which prescribe the age-based restriction on entry of women into the Sabarimala Temple is a direct application of Section 31 of the Travancore Act of 1950 which requires the Board to administer Temples under it in accordance with the traditions and usages of the Temples. Therefore, the notification is again protected by Articles 25(1) and 26 in the same manner as Rule 3. Further, since the notification was issued prior to the coming into being of the 1965 Act and Rules, its assessment cannot be tied to Rule 3(b).

29. Viewed in the above light, while the prescription of age in the Notifications of 1955 and 1956 could be deemed arbitrary, the principle behind the Notifications is to restrict entry of women who fall under a "procreative age group", which is a phrase used in Opinion C by the Hon'ble Court itself and therefore presumably is not vague or arbitrary. Further, even if the Sabarimala Ayyappa Temple does not attract Article 26, the Chief Priest of the Temple and the devotees are entitled to preserve the traditions of the Temple under Article 25(1), and therefore the notifications do not run afoul of Section 3 of the 1965 Act. The restriction also does

not run afoul of Section 3 since neither Article 25(2)(b) nor Section 3 envisage their application to practices which relate to the nature and form of the Deity, which in turn result in restrictions based on gender. Given that nowhere in the discussion of Opinion C there are references to restrictions placed on men in Temples dedicated to Female Deities, the Opinion suffers from a truncated approach to diversity in religious practices. In so far as the discussion in Paragraphs 88-90 on Rule 3(b) is concerned, the Petitioner herein relies on its submissions in relation to the other Opinions of the majority view.

30. As regards the discussion in Paragraphs 91-102 on applicability of Article 13 to the practice of the Sabarimala Ayyappa Temple, even if it were to be assumed that religious practices and traditions which apply to public places of worship, as distinguished from personal laws based on religion, fall under custom and usage as used in Article 13, it still requires the Hon'ble Court to balance rights under Article 13 and 25(1) bearing in mind the crucial element of diversity without treating individual rights alone as the all-conquering and impervious "shining star in the constellation of fundamental rights" as posited in Opinion C.
31. As for the discussion in Paragraphs 103-106 on the rights of the Deity, according to Opinion C, the Deity has a legal personage *only* for the purposes of suing and to be sued. Therefore, according to Opinion C, the said legal personage cannot be extended for the purposes of enjoyment and assertion of fundamental rights as a living person/juristic

person under Article 25(1) and Article 21. It is humbly submitted that this position misinterprets the point of the submission made on behalf of the Deity. Firstly, to equate the Deity's character with that of a body corporate is to miss the very point that a religious belief which accords the Deity the status of a living person, is different from vestation of a juristic character in a body corporate for transactional convenience. In other words, by questioning the Deity's character as a living person, which is the bedrock of Hindu mode of worship and is especially the mode of worship of the Deity in Sabarimala, the fundamental precepts of Hindu beliefs which have the force of law in so far as religious practices are concerned have been called into question, warranting a review. Secondly, there is no basis to assume the juristic character of the Deity is applicable for the purposes of suing and to be sued, but is not available for the enjoyment of fundamental rights. There is no such limitation in law with respect to the applicability of the juristic character of a Deity. Thirdly, a Deity's character as a minor in law is different from its character as a living person. The former is a legal inability requiring the *Shebait* or the devotees to take action on behalf of the Deity, but it still does not take away the character of a living person from the Deity notwithstanding its perpetual minorhood. After all, only a living person can be a perpetual minor and even a perpetual minor enjoys fundamental rights, since fundamental rights are not the exclusive preserve of adults. For instance, in W.P. (C) No. 728 of 2015, the lead petitioner is a minor, namely

Arjun Gopal, whose fundamental right to breathe pollution-free air has been asserted to seek a ban on sale and bursting of firecrackers in Delhi during Diwali. Therefore, the Deity's perpetual minorhood only proves its character as a living person and does not take away from it. Further, the import and significance of the submissions made on behalf of the Petitioner herein with respect to the Deity's rights have been misunderstood. It is irrefutable that the Temple at Sabarimala, its practices, the faith of the devotees in the Deity and the right of the devotees to worship the Deity, all are premised and must be necessarily traced to the very belief that there exists a Deity called Lord Ayyappa at the Sabarimala Temple which is His Abode, whose eternal celibate nature is inseparable from the Deity himself and informs every religious practice and ritual associated with the Temple and every practice and ritual observed by the devotees of Lord Ayyappa during the 41-day vow which they observe before they visit the Sabarimala Temple. Therefore, it necessarily follows that the belief that there exists Lord Ayyappa as a living person translates to the said living Deity enjoying rights under Article 25(1) asserted through the Chief Thantri, His devotees enjoying rights under Article 25(1) and the Temple enjoying rights under Article 26(b). Since the Deity is a living person under the law, the Deity, through the Chief Thanthri and His devotees, has a fundamental right to practice His faith and His vow of Naisthika Brahmacharya under Article 25(1). It is indeed surprising that while on one hand, Opinion C expansively

interprets Article 17 to go beyond caste-based untouchability *despite legislative history to the contrary*, Opinion C has not taken a similar expansive position with respect to the Deity's character as a living person which is well-settled in law, and the Deity's enjoyment of fundamental rights as a consequence of such character.

32. The discussion in Paragraphs 103-113 under the head "roadmap for the future", while not binding, raises issues which affect the analysis in Opinion C in the context of the Sabarimala Temple. Opinion C takes the view that secular constitutional Courts must desist from donning ecclesiastical hats since their expertise in matters of religion may be questionable. Therefore, Opinion C suggests that unless there is evidence of fraud being committed on the Court by a religious group, the group's position with respect to what constitutes an essential religious practice must be deferred to avoid burdening the Courts with scrutiny of religious texts. Surprisingly, despite overwhelming evidence being placed on record to prove the restriction placed on women of a procreative age group through scripture and colonial records and sworn affidavits being tendered by the Chief Thanthri where the primary reason for the practice has been identified as the celibate form the Deity in the Temple, Justice Chandrachud has not considered the evidence and has summarily rejected the existence of the practice citing a handful of aberrations which only prove the rule. Therefore, neither the law as it stands today has been applied to the evidence adduced nor the has roadmap of the future. This

patent inconsistency warrants a review of Opinion C and the majority view of the Judgement.

33. In stark contrast to the apparent errors in the Opinions of the majority view and the leaps in Constitutional reason, the dissenting Opinion takes a restrained approach to interference with religious practices and examines the evidence placed on record by those who support the practice of the Temple, including the Petitioner herein. The dissenting Opinion concludes that (a) the Writ Petitioner lacks the *locus* to challenge the practice of the Temple; (b) that in view of the *in rem* judgement of the Division Bench of the Kerala High Court, all issues raised in the Writ Petition has been finally and conclusively decided by the judgement of the Kerala High Court and therefore *res judicata* applies; (c) that the practice of the Temple does not fall within the meaning of untouchability under Article 17; (d) that Article 14 does not override Article 25(1); (e) that constitutional morality does not mean testing religious practices on the anvils of rationality or secular logic; (f) the practice of the Temple is informed directly by the celibate form of the Deity, and not alleged notions of menstrual impurity; (g) that devotees of Lord Ayyappa plausibly constitute a religious denomination within the meaning of Article 26; (h) that the Temple is not a State-funded Temple since it does not receive funds from the consolidated fund of India and (i) Rule 3(b) is not *ultra vires* Section 3 since it falls squarely within the ambit of the proviso to Section 3. In light of these clear and reasoned findings in the dissenting Opinion which have been arrived at

as a consequence of objective examination of the evidence placed on record by the Petitioner herein and others who support the tradition of the Temple, the absence of such an examination by the majority view renders the majority view liable to be reviewed. Further, the Petitioner herein represents the views of those women devotees who put faith in the traditions of the Sabarimala Ayyappa temple, including the impugned practice. The views of such women and their position with respect to the practice have not been given their due in the discussion by the majority, despite the discussion ostensibly revolving around women's rights, while the Writ Petitioner's claim of representing women and their rights has been accepted by the majority view despite non-fulfillment of the essential requirement of *locus* by the Writ Petitioner. That the majority view failed to consider that two of the women writ petitioner sought to withdraw the Writ Petition on the final date of argument i.e. 1st of August, 2018 and even submitted before this Hon'ble that after hearing the arguments presented in support of the temple's practice, they understand the basis of the practice and do not see it as a case of discrimination.

34. It is evident from the facts and submissions hereinabove that each of the majority opinions contain patent factual and legal errors, thereby making out a case for review in Open Court. Following are the following substantial questions of fact and law which establish a case for review by this Hon'ble Court:

- H. Whether the majority view of the Constitution Bench erred in not considering the evidence placed on record to demonstrate that the practice of the Temple has a direct and integral nexus with the celibate form of the Deity in the Sabarimala Ayyappa Temple?
- I. Whether the majority view erred in not holding that in light of the binding judgement of the Division Bench of the Kerala High Court under Article 226 which applies *in rem*, the Writ Petition is barred by *res judicata*?
- J. Whether the majority view of the Constitution Bench erred in taking the view that even in relation to public places of worship whose traditions and practices are protected by Article 25(1), an individual who calls into question the traditions of the Temple must prevail over the rights of other devotees who seek to protect the traditions?
- K. Whether the majority view of the Constitution Bench erred in not considering the diversity in religious practices in public places of worship within the Hindu fold, and by approaching the issue through the prism of discrimination?
- L. Whether the majority view erred in concluding that the devotees of Ayyappa do not constitute a religious denomination within the meaning of Article 26?
- M. Whether the majority view erred in concluding that a practice based on the celibate nature of the Deity and the Tantric traditions of the Temple amount to untouchability?

N. Whether the majority view erred in striking down the notifications as well as Rule 3(b) without considering the traditions and practices protected by Article 25(1), and Article 26 where applicable?

35. That the Petitioner herein has not filed any other Review Petition in this Hon'ble Court earlier for similar relief. Further, given the gravity of issues which are for consideration in this Petition by the Hon'ble Court, the Petitioner herein seeks an audience in Open Court before the present Petition is adjudicated upon.

36. That the Petitioner has been advised that the order of this Hon'ble Court deserves review reconsideration on the following amongst other:

GROUNDS

A. That the majority view erred in not considering the evidence placed on record which demonstrate that the practice of the Temple is a direct consequence of the celibate form of the Deity and the rules of Naishtika Brahmacharya which apply to the Deity;

B. That the majority view ought to have upheld the *in rem* judgement of the Division Bench of the Kerala High Court and dismissed the Writ Petition on grounds of *res judicata*;

C. That the majority view erred in concluding that in all circumstances, the right of an individual must prevail over the rights of other individuals in a public place of worship notwithstanding its effects on the traditions and practices of the place of worship;

D. That the majority view has erred in concluding that the devotees of Lord Ayyappa do not constitute a religious denomination within the meaning of Article 26;

E. That the majority view erred in concluding that the practice of the Temple amounts to untouchability under Article 17;

F. That the majority view erred in concluding that the practice of the Temple violates Section 3 of the 1965 Act;

G. That the majority view erred in concluding that Rule 3(b) of the 1965 Rules is *ultra vires* Section 3 of the 1965 Act since the Rule applies equally to men in relation to temples which place restrictions on their entry into certain Temples;

H. That the majority view has failed to appreciate the spirit of the notifications of 1955 and 1956 by ignoring the principle behind the restriction and focusing on the age-based proscription;

I. That the majority view will have the effect of eroding the diversity in religious practices across the board in all faiths since its approach places the individual over and above the traditions and practices of places of worship, whether or not they enjoy the status of a denominational place of worship.

PRAYER

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

a) review its Judgement dated 28.09.2018 delivered by a Constitution Bench of this Hon'ble Court in Writ Petition (Civil) No. 373 of 2006; and

b) be pleased to pass such other order or orders as this Hon'ble Court deems just and proper in the facts and circumstances of the case.

AND YOUR PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY

FILED BY

J. SAI DEEPAK

SUVIDUTT M.S.

ADVOCATE

ADVOCATE

SETTLED BY

MOHAN PARASARAN

SENIOR ADVOCATE

DRAWN ON: 06.10.2018

FILED ON: 08.10.2018

NEW DELHI

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (CIVIL) No. OF 2018

IN THE MATTER OF: -

PEOPLE FOR DHARMA ... PETITIONER

VERSUS

STATE OF KERALA AND ORS. ... RESPONDENTS

CERTIFICATE

Certified that the present Review Petition is first application for the review of the impugned order dated 28.09.2018 and it is based in the grounds admissible under the Rules. No additional facts, documents or ground have been taken or relied upon the Review Petition which were not part of the Special Leave Petition earlier.

Filed by:

SUVIDUTT M.S.

Advocate for the Petitioner

New Delhi

Date: 08.10.2018

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

REVIEW PETITION (CIVIL) No. OF 2018

IN

W.P. (C) NO.373 OF 2006

IN THE MATTER OF: -

PEOPLE FOR DHARMA ... PETITIONER

VERSUS

STATE OF KERALA AND ORS. ... RESPONDENTS

AFFIDAVIT

I, Ashish Dhar, S/O Lakshmi Nath Dhar, aged 37 years, resident of M-20, Lajpat Nagar – II, New Delhi – 1100024, is the Authorised Signatory of the registered organisation named People for Dharma, presently at New Delhi, do hereby solemnly affirm and declare as under:-

1. That I am the Authorised Signatory of the Petitioner organization in the above mentioned matter and hence fully conversant with the facts of the case, as such competent to swear this affidavit;
2. That the facts stated in the accompanying Review Petition from Page No. 412 to , are true and correct to my knowledge and the statement of dates/List of dates from Page No. B to and facts furnished along with the Review Petition and Applications are true to my knowledge and belief.

DEPONENT

VERIFICATION

Verified at New Delhi on this 7th day of October, 2018 that the contents of the paragraphs of my above affidavit are true and correct to my knowledge and belief, no part of it is false nor has any material fact been concealed therefrom.

DEPONENT