

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

IN THE MATTER OF:

INDIAN YOUNG LAWYERS

ASSOCIATION & ORS.

PETITIONERS

VERSUS

STATE OF KERALA & ORS.

RESPONDENTS

WRITTEN SUBMISSIONS BY

ADVOCATE J. SAI DEEPAK ON

BEHALF OF K.K. SABU (RESPONDENT

NO. 18), PEOPLE FOR DHARMA

(INTERVENOR) & CHETANA

CONSCIENCE OF WOMEN

(INTERVENOR)

[FOR INDEX PLEASE SEE INSIDE]

ADVOCATE FOR THE RESPONDENT &
INTERVENORS: **SUVIDUTT M.S.**
FILED ON: **24.07.2018**

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**SUR-REJOINDER BY ADVOCATE J. SAI DEEPAK ON
BEHALF OF K.K. SABU (RESPONDENT NO. 18),
PEOPLE FOR DHARMA (INTERVENOR) & CHETANA
CONSCIENCE OF WOMEN (INTERVENOR) TO THE
REJOINDER SUBMISSIONS OF MS. INDIRA JAISING
AND MR. RAJU RAMACHANDRAN**

[FOR INDEX PLEASE SEE INSIDE]

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INDEX

S.NO	PARTICULARS	PAGES
1.	Sur-rejoinder Submissions by Advocate J. Sai Deepak	

precedent was cited to support this position by either Ms. Jaising or Mr. Ramachandran, except for taking the position that a Deity, being a juristic person, does not have a conscience within the meaning of Article 25(1), and therefore, cannot profess or propagate his faith. This argument completely misses the point of the submission made on behalf of the Deity.

2. 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 Petitioner has demonstrated that it neither understands, nor believes in the Deity in Sabarimala and its nature as a living person.
3. Secondly, it defies logic and reason to argue that 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.

4. 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.

5. Further, it appears from the Rejoinder that the import and significance of the submissions made on behalf of the Respondent with respect to the Deity's rights have not been fully understood. 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), His devotees enjoying rights under Article 25(1) and the Temple enjoying rights under Article 26(b). Clearly, this argument has not

5

been rebutted either by Ms. Jaising or Mr. Ramachandran.

6. It is also submitted that the logic that applies to Article 25(1) equally applies to Article 21. Since Lord Ayyappa is a living Deity, He enjoys the right to privacy under Article 21 which includes the right to prescribe conditions to enter into his Abode, namely the Temple. Such right to privacy is not limited only to certain rituals which are performed daily, but also extends to the right of entry into the Temple.
7. In her rejoinder submissions, Ms. Jaising contended that corporations are not citizens and, therefore, do not enjoy fundamental rights. In support of the said contention, the *Bank Nationalisation* Judgment was cited. This is another fallacious submission, since Article 19 speaks of 'citizen' and therefore does not include corporation or juristic person, whereas Articles 14, 25(1) and 21 speak of 'person', which includes a juristic person and a Deity who is treated as a living person under the law. Therefore, the conflation by Ms. Jaising of "persons" with "citizens" does not help her case.

8. In any event the Bank Nationalisation Case requires a corporation to implead at least one natural person when it approaches the Court of law as a petitioner. In this case, the Deity is not the petitioner but in fact a respondent who is represented by the Respondent No. 4, the Thanthri, and his devotees, including female devotees to support the position of the Temple. Further, even applying the Petitioner's logic, it is the Petitioner which has failed to implead the Deity as a respondent, which it ought to have, given the Deity's character as a living person. Finally, since the Thanthri is the final word in so far as observance of religious practices in the Temple is concerned, owing to the practice of Devaprashanam, the Deity is represented in Court today both through the Thanthri and His female and male devotees who support the religious practice of the Temple. Therefore, the Respondents are well within their rights to assert the right of the Deity on behalf of the Deity.
9. Since the Deity is a living person under the law, the Deity has a fundamental right to be treated equally

even under Article 14, and His right to practice His faith and His vow of Naisthika Brahmacharya are equally protected by Articles 13, 14 and 25(1).

10. It is indeed surprising that while on one hand, both Ms. Jaising and Mr. Ramachandran exhorted the Hon'ble Court to expansively interpret Article 17 to go beyond caste-based untouchability *despite legislative history to the contrary*, they are patently averse to acknowledging 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. In other words, while both Ms. Jaising and Mr. Ramachandran are happy to go beyond the written text of the Constitution and its history on the issue of applicability of Article 17 to the issue at hand, they deny the Deity's legally well-settled position as a living person who is capable of enjoying fundamental rights. Clearly, this is a case of constitutional convenience.

B. Non-applicability of Articles 25(2), 14, 15 and 17 to the Petitioner's case

11. Section 3 and its Proviso of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act 1965 themselves represent the invocation of Articles 25(2)(b) and 26(b) respectively by the State Government. Further, Rule 3 of Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965 represents combined invocation of Articles 25(1), 25(2) and 26(b) since the Rules relate to the rights of the Deity, the rights of His devotees, the power of the State to codify existing practices and the right of the Temple to preserve the identity of the Deity and the Temple. The impugned notification also represents the invocation of Articles 25(1), 25(2) and 26(b). Consequently, Section 3 along with the Proviso and Rule 3 themselves represent a combined application of Articles 25(2), 25(1) and 26(b).

12. Most pertinently, Rule 3 is a codification of the pre-existing practices and customs of Kerala Temples. 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 Petitioner's challenge to Rule 3(b) and the impugned notification 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 notification is 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).

13. Since Rule 3(b) merely codifies the pre-existing practice, Article 14 or 15(1) cannot be invoked to challenge a pre-existing practice merely because it has been codified by the State. 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.

14. As pointed out by Mr. Parasaran, Article 15(2) does not apply to a religious place of worship owing to its express absence in the provision for good reason. Finally, as demonstrated by Mr. Parasaran, citing the history of Article 17, it was meant only to prohibit and deter caste-based untouchability and not any other practice.

C. The unreasonableness of the Impact Theory

15. In her Rejoinder submissions, Ms. Jaising urged the Court to apply the Impact Theory to determine whether a certain practice is discriminatory. The impact theory proceeds on the assumption that all exclusion for any reason and regardless of the object it flows from, amounts to discrimination. It is submitted that this is perhaps the worst test that could have been advanced on behalf the Petitioner to arrive at a finding of discrimination, apart from reversing the entire body of jurisprudence which has been developed by this Hon'ble Court over decades with respect to Article 14.

16. The entire body of case law that relates to Article 14 is hinged on the determination of a reasonable and intelligible nexus between a condition/restriction, and its object. In other words, if the nexus is arbitrary or vague and the condition is far removed from the object by several degrees of separation, thereby making it unintelligible, it is in such a situation that a Court may arrive at a finding of discrimination. For instance, in the example cited by Ms. Jaising, since the minimum height of six feet prescribed for the prison guard had nothing to do with the requirement of the job, the condition was rightly found to be unreasonable and hence discriminatory. In stark contrast, in the facts of the instant Petition, there is a direct, intelligible and reasonable nexus between the eternal celibate character of the Deity in Sabarimala and the restrictions placed on women with reproductive capabilities. In fact, continence and abstinence have always been the central attributes associated with the vow of celibacy or Brahmacharya. Therefore, there is nothing uncommon or unnatural about the

impugned religious practice, which is directly traceable to the celibate nature of the Deity.

17. If the Impact Theory, as suggested by Ms. Jaising, were to be accepted as the test for discrimination under Article 14, it would amount to replacing a precision surgical instrument namely the Intelligible Nexus Test, with a blunt sledgehammer, for an extremely sensitive balancing exercise. In other words, the impact theory as suggested by Ms. Jaising, is a blinkered approach which is oblivious and impervious to the rights of every other stakeholder such as the Deity, the Temple and devotees (women and men). Clearly, applying the impact theory is bound to lead to unconstitutional outcomes.

18. Further, if the blinkered and impervious impact-based approach of Ms. Jaising were to be applied to those places of worship which place restrictions on entry of men based on long-preserved traditions, it would only lead to homogenization of religious places of worship and killing their very identities in the process. Surely, this was never meant to be the

intent behind Article 14, and it is precisely to preserve such identity and religious diversity, the Constitution makers did not deem it fit to recognize an 'absolute right' of an individual under Article 25(1). It is also, precisely for this reason that the legislature has not been given the power to alter religious practices under Article 25(2), since it only speaks of social reform or welfare. It is therefore evident that the scheme and framework of the Constitution itself renders impermissible the application of an impact-based approach to such issues.

D. Clarity on Factual Aspects relating to the Observance of the practice

19. Both Ms. Jaising and Mr. Ramachandran, during the course of their Rejoinder submissions failed to address three important factual aspects:

- i. Reliance by the Petitioner's side on aberrations or digressions with respect to entry of women into the Sabarimala Temple, to construe the

rule or the norm with respect to the religious practices of the Temple;

- ii. The reason why the impugned religious practice/restriction is observed only in the Sabarimala Ayyappa Temple and not in other Ayyappa Temples across the country; and
- iii. Status of the Pandalam Royal family with respect to the Deity and restrictions on the family

20. With respect to the first issue, what the Petitioner's side has failed to point out is that, it is owing to State control of the Travancore Devaswom Board that the religious practice of the Sabarimala Temple has been flouted by the State Government to accommodate political ideologies and VIPs despite clear prescriptions to the contrary by the Chief Thanthri based on Devaprashnam. In other words, the Board chose to ignore the express will of the Deity as conveyed through the Thanthri. To precisely put pause to such departure from the original practices of the Temple, a devotee, S. Mahendran, approached the Kerala High Court which resulted in

the judgment of 1991. Therefore, aberrations in the observance of practice which was a consequence of statist interference, cannot now be used to question the existence of a rule or practice. In other words, the Deity, the Temple and the devotees must not bear the consequences of occasional departure from the practice which was a result of interference by the State government and the Board.

21. In this regard, it is further submitted that the entry of women between the age group of 10 and 50 from the north gate of the Sabarimala Temple too was one of the aberrations which culminated in the judgment of the Kerala High Court in 1991. During the course of her rejoinder submissions, Ms. Jaising submitted that if a rule is broken once, it is broken forever and is also proof of the fact that there never existed a rule. This submission is as fallacious as it can get, since going by the logic of Ms. Jaising, there is not a single rule in the world which has ever been broken, and all rules which have been broken lose the status of rules for eternity. Clearly, such a position is untenable and unreasonable.

22. The correct test is (a) whether the Rule has a basis in the character of the institution, which in this case is drawn from the nature of the Deity, and (b) whether in the event of a digression, the institution has deemed it important to reinforce and enforce the rule. Clearly, the Temple has indeed reinforced and enforced the rule, which is precisely why the petition exists. If the rule was absent or loosely observed, the Petitioner would have no reason to approach the Court in the first place.
23. Finally, the party which questions the existence of a rule must prove through positive and cogent evidence, that the rule has no basis and the aberrations are in fact the norm. In the instant case, the Petitioner has miserably failed to prove either through evidence.
24. With respect to the second factual issue, it is submitted that the reason why the impugned religious practice is observed only in the Sabarimala Ayyappa Temple and not in other Ayyappa Temples in Kerala and outside of Kerala is because He exists as a Naishtika Brahmachari only in the Sabarimala

Ayyappa Temple. In other four Ayyappa Temples and other Temples across the country, He exists in the form of Dharma Sastha, not a NaishtikaBrahmachari. This is evident from the very names of the Temples, namely KulathupuzhaSastha Temple, AryankavuSastha Temple, AchankovilSreeDharmasastha Temple, ErumelySreeDharmasastha Temple. Importantly, in the AchankovilSreeDharmasasthaTemple, 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.

25. With respect to the third issue, i.e. status of the Pandalam Royal Family, what the Petitioner's side has failed to point out is that the Royal Family are the foster parents of the Deity since He is a member of the family, the Son of the Pandalam Raja. Therefore, the women of the Royal family are deemed to be his Mother and Sisters. Brahmacharya is not affected by the presence of Mother and Sisters, which needs no pointing out. That apart, what the Petitioner's side is either unaware of or has deliberately not pointed out is that the Pandalam family has stopped visiting the Temple for several decades because of the Thanthri's edict that as a Son, the Deity cannot remain seated when the King, the Foster father of the Deity, visits the Temple. Given that this creates an ecclesiastical dilemma, the Pandalam family stopped visiting the Temple several decades ago.
26. Evidently, none of the above factual aspects, which shed abundant light on the religious practices of the

19

Temple and are based on the celibate nature of the Deity, have been placed before the Hon'ble Court by the Petitioner's side. This proves that the Petition is based on ignorance, a misplaced understanding of gender justice and a gross failure to grasp the diversity in religious traditions and practices.

E. The definition of a religious denomination under Article 26

27. 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 times 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 defy the conventional notions of religious denominations, is to defeat the very object of the absence of a definition.

28. In fact, 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.

F. The relevance and indispensability of the Essential and Integral Practice Test

29. It is submitted that the Essential and Integral Practice Test is applicable not just to the interplay between Article 25(2) and 26(b) but also to a balancing exercise under Article 25(1). This is because the principle behind and the utility of the test remain the same, even with respect to an examination under Article 25(1). After all, the object of the test is not to limit the scope of religion but to limit the scope of State's interference with religion, and the State includes the Judiciary. Just as the doctrine of Separation of Powers preserves the independence of the Judiciary, the Essential and Integral Practice Test shields religion from excessive interference by the State. It is further submitted that the Essential and Integral Practice Test is the product of application of constitutional morality to religion and religious practices. Therefore, it

continues to be indispensable in the balancing exercise called for by Article 25(1).

30. Finally, in the absence of ecclesiastical Courts, it falls upon secular Courts to wear the hat of a theologian in order to understand the origin, intent and basis of a religious practice before they arrive at an informed and unbiased finding of discrimination. That is precisely the reason for the formulation of the essential and integral practice test. To jettison this test as impractical would mean to reverse an entire body of jurisprudence which this Hon'ble Court has assiduously developed since the seven-Judge Bench decision in 1954 in the Shirur Mutt case.

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INDEX

S.NO	PARTICULARS	PAGES
1.	Written Submissions by Advocate J. Sai Deepak	1-47
2.	<u>ANNEXURE – A-Colly</u> News reports on the #ReadytoWait Campaign and expressions of support by the women devotees to the campaign.	48-75
3.	<u>ANNEXURE – B</u> True copy of the Judgement of the Kerala High Court dated 05.04.1991.	76-84
4.	<u>ANNEXURE – C</u> 1940 Travancore State Manual	85-87
5.	<u>ANNEXURE – D</u> An article from The Hindu on norms and rules from the construction of a temple building to the rites and rituals in Kerala temples.	88-90
6.	<u>Annexure – E</u> Extracts from the Tamil Translation of BhoothanathaUpakhyanam	91-96
7.	<u>ANNEXURE – F</u> Relevant page from Sridhar Swami's commentary on Srimad Bhagavatam	97-98
8.	<u>ANNEXURE – G</u> Relevant page from the Apastambha Sutra	99-100
9.	<u>ANNEXURE – H-Colly</u> Printouts of articles evidencing existence of	101-120

Temples where men are not allowed

10. **ANNEXURE – I**

121-123

Relevant pages of the Travancore Devaswom Proclamation of 1922 from the Travancore Devaswom Manual of 1939.

the Temple and (c) the legality and constitutionality of the practice.

2. The gross mischief that the Petitioner has committed is to give the impression that it represents all Hindu women in its challenge to the religious practice of the Temple. While the Petitioner represents only a handful of women activists who have no regard for the traditions of the Temple despite claiming the right to worship at the Temple, the Intervenor organization represents millions of women of different religions who respect the traditions of the Temple and are keen to avoid the violation of its sacrosanct traditions by others under the façade of gender equality. Simply stated, the rights of the members of the Intervenor organization under Article 25(1) would be violated if the reliefs sought in the Petition are granted by this Hon'ble Court.

3. The fact that the position and the views of the Intervenor are supported by millions of Hindu and Christian women who are devotees of Lord Ayyappa and ardent supporters of the Sabarimala Temple's tradition, is evident from the massive and vocal support received by the Intervenor organization for the 'Ready to Wait' campaign launched by it in support of the traditions of the Temple. Under the campaign, millions of women devotees declared that they were ready to wait for their rightful turn to have darshan of the deity. Therefore, it is reiterated that the Petitioner does not speak for or on behalf of the members of the Intervenor organization, who are educated, independent-minded and forward-looking individuals capable of forming their own views on matters of

religion and their rights without having to be spoken for. Any dilution of the established tradition of Lord Ayyappa Temple in Sabarimala as prayed for by the Petitioner would be against the *in rem* rights of millions of women who believe in the Sabarimala Ayyappa tradition and follow it. Annexed herewith as **Annexure A-Collyare** news reports on the #ReadytoWait Campaign and expressions of support by the women devotees to the campaign.

4. It is further humbly submitted that the Petitioner's position **suffers from a grave error in that it fails to distinguish between diversity in religious traditions and discrimination.** The issue, which requires surgical precision and rigorous examination of evidence, is being approached with a sledgehammer in the name of gender equality and the right to worship. The concept of diverse religious spaces is being approached solely through the prism of equality which does grave injustice to the very concept of equality, apart from causing irreparable harm to the rights of those who put faith in the Temple and its traditions in exercise of their rights under Article 25(1), and the Temple's own rights in matters of religion under Article 26.
5. It is also submitted that political correctness or the claimed popularity or otherwise of a view cannot be the touchstones for testing the validity of the Impugned religious practice since if that were to be the case, the constitutionality of every religious practice would need to be determined by a public poll. Clearly, that would be untenable, unreasonable and impermissible. In the same vein, it is submitted that the

fickle and convenient position of the State Government of Kerala, or for that matter any other party, is not conclusive of the constitutionality of the Impugned religious practice since that issue is to be determined on the anvils of the test prescribed by this Hon'ble Court in several landmark judgements.

6. While this Hon'ble Court has identified, in its Order dated October 13, 2017, five questions for consideration by the Constitution Bench, the Intervenor has humbly recast the said questions as follows:

If the Impugned religious practice is indeed an essential part of the tradition of the Temple and the Temple belongs to a religious denomination, can it be deprived of the protection it enjoys under Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965, the Proviso to Section 3 of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act 1965 and Article 26(b) of the Constitution citing alleged violation of Articles 14, 15(3), 17 and 25(1)? To answer this, the following sub-questions must be addressed:

- i. Is the Impugned religious practice an essential part of the tradition of the Temple? If yes, what is its basis and object? More specifically, is the Impugned religious practice indeed based on notions of impurity associated with menstruation?
- ii. Are there similar examples of Hindu religious institutions which restrict the entry of men or their participation in religious activities? If the

reliefs sought by the Petitioner were granted by this Hon'ble Court, would it amount to destruction of the diversity in religious traditions prevalent in this country?

- iii. Does the Temple fall under the definition of a religious institution belonging to a religious denomination within the meaning of Article 26? If yes, does the public character of the Temple belonging to a religious denomination deprive it of its denominational character and consequent fundamental rights under Article 26?
- iv. Does the Presiding Deity of the Sabarimala Temple, Lord Ayyappa, have rights under the Constitution? If yes, can the Petitioner's rights under Article 25(1) trump the rights of the Deity under Article 25(1), 26 and 21?
- v. What is the interplay between Articles 14, 15(3), 17, 25(1), 25(2)(b) and 26 of the Constitution? Specifically, can an individual cite rights under Article 25(1) to assert the right to ignore the traditions of the Temple which are protected under Article 26(b)?
- vi. Do the Judgements of this Hon'ble Supreme Court and the Places of Worship (Special Provisions) Act, 1991 permit any person or any arm of the State, including the Supreme Court, to alter the identity of a religious denomination and

the religious character of its religious institutions in the name of "reform" and gender equality?

- vii. Is the Travancore Devaswom Board, under which the Temple falls, part of "State" under Article 12? Even if it were, would that deprive the Temple of its fundamental rights under Article 26?
- viii. Can the language of the notification issued by the Travancore Devaswom Board which bars entry of women between the ages of 10 and 50 be used as a strawman to strike down Rule 3(b) of the 1965 Rules, or to conclude that the basis/principle of the Impugned religious practice is discrimination and hence unconstitutional?

In the ensuing portions of the Written Submissions, the Intervenor has addressed each of the above restated sub-questions, and in the process, addressed the questions framed by this Hon'ble Court in its Order dated October 13, 2017.

If the Impugned religious practice is indeed an essential part of the tradition of the Temple and the Temple belongs to a religious denomination, can it be deprived of the protection it enjoys under Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965, the Proviso to Section 3 of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act 1965 and Article 26(b) of

the Constitution citing alleged violation of Articles 14, 15(3), 17 and 25(1)?

I. Is the Impugned religious practice an essential part of the tradition of the Temple? If yes, what is its basis and object? More specifically, is the Impugned religious practice indeed based on notions of impurity associated with menstruation?

1. During the entire course of oral submissions made on behalf of the Petitioner by Mr. R.P.Gupta, the Intervenor supporting the Petitioner represented by Ms. Indira Jaising and the *Amicus Curiae*, Mr. Raju Ramachandran who supported the position of the Petitioner, there was not a single attempt made to actually delve into the accepted history of the Impugned religious practice and its basis in the traditions of the Temple to prove their claim that notions of impurity associated with menstruation indeed form the basis of or inform the Impugned religious practice. Instead, their entire arguments revolved around an academic discussion of the provisions of the Constitution when, in fact, the law laid down by this very Court in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* 1954 AIR 282, *Sardar Syadna Taher Saifuddin Saheb v. The State of Bombay* 1962 AIR 853 and *Tilkayat Shri Govindalji Maharaj v. State of Rajasthan* (1964) 1 SCR 561, requires the Court to rigorously and dispassionately examine the origins and basis of the Impugned religious practice by examining the

relevant scriptures, and in this case, by directly seeking inputs from the Chief Thanthri/ Chief Priest of the Temple, which this Hon'ble Court has the power to do.

2. In fact, in deciding the very same issues under consideration before this Hon'ble Court, the High Court of Kerala summoned and examined the Thanthri of the Sabarimala Temple and other Thanthrimukhyas(ChiefPriests)of Kerala in order to ascertain the practice followed in Sabarimala Temple before delivering its judgement in 1991, which is annexed herewith as **Annexure B**. This is because, under the religious practices of Kerala Temples, the Thanthri, and not the Devaswom Board, is the final authority on matters of religion.

3. This was emphatically laid down by the Kerala High Court in the said judgement saying the Devaswom Board "*has no voice in deciding such controversial, religious and ritualistic questions and the Thanthri alone can decide all questions relating to religious rituals and practices*". This has been accepted by the Travancore Devaswom Board in the said judgement, which position it cannot retract from. Extracted below are the relevant portions of the said judgement:

"5. The Travancore Devaswom Board in their counter-affidavit questioned the right of the petitioner to maintain the petition under Article 226 of the Constitution for the reason that no right affecting public at large is involved in this case. The question involved is purely relating to Hindu Religion and religious practices. No

writ can be issued by this Court against the 1st respondent in order to grant the relief asked for as the determination of the dispute is dependent on disputed questions of fact. They also challenged the maintainability of the petition without impleading a Hindu lady worshipper at least in a representative capacity. The jurisdiction of this Court cannot be invoked to regulate or control the religious functions and practices relating to a Hindu temple since that is the concern of men of religion. The religious questions posed in this writ petition can be determined finally only by the Thanthri concerned and not by other Thanthries who have no authority over the Sabarimala Sastha Temple. The members of the ThazhamanIllam are the hereditary Thanthries of the Sabarimala temple. The present Thanthri is Sri Neelakandaru and he is the final authority to take a decision on any issue with regard to the religious practices and customs as well as the rituals and poojas in Sabarimala temple. It is further stated that the Board, being a statutory authority conferred with the power of administration, has no voice in deciding such controversial, religious and ritualistic questions and the Thanthri alone can decide all questions relating to religious rituals and practices. **There were instances where Thanthries also were unable to take a decision pertaining to some religious practices and in such cases the Thanthri used to suggest that it can be resolved by a Devaprasnam.**

24. Sadasyathilakan Sri T. K. Velu Pillai in his Travancore State Manual, Vol. I at p. 553 says:

"The essential characteristic of Hinduism is faith. Purity of character is ensured by rules which regulate the practice of the worshippers as well as that of the priests."

At page 594 it is stated thus:

"We thus find that the worship in temples is regulated in strict accordance with the rules laid down in the Agama Sastras. Form is in religion the twin sister of faith and the temples

in Travancore present a continuity of tradition which cannot fail to be a stimulus to a well-regulated religious life. The essentials of discipline are the same in private temples as well as those under the management of Government. The head of the Devaswom Department is responsible for the proper conduct of the temple affairs but his authority is confined to the administrative side; the spiritual questions being decided by the Thantris and other man of religion. The Thantris are the arch-priests of Malabar temples. Ceremonies of exceptional importance, such as consecration of the idol, are performed by them. The office is generally hereditary. The Thantris are expected to have a correct knowledge of the details of worship, the performance of ceremonies and all kindred subjects. They have the authority to correct the mistakes of the priests. They are consulted in all matters connected with the Devaswoms so far as the spiritual side is concerned.

25. Since the spiritual questions are to be decided by the Thantris, we summoned and examined the Thantri of Sabarimala temple and other Thantrimukhyas of Kerala in order to ascertain the practice followed in Sabarimala temple and whether the practice has the approval of the community."

4. Annexed herewith as **Annexure Care** the relevant pages of the 1940 Travancore State Manual which was relied upon by the Hon'ble Division Bench of the Kerala High Court. This position is further supported by scholarly literature which is based on a text written in 1428 AD, namely the Tantrasamuccaya authored by Cheenas Narayanan Namboodiripad, which prescribes the norms and rules from the construction of a temple building to the rites and rituals

in Kerala temples. Annexed as **Annexure D** herewith is an article from The Hindu proving the same.

5. Further, while the Division Bench of the Kerala High Court has discussed the practice of Devaprashnam extensively in its judgement, not one submission was made with respect to the said practice by the Petitioner's counsel or any other Counsel supporting the case of the Petitioner. Following are the relevant extracts from the Kerala High Court's judgement which sheds light on the importance and centrality of the practice of Devaprashnam to the religious aspects of the Sabarimala Temple and in fact to most Temples in Kerala:

"5. There were instances where Thanthries also were unable to take a decision pertaining to some religious practices and in such cases the Thanthri used to suggest that it can be resolved by a Devaprasnam."

"36. The Thanthri of the temple Sri Maheswararu had mentioned about the Devaprasnams conducted at Sabarimala by well-known astrologers in Ext. C2. He had mentioned in that reply that in all the Devaprasnams it was revealed that young women should not be permitted to worship at the temple. The report of the Devaprasnam conducted in 1985 (from 5-4-1985 to 8-4-1985) was exhibited as Ext. Clause That is a Devaswom publication, the authenticity of which is not in dispute. The English translation of the relevant portion contained at page 7 of the original report reads as follows:

"It is seen that the deity does not like young ladies entering the precincts of the temple".

C.W. 5, the Secretary of the AyyappaSevaSangham, who was present at the time of Devaprasnam had spoken about what was revealed at the Devaprasnam. First respondent in its counter affidavit has

mentioned about the practice followed to set right controversial religious and ritualistic problems. It is stated that the Thanthri will suggest that it can be resolved, by a Devaprasnam. The practice of resorting to Devaprasnam to ascertain the wishes of the deity had been in vogue from time immemorial and the Thanthri of Sabarimala also had suggested conduct of Devaprasnam whenever occasion arose. The report of the Devaprasnam is rather conclusive or decisive. The wishes of the Lord were thus revealed through the well-known method of Devaprasnam and the temple authorities and worshippers cannot go against such wishes. If the wish of Lord Ayyappa as revealed in the Devaprasnam conducted at the temple is to prohibit woman of a particular age group from worshipping in the temple, the same has to be honoured and followed by the worshippers and the temple authorities. The Board has a duty to implement the astrological findings and prediction on Devaprasnam. The Board has therefore no power to act against that report which will be virtually disregarding the wishes of the deity revealed in the prasnam."

6. In light of the above, in the instant Petition too, this Hon'ble Court would be better assisted in forming its views on the Impugned religious practice and its basis by summoning the Chief Thanthri of the Sabarimala Temple and other Thanthrimukhyas of Kerala and seeking their views on affidavits and examining them in Open Court.

7. Without prejudice to the above submission, since the Petitioner has failed to place before the Hon'ble Court the history of the Impugned religious practice and its origins in the traditions of the Temple, the Intervenor shall place the same before the Court. The origins of the Impugned religious practice and its basis have been discussed in detail in the

judgement of the Kerala High Court which stands uncontroverted till date. After consulting the Thanthri of Sabarimala and other Thanthris from Kerala, the High Court gave its findings as under:

"39. There is a vital reason for imposing this restriction on young women. It appears to be more fundamental. The Thanthri of the temple as well as some other witnesses have stated that the deity at Sabarimala is in the form of a NaisthikBrahmachari. "Brahmachari" means a student who has to live in the house of his preceptor and study the Vedas living the life of utmost austerity and discipline. A student who accompanied his Guru wherever he goes and learns Vedas from him is a "Naisthikan". Four asramas were prescribed for all persons belonging to the twice born castes. The first is of a student or Bramchari, the second is of a householder after getting married, the third is the Vanaprastha or a life of recluse and the last is of an ascetic or Sanyasi. Sri B. K. Mukherjee, the fourth Chief Justice of India, in his Lordship's Tagore Law Lectures on the Hindu Law of Religious and Charitable Trust says at page 16 of the second addition thus:

"Ordinarily therefore a man after finishing his period of studentship would marry and become a house-holder, and compulsory celibacy was never encouraged or sanctioned by the Vedas. A man however who was not inclined to marry might remain what is called a NaisthikBrahmchari or perpetual student and might pursue his studies living the life of a bachelor all his days".

A Bramchari should control his senses. He has to observe certain rules of conduct which include refraining from indulging in gambling with dice, idle gossips, scandal, falsehood, embracing, and casting lustful eyes on females, and doing injury to others.

(vernacular matter omitted) Manu Smriti Chapter II, Sloka 179.

40. The deity in Sabarimala temple is in the form of a Yogi or a Bramchari according to the Thanthri of the temple. He stated that there are Sasta temples at Achankovil, Aryankavu and Kulathupuzha, but the deities there are in different forms. Puthumana Narayanan Namboodiri, a Thanthrimukhyarecognised by the Travancore Devaswom Board, while examined as C.W. 1 stated that God in Sabarimala is in the form of a NaisthikBramchari. That, according to him, is the reason why young women are not permitted to offer prayers in the temple.

41. Since the deity is in the form of a NaisthikBrahmachari, it is therefore believed that young women should not offer worship in the temple so that even the slightest deviation from celibacy and austerity observed by the deity is not caused by the presence of such women.

42. In this connection it has to be mentioned that Sabarimala temple is not the only temple in Kerala where there is restraint on the entry of women. Sri Malankal Krishna Pillai, a Malayalam poet of repute and a former Regional Deputy Director of Education, after visiting all the important temples in the State, had published a book titled "MahaKhshetrangakkuMunpil" (in front of great temples). While writing about the Siva temple in Teliparambu in Eanur District, he has mentioned about the custom there in not permitting women to enter the temple and offer prayers during day time. They are permitted to enter and worship only after the Athazhappja (the last pooja of the day) is over. The belief is that Lord Siva will be seated with his consort Goddess Parvathy at that time and Lord Siva is in a happy mood to shower boons on the devotees. That is supposed to be the appropriate or auspicious time for women to pray before the God revered as Rajadhirajan (King of all Kings). This custom or usage is understood to have been in prevalence for the past several centuries."

8. It is evident from the above-extracted portion of the judgement that there is no reference whatsoever to impurity of menstruation forming the basis of the Impugned religious practice. The celibate nature of the Deity is also evidenced from the Tamil translation, Sri Bhoothanathan, of Sri BhoothanathaUpakhyanam, which is the Sthalapuramam of the Sabarimala Temple. This book sets out the celibate nature of Lord Ayyappa. Paragraph 2 on Page 44 of the said book, wherein Lord Ayyappa addresses Devi Manjamata, translates in English as follows:

"It is true that You are My Shakti. But I am to be live as a Brahamacarin in this birth. So, I cannot marry You...."

Annexed herewith as **Annexure E** are the relevant pages from the Tamil Translation. **Therefore, it is the Petitioner which is guilty of mischievously turning a discussion on celibacy into one relating to alleged notions of impurity associated with menstruation.** What is also evident from Paragraph 40 of the Judgement of the Kerala High Court is that, it is only the Deity in the Sabarimala Ayyappa Temple who has taken the form of a NaishtikaBrahmachari i.e. an eternal celibate, and which is the fundamental reason/basis of the Impugned religious practice. **The High Court also specifically observed that this is not the form of the Deity in other Ayyappa temples located in Achankovil, Aryankavu and Kulathupuzha Temples, and therefore the Impugned**

religious practice is not observed in those Temples. It is indeed surprising that the Petitioner has not offered a single credible reason or fact or document which disproves or justifies ignoring this critical and pertinent finding on the very same issue by a Constitutional Court under Article 226. And yet, the Petitioner insists that the Impugned religious practice is somehow relatable to stigma associated with menstruation.

9. That Naishtika Brahmacharya requires the Brahmachari to observe the vow of celibacy without any room for departure is a well-known and accepted fact since it has its basis in Hindu texts such as Sridhara Swami's commentary on Srimad Bhagavatam which forbids Brahmacharis from thinking about, speaking about, playing with, looking at, personally talking with, wishing for sex with, trying for sex with, engaging in sex with women. Annexed herewith as **Annexure F** are the relevant pages from the said commentary. Similar rules of conduct have been prescribed for Brahmacharis in Apastambha Dharma Sutra, Bodhayana Dharma Sutra and Vaikhanasa Dharmasutra. Annexed herewith as **Annexure G** is the relevant page from the Apastambha Sutra. This is consistent with the concept of Brahmacharya, which is equally important to Sramanic traditions, namely Buddhism, Jainism, Ajivaka and Carvaka traditions. Therefore, going by the logic of the Petitioner, each of these traditions is based on notions of menstrual impurity, which is far from the truth and has absolutely no

basis in religious texts. **What the Petitioner has failed to point out is that the rules of Brahmacharya, when observed by women, too require them to avoid all contact with men. Clearly, the Petitioner's attempt to paint the practice of Naishtika Brahmacharya with a misogynist hue, apart from being ignorant and baseless, is extremely mischievous.**

10. The Petitioner has also, perhaps deliberately or perhaps in ignorance, failed to point out that even Hindu men who visit the Temple are required to observe a 41-day vow, which among other things, mandates abstinence. This is a direct consequence of the celibate nature of the Deity at the Sabarimala Temple-a religious *leitmotif* that underpins the integrity of every religious practice, ritual and ceremony carried out at the Temple. Therefore, the Petitioner's attempts to give the impression that all conditions apply only to women is factually baseless. **The fact is that different conditions apply to both genders, which are gender-sensitive and are therefore reasonable and not unequal. Difference is not discrimination and is certainly not tantamount to inequality.**

11. It is evident from the above that (a) the Impugned religious practice is based on observance of Naishtika Brahmacharya by the Deity at the Ayyappa Temple, and not on notions of menstrual impurity, and (b) given the form of the Deity at the Temple and its celibate nature, the

Impugned religious practice is an essential part of the Temple's fundamental charter of faith and constitution.

12. In *Seshammal v. State of Tamil Nadu* AIR 1972 SC 1586, this Hon'ble Court had discussed in detail the significance of Agama Shastras which apply to the religious aspects of a Temple. Following are the relevant extracts from the said judgement which squarely apply to the issues which arise for consideration in the Petition at hand:

"Before we turn to these questions, it will be necessary to refer to certain concepts of Hindu religious faith and practices to understand and appreciate, the position in law. The temples with which we are concerned are public religious institutions established in olden times. Some of them are Saivite temples and the others are Vaishnavite temples, which means, that in these temples God Shiva and Vishnu in their several manifestations are worshipped. The image of Shiva is worshipped by his worshippers who are called Saivites and the image of Vishnu is worshipped by his worshippers who are known as Vaishnavites. The institution of temple worship has an ancient history and, according to Dr. Kane, temples of deities had existed even in the 4th or 5th century B.C. (See: History of Dharmasastra Vol. II Part-II page 710) With the construction of temples the institution of Archakas also came into existence, the Archakas being professional men who made their livelihood by attending on the images. Just when the cult of worship of Siva and Vishnu started and developed into two distinct cults is very difficult to say, but there can be no doubt that in the times of the Mahabharata these cults were separately developed and there was keen rivalry between them to such an extent that the Mahabharata and some of the Puranas endeavoured to inculcate a spirit

of synthesis by impressing that there was no difference between the two deities. (See page 725 supra.) With the establishment of temples and the institution of Archakas, treatises on rituals were compiled and they are known as 'Agamas'. The authority of these Agamas is recognised in several decided cases and by this Court in *Sri Venkataramana Devaru v. The State of Mysore*. Agamas are described in the last case as treatises of ceremonial law dealing with such matters as the construction of temples, installation of idols therein and conduct of the worship of the deity. There are 28 Agamas relating to the Saiva temples, the important of them being the Kamikagama, the Karanagama and the Suprabedagama. The Vaishnavas also had their own Agamas. Their principal Agamas were the Vikhanasa and the Pancharatra. The Agamas contain elaborate rules as to how the temple is to be constructed, where the principal deity is to be consecrated, and where the other Devatas are to be installed and where the several classes of worshippers are to stand and worship. Where the temple was constructed as per directions of the Agamas the idol had to be consecrated in accordance with an elaborate and complicated ritual accompanied by chanting of mantras and devotional songs appropriate to the deity. On the consecration of the image in the temple the Hindu worshippers believe that the Divine Spirit has descended into the image and from then on the image of deity is fit to be worshipped. Rules with regard to daily and periodical worship have been laid down for securing the continuance of the Divine Spirit. The rituals have a two-fold object. One is to attract the lay worshipper to participate in the worship carried on by the priest or Archaka. It is believed that when a congregation of worshippers participates in the worship a particular attitude of aspiration and devotion is developed and confers great spiritual benefit. The second object is to preserve the image from pollution, defilement or desecration. It is part of the religious belief of a Hindu worshipper that when the image is polluted or defiled the Divine Spirit in the image

diminishes or even vanishes. That is a situation which every devotee or worshipper looks upon with horror. Pollution or defilement may take place in variety of ways. According to the Agamas, an image becomes defiled if there is any departure or violation of any of the rules relating to worship. In fact, purificatory ceremonies have to be performed for restoring the sanctity of the shrine. **Worshippers lay great store by the rituals and whatever other people, not of the faith, may think about these rituals and ceremonies, they are a part of the Hindu Religious faith and cannot be dismissed as either irrational or superstitious.** An illustration of the importance attached to minor details of ritual is found in the case of His Holiness PeriaKovilKelviAppanThiruvengkata Ramanuja PeddaJiyyangarluVarlu v. PrathivathiBhayankaramVenkatachrlu and others which went up to the Privy Council. The contest was between two denominations of Vaishnava worshippers of South India, the Vadagalais and Tengalais. The temple was a Vaishnava temple and the controversy between them involved the question as to how the invocation was to begin at the time of worship and which should be the concluding benedictory verses. This gives the measure of the importance attached by the worshippers to certain modes of worship. The idea most prominent in the mind of the worshipper is that a departure from the traditional rules would result in the pollution or defilement of the image which must be avoided at all costs. That is also the rationale for preserving the sanctity of the Garbhagriha or the sanctum sanctorum. In all these temples in which the images are consecrated, the Agamas insist that only the qualified Archaka or Pujari step inside the sanctum sanctorum and that too after observing the daily disciplines which are imposed upon him by the Agamas. As an Archaka he has to touch the image in the course of the worship and it is his sole right and duty to touch it. The touch of anybody else would defile it. Thus, under the ceremonial law pertaining to temples even the question as to

who is to enter the Garbhagriha or the sanctum sanctorum and who is not entitled to enter it and who can worship and from which Place in the temple are all matters of religion as shown in the above decision of this Court.

The Agamas have also rules with regard to the Archakas. In Saivite temples only a devotee of Siva, and there too, one belonging to a particular denomination or group or sub-group is entitled to be the Archaka. If he is a Saivite, he cannot possibly be an Archaka in a Vaishnavite Agama temple to whatever caste he may belong and however learned he may be. Similarly, a Vaishnavite Archaka has no place as an Archaka in a Saivite temple. Indeed, there is no bar to a Saivite worshipping in a Vaishnavite temple as a lay worshipper or vice versa. What the Agamas prohibit is his appointment as an Archaka in a temple, of a different denomination' DR. Kane has quoted the Brahmapurana on the topic of Punah-pratistha (Re-consecration of images in temples) at page 904 of his History of Dharmasastra referred to above. The Brahmapurana says that "when an image is broken into two or is reduced to particles, is burnt, is removed from its pedestal, is insulted, has ceased to be worshipped, is touched by beasts like donkeys or falls on impure ground or is worshipped with mantras of other deities or is rendered impure by the touch of outcastes and the like-in these ten contingencies, God ceases to indwell therein." The Agamas appear to be more severe in this respect. Shri R. Parthasarthy Bhattacharya, whose authority on Agama literature is unquestioned, has filed his affidavit in Writ Petition No. 442 of 1971 and stated in his affidavit, with special reference to the Vaikhanasa Sutra to which he belongs, that according to the texts of the Vaikhansa Shastra (Agama), persons who are the followers of the four Rishi traditions of Bhrigu, Atri, Marichi and Kasyapa and born of Vaikhanasa parents are alone competent to do puja in Vaikhanasa temples of Vishnavites. They only can touch the idols and perform the ceremonies and

rituals. None others, however, high placed in society as pontiffs or Acharyas, or even other Brahmins could touch the idol, do puja or even enter the GarbhaGriha. Not even a person belonging to another Agama is competent to do puja in Vaikhanasa temples. That is the general rule with regard to all these sectarian denominational temples. It is, therefore, manifest that the Archaka of such a temple besides being proficient in the rituals appropriate to the worship of the particular deity, must also belong, according to the Agamas, to a particular denomination. An Archaka of a different denomination is supposed to defile the image by his touch and since it is of the essence of the religious faith of all worshippers that there should be no pollution or defilement of the image under any circumstances, the Archaka undoubtedly occupies an important place in the matter of temple worship. **Any State action which permits the defilement or pollution of the image by the touch of an Archaka not authorised by the Agamas would violently interfere with the religious faith and practices of the Hindu worshipper in a vital respect, and would, therefore, be prima facie invalid under Article 25(1) of the Constitution."**

13. The above-highlighted portion is an endorsement of the rights of the members of the Intervenor organization as Hindu women who support the traditions of the Temple, including the Impugned religious practice. Further, the dismissive submissions of the Petitioner that the Impugned religious practice is based on superstition is squarely countered by the above-extracted judgement of this very Court. The primacy of the Agama Shastras was reiterated by this Hon'ble Court again in *Adi Saiva Sivachariyargal Nala Sangam vs. Government of Tamil Nadu and Another* (2016) 2

SCC 725, which was a judgment relating to appointment of Archakas to the Madurai Meenakshi Temple. Extracted below are the relevant portions of the said Judgement:

*"36. That the freedom of religion under Articles 25 and 26 of the Constitution is not only confined to beliefs but extends to religious practices also would hardly require reiteration. Right of belief and practice is guaranteed by Article 25 subject to public order, morality and health and other provisions of Part-III of the Constitution. Sub-Article (2) is an exception and makes the right guaranteed by Sub-article (1) subject to any existing law or to such law as may be enacted to, inter alia, provide for social welfare and reforms or throwing or proposing to throw open Hindu religious institutions of a public character to all classes and sections of Hindus. Article 26(b) on the other hand guarantees to every religious denomination or section full freedom to manage its own affairs insofar as matters of religion are concerned, subject, once again, to public order, morality and health and as held by this Court subject to such laws as may be made under Article 25(2)(b). The rights guaranteed by Articles 25 and 26, therefore, are circumscribed and are to be enjoyed within constitutionally permissible parameters. Often occasions will arise when it may become necessary to determine whether a belief or a practice claimed and asserted is a fundamental part of the religious practice of a group or denomination making such a claim before embarking upon the required adjudication. A decision on such claims becomes the duty of the Constitutional Court. It is neither an easy nor an enviable task that the courts are called to perform. Performance of such tasks is not enjoined in the court by virtue of any ecclesiastical jurisdiction conferred on it but in view of its role as the Constitutional arbiter. **Any apprehension that the determination by the court of an essential religious practice itself negatives the freedoms guaranteed by Articles 25 and 26 will***

have to be dispelled on the touchstone of constitutional necessity. Without such a determination there can be no effective adjudication whether the claimed right it is in conformity with public order, morality and health and in accord with the undisputable and unquestionable notions of social welfare and reforms. A just balance can always be made by holding that the exercise of judicial power to determine essential religious practices, though always available being an inherent power to protect the guarantees under Articles 25 and 26, the exercise thereof must always be restricted and restrained.

37. Article 16 (5) which has virtually gone unnoticed till date and, therefore, may now be seen is in the following terms:

"16(5) - Nothing in this Article shall affect the operation of any law which provides that an incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

38. A plain reading of the aforesaid provision i.e. Article 16(5), fortified by the debates that had taken place in the Constituent Assembly, according to us, protects the appointment of Archakas from a particular denomination, if so required to be made, by the Agamas holding the field. The debates in the Constituent Assembly referred to discloses that the suggestion that the operation of Article 16(5) should be restricted to appointment in offices connected with administration of a religious institution was negatived. The exception in Article 16(5), therefore, would cover an office in a temple which also requires performance of religious functions. In fact, the above though not expressly stated could be one of the basis for the views expressed by the Constitution Bench in Sheshammal (supra)."

14. Not only does the judgement clarify that the rights under Articles 25 and 26 extend to religious practices, it also clarifies the recognition of the primacy of Agamas in Article 16(5) in matters of appointment to religious offices. In the recent judgement delivered on May 2, 2018, concerning the religious practices at Mahakaleshwar Temple in Ujjain, this Hon'ble Court expressly held in Paragraph 15 of the judgement that the State has the constitutional obligation to preserve the religious practices of all religions. In view of such an expansive treatment, it is, therefore, evident that neither the history of the Temple or its traditions or the Impugned religious practice, nor the law that applies to preservation of the Agama Shastras of Hindu Temples supports the Petitioner's challenge to the Impugned religious practice.

II. Are there similar examples of Hindu religious institutions which restrict the entry of men or their participation in religious activities based on certain well-defined criteria drawing from traditions which have been observed over time? If the reliefs sought by the Petitioner were granted by this Hon'ble Court, would it amount to destruction of the diversity in religious traditions prevalent in this country?

1. In a country as diverse as India and a religion as diverse as Hinduism, there is no dearth of such examples. A simple search on Google with the search string "Temples where men are not allowed" throws enough results to showcase the

diversity of Hindu traditions. Annexed herewith as **Annexure H-Colly** are a few articles which cite such examples. The examples contained in the articles make the point that both within Kerala and outside of it, there are hundreds of Temples which place severe restrictions on the entry of men and their participation in the religious activities, and which place women at a higher pedestal and also worship the very act of menstruation. The details of the articles are as follows:

A. "Women's only temples aplenty" published on March 11, 2016 by the Sunday Guardian-
<https://www.sundayguardianlive.com/news/3050-women-s-only-temples-aplenty>

B. "Celebrating the menstruating Goddess in a Kerala Temple? Not completely" published on June 26, 2015 by The News Minute-

<https://www.thenewsminute.com/article/celebrating-menstruating-goddess-kerala-temple-not-completely-32604>

This article speaks of the Chengannur Mahadeva Kshetram (Temple), Kerala where Goddess Parvati is worshipped in her menstruating form and the duty of the head priestess, a lady, is called upon to confirm if the Deity is menstruating. Upon confirmation, the Idol of the Deity is shifted to a room off the sanctum sanctorum and the Temple is closed for four days. On the fourth day, the Idol is taken out for a bath in the river and brought back to the Temple where the Lord Shiva awaits her at the entrance. The Kamakhya Temple in Assam is yet another example of celebration of menstruation.

C. "First Time In 400 Years, Men Allowed Inside This Temple in Odisha" published on April 23, 2018 by News18-
<https://www.news18.com/news/buzz/first-time-in-400-years-men-allowed-to-touch-idols-inside-this-temple-in-odisha-1726649.html> - This article speaks of Ma Panchubarahi Temple in Odisha's Satabhaya village. The Temple is run by five married Dalit women priests and no man is allowed to touch the Idols in the Temple. For the first-time in 400 years, men were allowed to touch the Idols for the purpose of shifting them owing to the rise in sea level of the Bay of Bengal. If the Petitioner's logic were to be applied to this Temple, following would be the consequences:

- a. That the Temple's tradition of not allowing men to touch the Idols is based on superstition;
- b. That the use of men to shift the Idols to preserve them is proof of the flexibility of the general rule and therefore must lead to the evisceration of the rule completely.

2. It is evident from the above examples that a one-size-fits-all standardized approach to gender equality as advocated by the Petitioner does grave injustice to the sheer religious diversity of Hinduism and its religious institutions and would, in fact come, at great and irreparable infraction of the religious rights of various Hindu denominations. That the Petitioner's approach lacks respect for nuance is clear from the above.

III. Does the Temple fall under the definition of a religious institution belonging to a religious

denomination within the meaning of Article 26? If yes, does the public character of the Temple belonging to a religious denomination deprive it of its denominational character and consequent fundamental rights under Article 26?

1. In this regard, the judgement of the Kerala High Court again assumes relevance since it contains a detailed discussion and finding on this precise question, which has not been challenged thus far. The High Court concluded that devotees of Lord Ayyappa constitute a denomination on the basis of this Hon'ble Court's judgement in *Raja Bira Kishore Deb v. State of Orissa*, AIR 1964 SC 1501 wherein it was held that the identity of a religious denomination consists in the identity of its doctrines, creeds and tenets and these are intended to ensure the unity of the faith which its adherents profess and the identity of the religious views are the bonds of the union which binds them together as one community. After discussing the judgements of the Supreme Court on the definition of a religious denomination from Paragraphs 15 to 21, the High Court concluded as follows:

"a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion. No outside authority has any jurisdiction to interfere with the decision of such religious denomination. Article 26(b) gives complete freedom to the religious denomination to manage its own affairs in matters of religion. The only restriction imposed by that article is that the exercise of the right is subject to public order, morality

and health. The freedom of conscience and freedom to speak, profess and propagate religion guaranteed under Article 25 of the Constitution is subject not only to public order, morality and health, but also subject to the other provisions of Chapter III. It necessarily implies that the right to freedom of religion guaranteed under Article 25 is subject to the freedom to manage religious affairs guaranteed under Article 26(b) of the Constitution."

2. The finding of the High Court is consistent with the law laid down in this regard by this Hon'ble Court in the following judgements:

a. *The Commissioner, Hindu Religious Endowments, Madras, v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282 (para 15)

b. *Sri Venkataramana Devaru and Ors. vs. The State of Mysore and Ors.* AIR 1958 SC 255 (Para 14)

c. *The Durgah Committee, Ajmer and Anr. vs. Syed Hussain Ali and Ors.*, AIR 1961 SC 1402 (Para 24)

d. *Sardar Syedna Taher Saifuddin Saheb vs. The State of Bombay*, AIR 1962 SC 853 (Para 61)

e. *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, AIR 1963 SC 1638 (Para 5)

f. *State of Rajasthan and Ors. vs. Shri Sajjanlal Panjawat and Ors.*, AIR 1975 SC 706 (Para 35)

g. *SP Mittal vs. Union of India* AIR 1983 SC 1 (Paras 12-13, 21)

h. *Acharya Jagdishwaranand Avadhuta and Ors. vs. Commissioner of Police, Calcutta and Anr.*, AIR 1984 SC 51 (Para 11)

i. *NallorMarthandam Vellalar and Ors. vs. The Commissioner, Hindu Religions and Charitable Endowments and Ors.*, AIR 2003 SC 4225 (Para 8)

j. *Dr. Subramanian Swamy vs. State of Tamil Nadu and Ors.*, AIR 2015 SC 460

k. *Adi Saiva Sivachariyargal Nala Sangam vs. Government of Tamil Nadu and Another* (2016) 2 SCC 725

3. Given the distinct identity of the Temple, the traditions it subscribes to and the clear markers of identity which devotees have to observe as Ayyappa devotees during the period of observance of the vow and the visit to the Temple, there can be no denying the fact that Ayyappa devotees do in fact constitute a religious denomination for the purposes of Article 26.

4. As regards the interplay between the public character of the Temple and its denominational rights under Article 26, it is humbly submitted that the two aspects are not mutually destructive. While the Temple has a public character, in the sense that it is not a private Temple, its rights under Article 26 to expect and enforce adherence of its traditions by devotees who visit the Temple stand undiluted. Had that not been the case, it would mean that all religious institutions which have a public character or which are public places of worship do not have rights under Article 26, which would be a patently ludicrous and untenable position to take. Simply stated, there is nothing in Article 26 which gives the impression that the inherence and enjoyment of fundamental rights under Article 26 by a religious institution of a religious

denomination is subject to it not being a place of public worship. Clearly, public or private character does not affect Article 26 so long as the requirement of religious denomination is satisfied.

5. A Temple even if it a public place of worship does not lose its status as the abode of the Deity, which is the very significance behind the act of consecration or *prana pratishthana*. Therefore, it is the will of the Deity expressed in the form of tradition that shall apply to the conduct of Devotees once they enter the Temple and not the free will of the devotees who have no regard for the traditions of the Temple and the beliefs underlying such traditions. **The rights of the Deity as the master of his abode have been recognized by this Hon'ble Court in several judgements.** Therefore, the limited consequence of the public character of the Temple is to allow access to all Hindus who abide by the rules of the Owner of the Abode, namely the Deity.

IV. Does the Presiding Deity of the Sabarimala Temple, Lord Ayyappa, have rights under the Constitution? If yes, can the Petitioner's rights under Article 25(1) trump the rights of the Deity under Article 25(1), 26 and 21?

1. As submitted earlier, the Deity of the Temple has a legal personage under Indian law, which has been recognized in several judgements by several High Courts prior to 1947 and by this Hon'ble Court post 1947. Among the earliest

judgements to recognize this position is the judgement of the Bombay High Court in *Pramatha Nath Mullick vs Pradyumna Kumar Mullick*(1925) 27 BOMLR 1064. Extracted here are the relevant portions of the judgement:

"8. One of the questions emerging at this point is as to the nature of such an idol, and the services due thereto. A Hindu idol is, according to long established authority, founded upon the religious customs of the Hindus, and the recognition thereof by Courts of law, a "juristic entity." It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir, It is unnecessary to quote the authorities; for this doctrine, thus simply stated, is firmly established.

9. A useful narrative of the concrete realities of the position is to be found in the judgment of Mukerji J. in *Rambrahma v. Kedar* (1922) 30 C.L.J. 478 (p 483)-

We need not describe here in detail the normal type of continued worship of a consecrated image, the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of (lowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified image is regaled with the necessaries and luxuries of life indue succession, oven to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest."

2. The said position was endorsed and reiterated by this Hon'ble Court in *Yogendra Nath Naskar v. Commissioner of Income-Tax, Calcutta* 1969 AIR 1089. Extracted below are the relevant portions:

*"Samkara, the great philosopher, refers to the one Reality, who, owing to the diversity or intellects (matibheda) is conventionally spoken of (parikalpya) in various ways as Brahma, Visnu and Mahesvara. It is however possible that the founder of the endowment of the worshipper may not conceive on this highest spiritual plane but hold that the idol is the very embodiment of a personal God, but that is not a matter with which the law is concerned. Neither God nor any supernatural being could be a person in law. But so far as the deity stands as the representative and symbol of the particular purpose which is indicated by the donor, it can figure as a legal person. The true legal view is that in that capacity alone the dedicated property vests in it. There is no principle why a deity as such a legal person should not be taxed if such a legal person is allowed in law to own property even though in the ideal sense and to sue for the property, to realise rent and to defend such property in a of law again in the ideal sense. Our conclusion is that the Hindu idol is a juristic entity capable of holding property and of being taxed through its shebaites who are entrusted with the possession and management of its property. It was argued on behalf of the appellant that the word 'individual' in s. 3 of the Act should not be construed as including a Hindu deity because it was not a real but a juristic person. We are unable to accept this argument as correct. We see no reason why the meaning of the word 'individual' in section 3 of the Act should be restricted to human being and not to juristic entities. In *The Commissioner of Income Tax, Madhya Pradesh & Bhopal v. Sodra Devi*(1) Mr. Justice Bhagwati pointed out as follows:*

"the word 'individual' has not been defined in the Act and there is authority, for the

proposition that the word 'individual' does not mean only a human being but is wide enough to include a group of persons forming a unit. It has been held that the word 'individual' includes a Corporation created by a statute, e.g., a University or a Bar Council, or the trustees of a baronetcy trust incorporated by a Baronetcy Act".

We are accordingly of opinion that a Hindu deity falls within the meaning of the word 'individual' under section 3 of the Act and can be treated as a unit of assessment under that section.

3. The said position was again endorsed in 1999 by this Hon'ble Court in *Ram Jankijee Deities v. State of Bihar* 1999 AIR SCW 1878, wherein it held as follows:

*"The court while deciding the issue ought to look into the records as to the purpose for which the matter has been placed before the court. We are rather at pains to record here that judicial discipline ought to have persuaded the learned Single Judge not to dispose of the matter in the manner as has been done, there being no reference even of the earlier order. Before proceeding with the matter any further apropos the judgment under appeal, it would be convenient to note however that Hindu law recognizes Hindu idol as a juridical subject being capable in law of holding property by reason of the Hindu Shastras following the status of a legal person in the same way as that of a natural person. The Privy Council in the case of *Pramatha Nath Mullick vs. Pradyumna Kumar Mullick & Anr* LR 52 IA 245 observed..."*

4. Therefore, it is evident from the above that judgements that Lord Ayyappa too has the character of a juristic person under Hindu law as recognized by this Hon'ble Court. Consequently, the Deity enjoys rights as a person under Article 25(1), 26 and 21. The Deity as the Owner of His

Abode enjoys the right to privacy under Article 21, which includes the right to preserve His celibate form and the attendant restricts that apply to Him under his vow of Naisthika Brahmacharya. It is the will of the Deity which is being preserved by the Temple through the traditions it observes, which is effectively the object of Article 26. Finally, the Deity has the right to follow His Dharma, like any other person under Article 25(1) and the State is duty bound to protect His Faith. In light of this, clearly the Petitioner's rights under Article 25(1) cannot prevail over the Deity's rights. In fact, they must be necessarily subservient to the rights of the Deity.

5. Further, if the Temple or the Chief Priest of the Temple, as the Shebait, fail in their duty to protect the interests of the Deity or act adversely to the interests of the Deity, devotees such as the members of the Intervenor have the right to take legal action to protect the interests of the Deity, which is a logical *sequitur* to the rights of the devotees under Article 25(1). This has been recognized by this Hon'ble Court in *Bishwanath And Anr vs Shri Thakur Radhaballabhji&Ors* 1967 AIR 1044, as follows:

"The question is, can such a person represent the idol when the Shebait acts adversely to its interest and fails to take action to safeguard its interest. On principle we do not see any justification for denying such a right to the worshipper. An idol is in the position of a minor; when the person representing it leaves it in the lurch, a person interested in the worship of the idol can certainly be clothed with an ad hoc power of representation to

protect its interest. It is a pragmatic, yet a legal solution to a difficult situation. Should it be held that a Shebait, who transferred the Property, can only bring a suit for recovery, in most of the cases it will be an indirect approval of the dereliction of the Shebait's duty, for more often than not he will not admit his default and take steps to recover the property, apart from other technical pleas that may be open to the transferee in a suit. Should it be held that a worshipper can file only a suit for the removal of a Shebait and for the appointment of another in order to enable him to take steps to recover the property, such a procedure will be rather a prolonged and a complicated one and the interest of the idol may irreparably suffer. That is why decisions have permitted a worshipper in such circumstances to represent the idol and to recover the Property for the idol. It has been held in a number of decisions that worshippers may file a suit praying for possession of a property on behalf of an endowment; see *Radhabai Kom Chimnaji Saliv. Chimnaji Bin Ramji (1) Zafaarab Ali v. Bakhtawar Singhe Chidambaranat- Thambiran @ Sivagnana Desika Gnanasambanda Pandara Sannadhi v. P. S. Nallasiva (3) Mudaliar, Dasondhay v. Muhammad Abu Nasar (4), Kalavana Venkataramana Aiyangar v. Kasturi Ranga- Aiyangar (s) Sri Radha Kirshnaji v. Rameshwar Prashad Singh (6) Manmohan Haldar v. Dibbendu Prosad Roy Choudhury. (7)*

There are two decisions of the Privy Council, namely *Pramatha Nath Mullick v. Pradyumna Kumar Mullick (8)* and *Kanhaiya Lai' v. Hanid Ali (9)* wherein the Board remanded, the case to the High Court in order that the High Court might appoint a disinterested person to represent the idol. No doubt in both the cases no question of any deity filing a suit for its protection arose, but the decisions are authorities for the position that apart from a Shebait, under certain circumstances, the idol can be represented by disinterested persons. B. K. Mukherjea in his book "The Hindu Law of Religious and Charitable Trust" 2nd Edn sum--

marizes the legal position by way of the following propositions, among others, at p. 249.

"(1) An idol is a juristic person in whom the title to the properties of the endowment vests. But it is only in an ideal sense that the idol is the owner. It has to act through human agency, and that agent is the Shebait, who is, in law, the person entitled to take proceedings on its behalf. The personality of the idol might therefore be said, to be merged in that of the Shebait.

(2) Where, however, the Shebait refuses to act for the idol, or where the suit is to challenge the act of the Shebait himself as prejudicial to the interests of the idol then there must be some other agency which must have the right to act for the idol. The law accordingly recognises a right in persons interested in the endowment to take proceedings on behalf of the idol. This view is justified by reason as well as by decisions.

Two cases have been cited before us which took a contrary view. In *Kunj Behari Chandra v. Sri Sri Shyam Chand Thakur* (1) it was held by Agarwala, J., that in the case of a public endowment, a part of the trust property which had been alienated by the Shebait or lost in consequence of his action could be recovered only in a suit instituted by a Shebait. The only remedy which the members of the public have, where the property had been alienated by a person who was a Shebait for the time being was to secure the removal of the Shebait by proceedings under s. 92 of the Code of Civil Procedure and then to secure the appointment of another Shebait who would then have authority to represent the idol in a suit to recover the idol properties. So too, a division Bench of the Orissa High Court in *Artatran Alekhagadi Brahma v. Sudersan Mohapatra* (2) came to the same conclusion. For the reasons given above, with great respect, we hold that the said two decisions do not represent the correct law on the subject.

In the result, agreeing with the High Court, we hold that the suit filed by the idol represented by a worshipper, in the circumstances of the case is maintainable. The appeal fails and is dismissed with costs.

6. It is evident from the above-cited and quoted judgements of this Hon'ble Court that any alteration in the character of the Deity has an adverse bearing on the fundamental rights of the Deity as well as the fundamental rights of the Devotees.

V. What is the interplay between Articles 14, 15(3), 17, 25(1), 25(2)(b) and 26(b) of the Constitution? Specifically, can an individual cite rights under Article 25(1) to assert the right to ignore the traditions of the Temple which are protected under Article 26(b)?

1. The Shirur Mutt decision makes it abundantly clear that while Article 26 is subject to the reformatory lever (if reform is indeed called for based on evidence) provided to the Executive under Article 25(2)(b), nowhere does it hold that the rights of religious denominations under Article 26(b) are subservient to rights under Article 25(1). In fact, while rights under Article 26(b) are subject to Article 25(2)(b), rights under Article 25(1) are subservient to Article 26. Had this not been the case, all denominational rights of religious institutions and their traditions can be reduced to nothing in one fell swoop citing Article 25(1), which was never the intention of the framers of the Constitution since that would

defeat the very object of vesting rights in denominations under Article 26. In fact, while the seven-Judge Bench in Shirur Mutt harmonized the interplay between Article 25(2)(b) and Article 26, it did not consciously do so with respect to Articles 25(1) and 26 because its devastating effects on the identity of religious denominations were clear to the Bench.

2. The consequence of rendering rights of denominations under Article 26 subservient to Article 25(1) would lead to the following consequences:

a. If a Temple has a practice of strictly not allowing non-vegetarian food to be offered or distributed as *prasad* within its premises, a lone individual could trump that practice by citing his right to offer non-vegetarian food as *prasad* to the Deity or distribute non-vegetarian food to devotees within the Temple.

b. It would be possible for a Muslim to distribute food and alcohol, which is not considered halal, to devout Muslims within a Mosque.

c. It would be possible for a Sikh to offer *prasad* laced with tobacco and non-jhatka meat at a Gurudwara.

d. In the context of the Sabarimala Temple, it would be possible for Hindu men who do not observe the 41-day vow, to also claim a right of entry and worship at the Temple.

Clearly, not only would the religious beliefs and practices of religious institutions be infringed by an untrammelled exercise of Article 25(1), it would also affect the rights of observant

devotees and faithful under Article 25(1), which is precisely what the Seshammal judgement addresses.

3. In the absence of being able to demonstrate discrimination on the basis of gender, it is not possible to cite Article 15(3) to trump rights under Article 26 and the rights of observant devotees under Article 25(1). Since the Impugned religious practice of the Sabarimala Temple is based on the eternally celibate character of the Presiding Deity, and not on notions of menstrual impurity unlike the position of the trustees of the Haji Ali Dargah, there is no evidence of discrimination which has been placed before the Court for the Court to be able to invoke the remedial mechanisms under Article 15(3) or 25(2)(b). Even if the Proviso to Section 3 of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act 1965 or Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965 had not been provided for, Article 26 would continue to apply to protect the denominations rights, beliefs and traditions of the Temple. The presence of these provisions only strengthens the position of the Temple.

4. The reliance by the Petitioner on the prohibition against untouchability under Article 17 is a desperate and baseless attempt to overcome the hurdles posed by the settled law on Articles 25(1), 25(2)(b) and 26. Article 17 has no application legally since it specifically applies only to the practice of untouchability based on caste

41

or religion, not gender, which is evident from the promulgation of the Protection of Civil Rights Act, 1955. To expand the scope of this provision to include the impugned religious practice in Sabarimala is to ignore the legislative history of the Article. Further, to read Article 17 to cover the restrictions imposed by the Section and Rule under challenge, it is first necessary for the Petitioner to demonstrate that the framework of Articles 25 and 26 is, at the first instance, insufficient to resolve the question of the constitutionality of the Impugned religious practice. This is evidently not even the Petitioners' own best case. That apart, in the facts of the instant Petition, there is no evidence to suggest that the Impugned religious practice is based on gender-based untouchability or notions of impurity associated with the physiological process of menstruation. On the contrary, the Impugned religious practice is based solely on the eternally celibate nature of the Deity at the Temple. Therefore, the reliance on Article 17 holds no water.

5. The reliance on Article 14 by the Petitioner is the crux of the matter because what is being sought by the Petitioner is a mechanical and blinkered approach to gender equality which is blind to, deaf to and unconcerned with the rights of any other individual or institution. The Petitioner is not even concerned with the implications of such an approach to Hindu religious institutions where women rightly have exclusive spaces. This is a textbook case of cutting the head to fit the hat, which brings an Anglican, Abrahamic and monocultural

approach to Indic traditions whose sheer diversity and appetite for nuance is unmatched anywhere in the world, which is precisely what Article 26 was intended to protect, preserve and perpetuate. Clearly, the Petitioner seeks subversion of the Constitution using Constitutional values as the means to achieve the said object in the name of gender equality. Therefore, the religious practices of the Sabarimala Temple do not warrant this Hon'ble Court's intervention since no evidence has been led by the Petitioner to invite the intervention of the Court.

VI. Do the Judgements of this Hon'ble Supreme Court and the Places of Worship (Special Provisions) Act, 1991 permit any person or any arm of the State, including the Supreme Court, to alter the identity of a religious denomination and its religious institutions in the name of "reform" and gender equality?

1. In the landmark judgement of *Sardar Syadna Taher Saifuddin Saheb v. The State of Bombay* 1962 AIR 853, this Hon'ble Court itself has held that the reformative levers provided in the Constitution cannot be to reform a religious or a religious institution out of its identity and the State must be careful in applying its notions of equality and modernity to religious institutions. What makes the judgement noteworthy is that the Court recognized the validity of the power of excommunication from the Dawoodi Bohra community and struck down as unconstitutional the Bombay Prevention of Excommunication Act, 1949. Following are the views of Justice

43

N. RajagopalaAyyangar whose prophetic note of caution in relation to the exercise of powers under Article 25(2) are applicable to the instant Petition as well:

"In my view by the phrase "laws providing for social welfare and reform" it was not intended to enable the legislature to "reform", a religion out of existence or identity. Article 25 (2)(a) having provided for legislation dealing with "economic, financial, political or secular activity which may be associated with religious practices", the succeeding clause proceeds to deal with other activities of religious groups and these also must be those which are associated with religion. Just as the activities referred to in Art. 25(2)(a) are obviously not of the essence of the religion, similarly the saving in Art. 25(2)(b) is not intended to cover the basic essentials of the creed of a religion which is protected by Art. 25(1).

Coming back to the facts of the present petition, the position of the Dai-ul-Mutlaq, is an essential part of the creed of the Dawoodi Bohra sect. Faith in his spiritual mission and in the efficacy of his ministration is one of the bonds that hold the community together as a unit. The power of excommunication is vested in him for the purpose of enforcing discipline and keep the denomination together as an entity. The purity of the fellowship is secured by the removal of persons who had rendered themselves unfit and unsuitable for membership of the sect. The power of excommunication for the purpose of ensuring the preservation of the community, has therefore a prime significance in the religious life of every member of the group. A legislation which penalises this power even when exercised for the purpose above-indicated cannot be sustained as a measure of social welfare or social reform without eviscerating the guarantee under Art.25(1) and rendering the protection illusory."

2. It is evident from the above-extracted portions of the judgement that if the power of excommunication from a religious denomination can be held as constitutional for the purposes of adherence to the tenets of the denomination, surely it cannot be contended that the Sabarimala Temple does not have the power to lay down gender-specific conditions to permit entry into the Temple and worship of the Deity based on the celibate nature of the Deity.

3. The Petitioner's argument that the Sabarimala Temple was originally of Buddhist origins flies in the face of both Section 4 of the Places of Worship (Special Provisions) Act, 1991 which bars both the Petitioner and this Hon'ble Court from altering the religious character of the Temple. Further, abolishing the Impugned religious practice, which is essential to the Temple's character, would also amount and lead to altering the religious character of the institution under Section 4 of the said Act as well as converting its religious denomination under Section 3, both of which are prohibited expressly.

VII. Is the Travancore Devaswom Board, under which the Temple falls, part of "State" under Article 12 by virtue of Article 290A of the Constitution? Even if it were, would that deprive the Temple of its fundamental rights under Article 26?

1. It is firstly submitted that the reliance on Article 290A by the Petitioner to argue that the Temple and the Devaswom Board fall under "State" is erroneous and misleading. The insertion of Article 290-A by virtue of the Seventh Amendment to the Constitution in 1956 was in the following backdrop:

a. The erstwhile Princely State of Travancore had taken over the landed properties of Devaswom Boards and in turn, had accepted the obligation to maintain the Temples for eternity by paying annuities from the coffers of the State. When the erstwhile State merged with the Union of India, the obligation of paying annuities for the landed properties taken over by the erstwhile princely State was transferred to the Indian State. Annexed herewith as **Annexure I** are the relevant pages of the Travancore Devaswom Proclamation of 1922 from the Travancore Devaswom Manual of 1939 evidencing the same.

b. Therefore, to argue that the Indian State is funding the Travancore Devaswom Board and hence the Sabarimala Temple from the Consolidated Fund of India which gives it the character of State under Article 12 is a factually incorrect argument, mistakenly calculated to overcome Article 26. This is because Article 16(5) still recognises the denominational rights of a religious institution even if it attracts Article 12. Therefore, Article 290A does not in any manner take away

the denominational character of the Sabarimala Temple or its fundamental rights under Article 26.

VIII. Can the language of the notification issued by the Travancore Devaswom Board which bars entry of women between the ages of 10 and 50 be used as a strawman to strike down Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 or to conclude that the basis/principle of the Impugned religious practice is discrimination and hence unconstitutional?

1. It is evident that the object of the age limit specified by the Travancore Devaswom Board notification is to give fuller effect to the Impugned religious practice. It is humbly submitted that even if it is accepted that the age limit specified by the Travancore Devaswom Board is arbitrary for being inexact in its coverage of women entering menarche *i.e.* it fails to take into account women who enter menarche under the age of 10 and could continue to have reproductive capabilities beyond the age of 50, it can, at best, open the *notification* to challenge for this reason. This still does not lead to rendering the principle behind the notification illegal or unconstitutional. Further, it does not in any manner affect the legality and constitutionality of Rule 3 of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965 or Section 3 of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act 1965 since the objective

47

underlying these provisions is to protect the religious diversity and traditions of the Temples in Kerala, which is effectively a restatement of Article 26. Simply stated, nothing stops the Devaswom Board from issuing a better-worded fresh notification under Rule 3(b) if the existing notification is to be struck down.

2. With reference to the specific facts of the Petition, as submitted earlier, the Impugned religious practice is not based on any notions of menstrual impurity or misogyny. The practice has clear, direct, essential and integral nexus to the celibate nature of the very Deity of the Temple and to the worship of the Deity. Pertinently, the Petitioner has not challenged the notification, but has, in fact, challenged the Rule. Therefore, the legality and constitutionality of Rule 3 and Section 3 must not be viewed through the strawman prism of the notification, and must be judged independent of the notification since the notification, at best, fails to capture the spirit of the Impugned religious practice.

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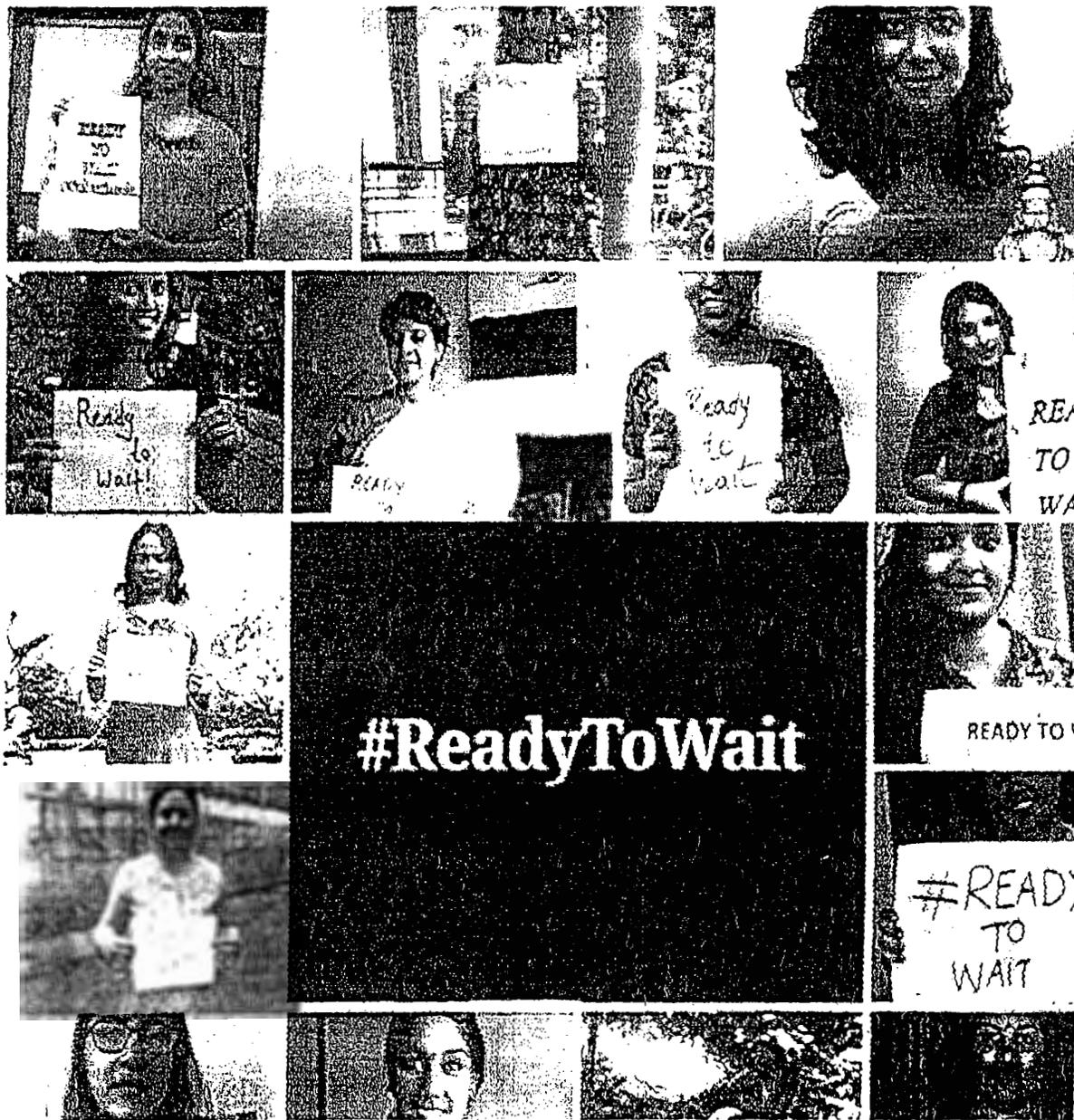
Drawn on: 23.07.2018

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New Delhi

KERALA

Sabarimala row gets Facebook imprint



Radhakrishnan Kuttoor

PATHANAMTHITTA: AUGUST 31, 2016 01:15 IST

UPDATED: SEPTEMBER 20, 2016 23:20 IST

'#ReadyToWait' has been launched by four women opposing entry to all women in Sabarimala.

A Facebook campaign launched by four women devotees two days ago, opposing entry to all women in Sabarimala, claims to have gone viral with many women devotees extending solidarity. The devotees have posted their photographs with a placard displaying 'Ready to wait' slogan with a hash tag. The e-campaign was launched by Padma Pillai in Hyderabad, Anjali George, Suja Pavithran and Shilpa Nair.

~~already to visit and go to what is that, an entrepreneur training from Bimakarani,~~
said: "We are not women against women, but women for women. However, being devotees of Lord Ayyappa, we are hurt at the smear campaign unleashed by a few atheists on the deity, whom the devotees worship to their heart."

She said the judiciary should seek the opinion of women Ayyappa devotees too on the matter.

Prof. Leelamony, retired history professor, said restricted entry for women to the Sabarimala temple was part of a ritualistic tradition.

Rashtriya Swayamsevak Sangh national leader J. Nandakumar has come out in support of it on Twitter.

Following the verdict of the Mumbai High Court facilitating entry for women to the sanctum sanctorum of Haji Ali Dargah, the Bhumata Ranragini Brigade and its leader Trupti Desai have announced Sabarimala as their next destination. Entry for women of menstrual age is restricted to Ayyappa temple as part of its tradition.

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51

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of the Day

Forget #RightToPray, women are now #ReadyToWait

[Dhwani Desai](#) | TNN | Sep 1, 2016, 00:00 IST



[Trupti Desai](#) and her feisty gang of women were the toast of the nation when they fought to secure the rights of all women to pray at the many places of worship where the entry of women was banned or restricted, such as [Haji Ali](#) and [Shani Shingnapur](#). With the activists wanting to do away with the restriction of the entry of women of menstruating age in [Sabarimala](#) comes another social media campaign — Ready To Wait — in which women are putting up pictures online saying that they are not against the traditions and restrictions placed on their entry into the temple, and are, in fact, ready to wait till the age when they are allowed entry, to preserve ancient customs.

Tradition cannot trump constitutional rights

"I don't think that all traditions should be followed. I think that the women who started this campaign probably face conventional, family, cultural and religious pressures. As a right, they must allow women who want to go

inside the temple, and those who don't, shouldn't. The mindset of a few people should not be a rule for others to follow. When women say that this is Hindu culture and tradition, it just shows the pressures that women have to follow. Just because women have started a parallel campaign, it doesn't mean that it has to be supported — it could have been started just to take attention away from the other campaign. There is a constitutional provision for any citizen of India to pray in any place of worship, and customs or traditions should not trump constitutional rights," says Brinda Adige, a women's rights activist. 52

Nothing wrong with abiding with beliefs, but ban is wrong

Actress Khushbu, however, has a more reserved take on the issue, saying that women anyway do not enter a temple when they are menstruating, so their entry should not be banned. "There are certain beliefs and there is nothing wrong with abiding by them. But the problem arises when you say that women aren't allowed inside a temple. Every woman is mentally prepared to not enter a temple when she is menstruating. And that is absolutely fine. We need not say that we should enter the temple even when we are menstruating, but don't deny us the right to ever enter it. That becomes an issue. We are not asking for too much," she says.

Jayamala's Sabarimala controversy

This is not the first time that the temple has been at the centre of a controversy. Actress Jayamala shocked everyone in 2006 when she admitted that she entered the sanctum sanctorum of the Sabarimala temple and touched Lord Ayyappa's feet in 1987, when she was 27 years old. A case was filed against her, which was later squashed. When Bangalore Times contacted the actress for her reaction to the Ready To Wait campaign — which has once again put the spotlight on the Sabarimala temple and its denial of allowing women of menstruating age from entering it— she refused to comment, saying that she was fed up of talking about it.

Why women are banned from visiting Ayyappa

The legend goes that it was Ayyappa's mission to slay the demoness Mahishi, sister of Mahishasura, who was enraged after her brother was killed by Durga, and was threatening to cause large-scale destruction. Mahishi, after being killed at the hands of Ayyappa, was freed from her past karma and became devoted to Ayyappa. She turned into a beautiful woman and asked him to marry her. But Ayyappa told her that he is a Brahmachari and would marry her when no first-time visitor (kanni Ayyappa) comes to the Sabarimala Temple. But he allowed her to reside nearby, now known as the Malikapurathamma Temple. It is believed that it is in solidarity with the waiting bride that women of marriageable age don't enter the shrine.

Times View

Whether a woman wants to wait till the prescribed age to enter the Sabarimala Temple or not is entirely her prerogative, her choice. And it is this 'right to choose' that activists are fighting for. Don't take that choice away from us just because we are women — that's all they are trying to say. So, in that sense, it is not a fight against the tradition or the temple. The fight is only so that we all get a fair playing ground, where the rules are the same for everyone, irrespective of gender. Let gender, and a natural process like menstruation, not come in the way of worship.



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GENDER ROW

Sabarimala row: Women devotees say they're #ReadyToWait

By Vinod V K / August 29, 2016



Image source: Facebook

After the Bombay High Court lifted the ban on women entering the Shani Shignapur temple and Haji Ali Dargah, the focus is now on the ancient Sabarimala temple in Kerala.

The hill shrine in Pathanamthitta district of Kerala has been in a legal tangle after a petition was filed in Supreme Court seeking revocation of a centuries-old tradition, which bans women aged between 10 and 50 from entering the temple.

56

While the apex court is yet to deliver its verdict, a section of women devotees in the state has set off a counter-campaign claiming they are ready to wait to reach the stipulated age to scale the hill and enter the temple.

The novel campaign, seen as a major setback to the women activists who seek to drum up support for their movement in the state, has already set the social media by storm with the hashtag #ReadyToWait trending on both Facebook and Twitter. #ReadyToWait is apparently a counter to the #RightToPray drive launched recently by a national TV channel.

The new campaign gathered momentum after a Facebook user Anjali George published a post on Saturday in which she sought to explain how "Sabarimala is not a gender issue".

"You cannot apply the semitic scale which reduces God to a human figure to pagan traditions that worship nature and its forces," she said in her post.

Several women devotees have taken to Facebook and Twitter to urge the "western-funded feminists and Godless communists" to leave the customs of the native civilisation to the devotees of the temple.

Anjali writes: "Just like there is space for both theism and atheism in Sanatana dharma, there is also space for male or female worship or their exclusion from worship."

Another user Manju Pillai wonders how gender equality happens through Sabarimala. She reminds the "north Indian lobby and pseudo-feminists" that the right to enter a temple is not the biggest issue of the 21st century and asked them to raise their voice for the girls who are married off before the age of 21 in the northern districts of the state and for the un-wed mothers in the tribal communities.

Unlike the cases of Shani temple and Haji Ali Dargah, Kerala has never witnessed a mass movement against the ban on women in Sabarimala and many of those who have come out against the tradition are from outside the state.

Kavitha Niroop from Thiruvananthapuram writes: "I would rather fight against dowry system, for women's safety, for reducing domestic violence against women, creating awareness among men to respect women's individuality and freedom and an N number of other urgent necessities which will really make a difference to women population. Being able to go to temple is the least important of women's issues!"

There are multiple theories revolving around the age-old tradition in the temple, with one of them saying women of reproductive age cannot complete the prescribed 41-day-long fast as they will have to go through the menstrual cycle. The rural Indian culture, since time immemorial, has related menstruation to impurity.

Another theory is that the temple's idol is based on the concept of *naisthik brahmacharya* (eternal celibacy).

However, activists believe that the tradition amounts to discrimination against women and violates their constitutional right to practice religion.

The apex court has, on various occasions, questioned the Travancore Devaswom Board over the alleged discrimination against women devotees in the temple and maintained that its verdict would be based on the Constitution and not on tradition.

Sabarimala shrine, situated around 4,000 feet above the sea level, on the Western Ghats, is one of the richest temples in India, with over 100 million devotees visiting every year.

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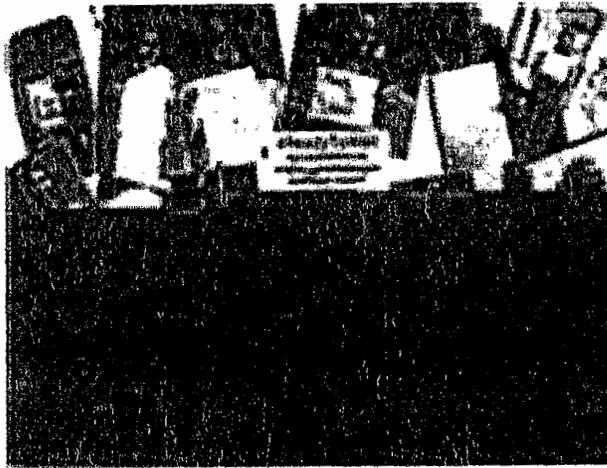
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These Kerala women are 'ReadyToWait' to beat 'conspiracy' against Sabarimala

By: FE Online | Published: August 29, 2016 7:32 PM



Several women have now posted their photos with posters 'Ready to Wait' on the social media platform to show their solidarity with the campaign. They have pledged that they are ready to wait till the age of 55 before entering the temple. (Source: Facebook)

With the help of courts, women groups in the country have tasted some success in ending what they call 'discrimination against women' at places of worship. In two recent judgements, the Bombay high court paved way for women's entry to the sanctum sanctorum of a Shani Temple in Maharashtra and the Haji Ali shrine in Mumbai. The two victories have now put the focus of some women rights groups on over a decade-old pending sensitive case of women's entry to Kerala's Sabarimala Temple.

However, as far as the Kerala temple is concerned, many believe that the women rights groups are "conspiring" against the age-old religious practices driven by deep faith in Lord Ayyappa. To expose this, some women in Kerala have started a counter movement, saying they are ready to wait to enter the temple. As per tradition, there is no blanket ban on the entry of women to Sabarimala. There is only a restriction on the entry of women in the menstruating age group. The #ReadytoWait campaign started on social media by some Kerala women seeks to highlight these points, urging the women to be made the decision-maker in the matter, not the courts or some rights group who don't feel about the deity - Lord Ayappa.

The campaign was apparently triggered by a Facebook post by one user Anjali George. She wrote: "Request all women who ardently wish to defeat the anti-pagan #BreakingIndia forces funded monotheistic agenda to foist Abrahamic Puritanism on this mighty nation which has nurtured diversity and worshipped the feminine in all its varied forms, to join the #ReadyToWait movement." Several women have now posted their photos with posters 'Ready to Wait' on the social media platform to show their solidarity with the campaign. They have pledged that they are ready to wait until the age of 55 before entering the temple.

The campaign has generated quite a buzz on social media platforms, and many believe it would expose the "misinformation" and "conspiracy of the women rights groups. Commenting on the campaign Rahul Easwar, an activist who belongs to the family of priests at Sabarimala temple, tweeted, "Proud to see 100s of Hindu Woman standing up to defeat the Conspiracy against Sabarimala - #ReadyToWait ..May our Woman lead us".

The Sabarimala temple is situated on a hilltop (about 3000 feet above sea level) in Pathanamthitta district, which is unique in many respects. The uniqueness gathers its voice, as the temple is open to all, irrespective of caste, creed or religion, according to the official website of the temple.

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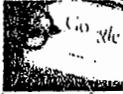
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NATIONAL

Ready to wait till 50 to enter Sabarimala: Women's group

Krishnadas Rajagopal

NEW DELHI, OCTOBER 27, 2016 02:53 IST

UPDATED: DECEMBER 02, 2016 11:51 IST

A group claiming to represent women devotees of Kerala moved the Supreme Court on Wednesday, saying the members were ready to wait till the age of 50 to enter the famed Sabarimala temple. The group has termed the petitioners, who have approached the apex court against the restriction on women's entry into the temple, "feminists" and their cause "White Man's Burden to civilise unwashed pagans."

'People for Dharma', a Chennai-based organisation, told the Supreme Court that its campaign, called 'Ready to Wait', was the antithetical voice to the popular 'Right to Bleed' and 'Right to Pray' movements seeking equal rights for women to worship.

"By appointing themselves the champions of the rights of women devotees, what the feminist petitioners actually imply is that the devotees are incapable of fighting for themselves. That's one kind of classism too. It is a modern version of the 'White Man's Burden' to civilise unwashed pagans," said their application, filed through advocate Suvidutt M.S.

The group sought to intervene in the pending litigation on Sabarimala temple entry rights for women aged between 10 and 50.

The temple entry case is likely to come up for hearing before a three-judge Bench led by Dipak Misra as soon as the court re-opens on November 7.

People for Dharma said the "feminist petitioners" had "absolutely no clue to the scientific and philosophical basis of a temple and falsely and foolishly equate the practices of Santana Dharma with the inborn discrimination in Semitic religions."

"Campaigns popularly titled as 'Happy to Bleed', 'Right to Pray' are mere initiatives which serve as case studies showing how 'equality discourses' are being utilised to undermine Adhyatmic traditions of Sanatana Dharma and prepare the ground for harvest by Abrahamic ideologies," the application said.

The application said there was no prohibition on women's entry in Sabarimala. Women below 10 years and above 50 years were allowed to have the darshan of the deity.

"Some temples even celebrate the menstrual phase of women," the group said citing the cases of Kamakhya temple in Assam and the Devi temple in Kerala's

Chenganoor. "This alone is enough to expose the hollowness of the claim that
Sanatana Dharma discriminates menstruating women," the application said. 65

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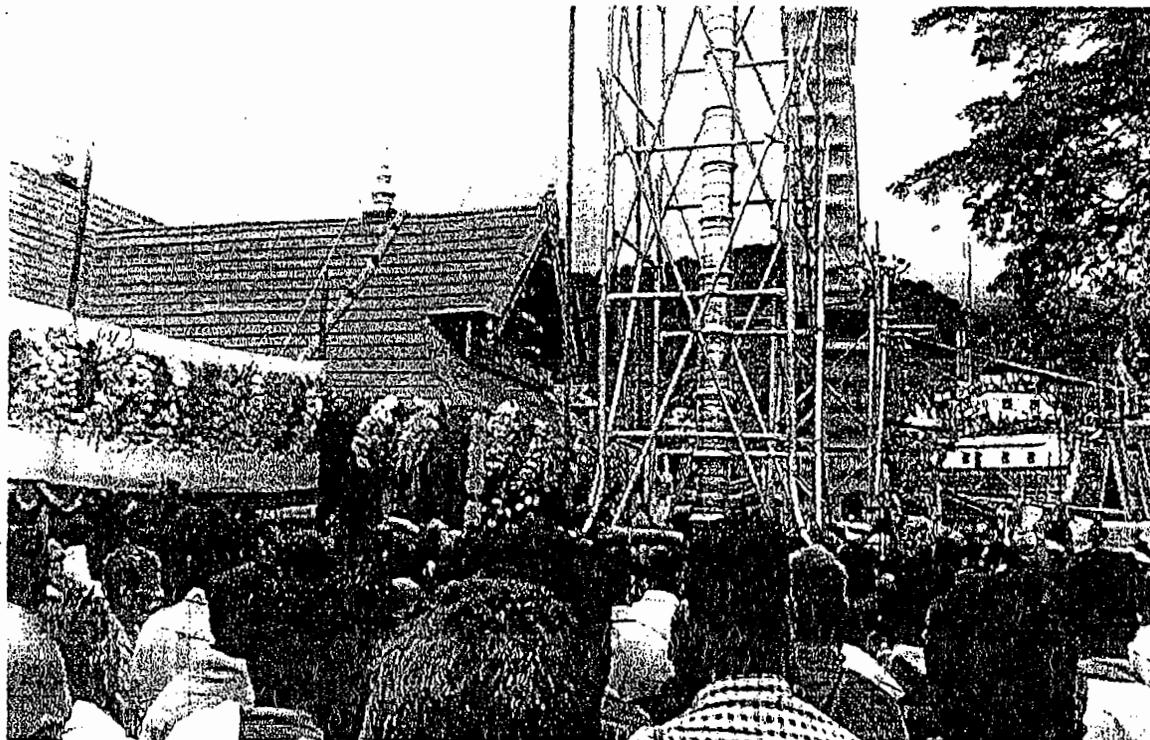
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Snapshot

- Now that the Sabarimala debate is back in news, here is a recap of what the case is about.

With the Supreme Court referring the issue of women's entry into Sabarimala to a constitutional bench on 13 October, the issue is back in the news now.

It is the five south Indian states, from which the majority of Sabarimala devotees come. For the same reason, the rest of India may not be well informed about this issue beyond what national media discusses regarding the simple narrative of gender equality. For their benefit, here is what this case is all about. The two sides, who are contesting against each other, in this case can be broadly categorised under two hashtags - #RightToPray and #ReadyToWait.

First, let us briefly look at what both sides stand for. #RightToPray is supposed to be a gender equality movement that draws its pride from their perceived victory at Haji Ali Dargah and Shani Shingnapur temple last year where women were allowed entry to offer prayers.

The other side, #ReadyToWait, is declaring itself to be a movement created by the women devotees of Lord Ayyappa, the deity of the hill shrine Sabarimala. Their aim, in simple terms, seems to be telling us that Sabarimala women entry issue is not a gender equality matter as its new champions would want to project it as.

As the #RightToPray concept is of less ambiguity, let us try to understand more about the novel idea of #ReadyToWait.

To begin with, it should be understood that the usage of the phrase 'ban on women entry' is totally wrong for Sabarimala, unlike in the case of Shani Shingnapur temple or Haji Ali Dargah, where it was a blanket ban on women entering the particular pray areas of those shrines, which was started very recently in the case of Haji Ali, supposed to be only after 2011.

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everything related to Sabarimala are designed in accordance with this special posture of its celibate deity. Devotees have to observe strict *vata* (*brahmacharya vrata*) of up to 41 days including maintaining physical purity, abstaining from earthly pleasures like consumption of alcohol, meat or indulging in sexual activities etc, as part of the preparation for their yearly pilgrimage to Sabarimala.

The main argument on why women of a particular age group were not welcome in Sabarimala comes from the folklores of Lord Ayyappa which we can see that towards the end of his life as a man he chose to be a celibate and wanted to become part of the *immortal* or deity of the temple, which was constructed by the king of Panthalam, Lord Ayyappa's adoptive father, on the instruction of the lord himself. He had chosen the steep mountains in the deep forest as his abode for his eternal yogic sleep so that he can stay away, as much as possible, from the worldly affairs.

It is in the culture of our land, as part of Sanatana Dharama that nobody wants to disturb such a *yogi* by their presence. This also explains why Sabarimala is not open for *darshan* throughout the year. Young women prefer to stay away from such celibate *yogis* out of respect.



One of the main arguments seems to have been raised by #ReadyToWait camp and its supporters is that the celibate posture of Lord Ayyappa is what mandates the pre-conditions, which is the strict *vata*, for his devotees to come and worship him once in a year so as to have very minimal disturbance to his permanent yogic posture. So they are asking, if somebody is not believing in these pre-conditions as part of the Sabarimala pilgrimage, then it means that he or she doesn't believe in Lord Ayyappa. If he or she doesn't believe in Sabarimala's Lord Ayyappa in its current form, then why should he or she insist on going there?

It indicates that their insistence does not stem from devotion. They are free to go to hundreds of other Ayyappa temples across the country, where the deity's posture is not that of a celibate, and hence there are no restrictions of any kind. The revolting, non-believing, Ayyappa fans (yes, not devotees) can very well visit any of those temples and offer their prayers (if any). The problems should disappear there itself.

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in Sabarimala, which is just another temple, where you have a different set of rituals, the rituals which give the Sabarimala its unique position in the Hindu way of life in India.

Those who are eager to brand Sabarimala as a regressive Hindu icon with half-baked information should understand one more important fact that Sabarimala is one of the very few prominent temples in India where there is no restriction in the name of caste or religion. Be it a Muslim or a Christian or those practising any other religion, can go to Sabarimala if they follow the rituals. The only precondition for entering the temple is that one should be ready to follow the rituals and customs

It is important to point out that there is a mosque at the foothills of Sabarimala, which is believed to be belonging to Lord Ayyappa's friend, who was a Muslim. Devotees call him Vavar swami. It is mandatory for all Ayyappa devotees to visit this mosque first before they start climbing the hill towards Sabarimala. This is also a part of the ritual. You cannot find it in the Constitution of India.

These special traditions and rituals make Sabarimala what it is today. Without all these, Sabarimala will be just one of the hundreds or thousands of other temples. So before one raises his/her sword against Sabarimala in the name of gender equality he/she should understand that Sabarimala is the epitome of equality in all aspects, be it caste, religion or gender.

Those who are entering this debate must understand first and foremost that temples of Hindus are not run by the Constitution. It is meant only for those who believe in it. And until the rituals based on belief don't affect the civil health of the society, nobody has any right to alter it. Hindus of this country have done it in the past and I hope that they will do it in future also whenever the need of a reform arises. Even in this issue also they are capable of differentiating between the rights and wrongs.

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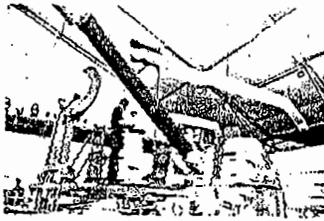
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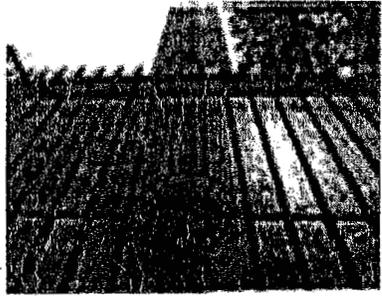


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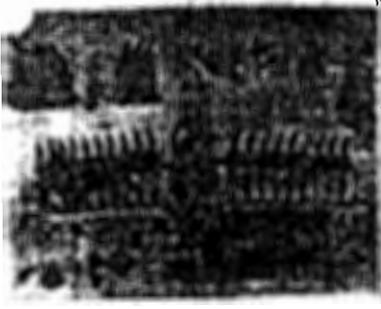
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Women's group moves SC over Sabarimala entry, says 'We are ReadyToWait'

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The 'People for Dharma' organisation wants to become a party in the case.

Megha Varier (<https://www.thenewsminute.com/author-articles/Megha-Varier>) |

Thursday, October 27, 2016 - 14:13

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Subject=TheNewsMinute&Body=Women's group moves SC over Sabarimala entry, says 'We are ReadyToWait' <https://www.thenewsminute.com/article/womens-group-moves-sc-over-sabarimala-entry-says-we-are-readytowait-52004>)

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group-moves-sc-over-sabarimala-entry-says-we-are-readytowait-52004&title=Women's
group moves SC over Sabarimala entry, says 'We are ReadyToWait')



Nearly two months after a counter campaign #Ready To Wait (<http://www.thenewsminute.com/article/women-devotees-counter-campaign-entry-sabarimala-say-readytowait-49003>) took social media by storm, with a group of Malayali women saying that they were willing to wait till the age of 50 to enter the Sabarimala shrine, the group has now moved the Supreme Court seeking to be a party to the case.

The organizers of Ready To Wait campaign, a group called 'People for Dharma' filed an application on Wednesday seeking to intervene in a bunch of petitions being heard by the apex court on women's entry to Sabarimala.

They pointed out in the petition that the unique customs rooted in Tantra Shashtra should be respected. The organization expressed their willingness to wait till the age of 50 to enter the shrine, thereby respecting the traditions of the temple and the Hindu religion. The case is expected to come up for hearing in the first week of November.

74

The campaign that began in August this year, was a counter campaign to a number of movements including 'Right to pray' and 'Happy to Bleed', that came down heavily on the tradition that bans the entry of menstruating women to the shrine.

The NEWS Minute (1)

The case filed by Indian Young Lawyers Association in 2006 pertains to lifting the ban on entry of women of menstruating age to the famous Ayyappa shrine Sabarimala in Kerala. The Travancore Devasom Board and the Kerala government are also a part of the case in the Supreme Court.

'People for Dharma', registered in Chennai earlier this month has more than a thousand women members.

Saying that there is no ban on entry of women but only a mere restriction in the age group, Shilpa Nair, co-founder of People for Dharma said, "It is the devotees and the stakeholders who should have a say in this regard, and not individuals or organizations who are either not devotees or are completely alien to the ways of the Hindu religion."

It is the "overwhelming response" that Ready To Wait campaign generated on social media, that gave the organizers the confidence to form a registered organization to represent the case.

"Through the campaign, we came to know that there is immense support for our cause. We then decided to expand our campaign outside social media, since the actual fight is happening not on social media, but in the court. And that is where we need our voices to be heard, the voices of the devotees," said Shilpa, a Dubai-based entrepreneur and devotee.

Asked whether the decision to seek intervention in the case comes in the backdrop of the Haji Ali trust conceding to SC directive to allow women's entry, Shilpa asserts that comparing the two is "an insult to both Hindus and Muslims."

"It is like comparing apples to pears, both the issues are completely different from each other. A comparison should not be made because it is only in the past few years that the restriction was imposed in the dargah. This is not the case with Sabarimala, there is a particular reason for the restriction of

75

women of menstruating age to Sabarimala. Lord Ayyappa is a celibate and all we are saying is that we devotees are ready to respect that tradition," Shilpa says.

≡ She is however, quick to a **The NEWS Minute** against feminism.

"The thing with feminists is that they go a little overboard at times with their equality talk. I don't think there is gender inequality in Kerala, we have a history of being a matrilineal state. Sabarimala issue is not even inequality, it is only accepting the diversity of our nation and respecting it," she maintains.

The decision to register the organization in Chennai, Shilpa says was done purely out of convenience.

"Then again, we want to highlight this issue not as a Kerala centric matter. The devotees span across the whole of South India, including Tamil Nadu," Shilpa said.

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MANU/KE/0012/1993

Equivalent Citation: AIR1993Ker42

IN THE HIGH COURT OF KERALA

O.P. No. 9015 of 1990-S

Decided On: 05.04.1991

Appellants: S. Mahendran

Vs.

Respondent: The Secretary, Travancore Devaswom Board, Thiruvananthapuram and Ors.

Hon'ble Judges/Coram:

K.S. Paripoornan and K.P. Balanarayana Marar, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: P. Balagangadham Menon, Amicus Curiae

For Respondents/Defendant: T.K. Charukrishnakutty, C.P. Sathkaranadas, Govind Bharathan and V.P. Seemrithini, Advs. and V. Ramachandra, Govt. Pleader

Subject: Civil

Subject: Constitution

Acts/Rules/Orders:

Constitution of India - Article 15, Constitution of India - Article 25, Constitution of India - Article 26; Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 - Section 3; Kerala-Hindu Places of Public Worship (Authorisation of Entry) Rules - Rule 3; Travancore - Cochin Hindu Religious Institutions Act, Travancore - Cochin 1950

Cases Referred:

Raja Bira Kishore Deb v. State of Orissa, AIR 1964 SC 1501; D.R.R. Varu v. State of Andhra Pradesh, AIR 1970 SC 181; Commr. H.R. & C.E., Madras v. Sree Lakshmindra Thirtha Swamikal of Sri Shirur Math, AIR 1954 SC 282; Adelaide Co. v. The Commonwealth, (1943) 67 CLR 116-127; T. Krishnan v. Guruvayoor Devaswom Managing Committee, AIR 1978 Kerala 68; S.P. Mittal v. Union of India, (1983) 1 SCC 51, AIR 1983 SC 1; Narayanan Namboodiri v. State of Kerala, 1985 Ker LT 629, AIR 1985 Ker 160; Vankataramana Davaru v. State of Mysore, AIR 1958 SC 255; Tilakayat Shri Govindaji Maharaj v. State of Rajasthan, (1964) 1 SCR 561, AIR 1963 SC 1638

Case Note:

Constitution - reasonable discrimination - Articles 15, 25 and 26 of Constitution of India and Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 - usage that women of particular age group not permitted to enter precincts of temple or to trek Sabarimala for purpose of pilgrimage challenged - females of particular group prohibited due to their inability to observe 'vratham' continuously for certain period due to physiological reasons - no distinction of caste, creed or colour in temple - prohibition only in respect of women of particular age group and not women as class - testimony of witnesses conclusively established practice and usage followed in temple of not permitting women of particular age group to worship in temple - such restriction in accordance with usage prevalent from time immemorial - such restriction does not violate Articles 15, 25 and 26 - such restriction not violative of Act of 1965 as there was no restriction between one section and another section or between one class and another class among Hindus in matter of entry to temple.

JUDGMENT

K.P. Balanarayana Marar, J.

1. This is a 'public interest litigation'. It has far-reaching consequences regarding the faith of "Sabarimala" temple, a temple of great antiquity, visited by more than 20 lakhs of persons every year from all parts of India. The question posed is, whether it is open to all women, irrespective of their age, to trek the hill and worship of the temple, and how far is it permissible as per existing 'acharas', beliefs and custom?

2. A petition was sent by one S. Mahandaran, K. P. S. Bhavan, Perururai, Changanacherry, to one of us (Paripooman J.) which was converted into an original petition and treated as public interest litigation. He complained of young woman trekking Sabari hills (Sabarimala) and offering prayers at the Sabarimala Shrine. That is contrary to the customs and usages followed in the temple, according to him. Special treatment is alleged to have been given to wives of V.I.Ps. He pointed out a specific instance of the first rice-feeding ceremony of the grand-daughter of the former Devaswom Commissioner Smt. Chandrika conducted at Sabarimala temple in the presence of her daughter, the mother of the child, and other relatives including women a photograph which appeared in the Janmaboomi daily of 19-8-1990 was also enclosed along with the complaint petition. He sought suitable action to be taken against the persons concerned.

3. The petition came up before us on 24-9-1990. Notice was ordered to be issued to the complainant and Smt. S. Chandrika, former Devaswom Commissioner, Travancore Devaswom Board, to file their explanations in the matter and to be present in Court on 3rd of October, 1990. The Board was also directed to file its explanation on that date. In pursuance to the summons issued by this Court, the petitioner Sri Mahendran appeared and filed a detailed explanation. Smt. Chandrika was also present in Court but did not file any written explanation. No written explanation was filed by the Board also then. On hearing the petitioner Sri Mahendran, Smt. Chandrika and the counsel for the Devaswom Board, we felt that the questions that arise for consideration are fundamental and vital and have got a great impact on the very faith regarding Sabarimala temple. The complaint was therefore converted into an original petition under Article 226 of the Constitution of India as a public interest litigation and the petition was numbered as O.P. 9015/1990. At our request Sri P. Balagangadhara Menon, a Senior Counsel of this Court, agreed to assist the Court as amicus curiae. He was also requested to appear for the petitioner. The Secretary, Travancore Devaswom Board, Smt. S. Chandrika, Former Devaswom Board Commissioner, and the Chief Secretary to Government of Kerala were made respondents to the petition. The counsel for the Board was directed to file a list of available Thanthri Mukhyas in the erstwhile Travancore territory with names and addresses along with the present Thanthri of the Sabarimala temple. It was observed that Sri Balagangadhara Menon will also be at liberty to furnish the names and addresses of other Thanthri Mukhyas who will be able to speak on the various aspects that may come up in this original petition. After getting the lists submitted on both sides, we directed the Registrar of this Court to issue summons to nine persons requesting them to appear in this Court on 26-10-1990 to give evidence. They were requested to appear on that day along with the documents or other materials in their possession which throw light on the matter. Witness No. 8 cited by petitioner's counsel was given up. Sri K. Kerala Varma Raja of Pandalam Kovilakam, specified as No. 7 in the list of witnesses, was examined as a witness on the side of the petitioner. Persons specified as Nos. 1 to 4, 6 and 9 were examined as Court witnesses. The person specified as No. 5 was not present. Summons has been served wrongly on another person. That witness was given up.

4. The respondents appeared through counsel and filed counter-affidavits. The Indian Federation of Women Lawyers, Kerala Branch, sought implement by filing C.M.P. No. 17102/1990. The President of the Kerala Kshetra Samrakshana Samithi, Sri M. P. Gopakrishnan, filed C.M.P. 17079/1990 to get himself impleaded. Both these petitions were allowed and the petitioners were permitted to participate in the proceedings and to be heard as per Rule 152(2) of the High Court Rules.

5. The Travancore Devaswom Board in their counter-affidavit questioned the right of the petitioner to maintain the petition under Article 226 of the Constitution for the reason that no right affecting public at large is involved in this case. The question involved is purely relating to Hindu Religion and religious practices. No writ can be issued by this Court against the 1st respondent in order to grant the relief asked for as the determination of the dispute is dependant on disputed questions of fact. They also challenged the maintainability of the petition without impleading a Hindu lady worshipper at least in a representative capacity. The jurisdiction of this Court cannot be invoked to regulate or control the religious functions and practices relating to a Hindu temple since that is the concern of men of religion. The religious questions posed in this writ petition can be determined finally only by the Thanthri concerned and not by other Thanthries who have no authority over the Sabarimala Sastha Temple. The members of the Thazharian Illam are the hereditary Thanthries of the Sabarimala temple. The present Thanthri is Sri Neelakandaru and he is the final authority to take a decision on any issue with regard to the religious practices and customs as well as the rituals and poojas in Sabarimala temple. It is further stated that the Board, being a statutory authority conferred with the power of administration, has no voice in deciding such controversial, religious and ritualistic questions and the Thanthri alone can decide all questions relating to religious rituals and practices. There were instances where Thanthries also were unable to take a decision pertaining to some religious practices and in such cases the Thanthri used to suggest that it can be resolved by a Devaprasnam.

6. After pointing out the difficulties experienced by pilgrims in olden days to trek the entire distance through thick forests it is stated that transport facilities had improved in the recent past resulting in flow of pilgrims in large numbers from all over Kerala and outside. Scientific advancement and its influence in modernisation of human life is bound to bring about changes in the old customs and practices. Hindu religion is adaptable to the changing situation. After mentioning about the contribution of Aadi Sankara, Ramanujam, Paramahansa and Vivekananda in rejuvenating Hinduism, the counter-affidavit states that rituals, customs and practices in temples are generally meant to discipline the mind of human beings to refine it or to rejuvenate it to tune up to higher standards of thinking.

7. In olden days worshippers visit the temple only after observing penance for 41 days. Since pilgrims to Sabarimala temple ought to undergo 'Vratham' or penance for 41 days, usually ladies between the age of 10 and 50 will not be physically capable of observing vratham for 41 days on physiological grounds. The religious practices and customs followed earlier had changed during the last 40 years particularly from 1950, the year in which the renovation of the temple took place after the "fire disaster". Even while the old customs prevailed, women used to visit the temple though very rarely. The Maharaja of Travancore accompanied by the Maharani and the Divan had visited the temple in 1115 M.E. There was thus no prohibition for women to enter the Sabarimala temple in olden days, but women in large number were not visiting the temple. That was not because of any prohibition imposed by Hindu religion but because of other non-religious factors. In recent years, many worshippers had gone to the temple with lady worshippers within the age group 10 to 50 for the first rice-feeding ceremony of their children (Chottoomu). The Board used to issue receipts on such occasions on payment of the prescribed charges. A change in the old custom and practice was brought about by installing a flag staff (Dhwajam) in 1969. Another change was brought about by the introduction of Padipooja. These were done on the advice of the Thanthri. Changes were also effected in other practices. The practice of breaking coconuts on the 18 steps was discontinued and worshippers were allowed to crack the coconuts only on a stone placed below the eighteen sacred steps (Pathinettaam Padi). These changes had been brought about in order to preserve the temple and the precinct in all its gaiety and sanctity.

8. For the last 20 years women irrespective of their age were allowed to visit the temple when it opens for monthly poojas. They were not permitted to enter the temple during Mandalam, Makaravilakku and Vishu seasons. The rule that during these seasons no woman who is aged more than 10 and less than 50 shall enter the temple is scrupulously followed. The counter-affidavit further states that the Board, being a statutory authority, cannot forget the mandate laid down under Articles 15, 25 and 26 of the Constitution of India while administering the temples under their control. The Board cannot conceive of any religious practice under the Hindu religion which deprives a worshipper of his rights to enter the temple and worship therein according to his belief. Notifications are issued by the Board during Mandalam, Makaravilakku and Vishu preventing women of the age group 10 to 50 from entering the temple, taking into account the religious sentiments and practices followed in the temple. The Board contends that none of the fundamental rights of petitioner had been violated and seeks dismissal of the petition.

9. The second respondent, former Devaswom Commissioner Smt. S. Chandrika in her counter-affidavit admitted that the first rice-feeding ceremony of her grandchild was conducted on the 1st of Chingam 1166 at Sabarimala temple while she was holding the post of Devaswom Commissioner. Women had functioned as Devaswom Commissioners even earlier. All of them were aged more than 50 at the time they functioned as Commissioner. She further stated that wives of important personalities were not given any special treatment as alleged in the petition. The restriction regarding the entry of women in the age group 10 to 50 is there only during Mandalam, Makaravilakku and Vishu. As per the stipulations made by the Devaswom Board there is no restriction during the remaining period. When monthly poojas are conducted, women of all age groups used to visit Sabarimala. On the 1st of Chingam 1166 the first rice-feeding ceremony of other children were also conducted at the temple. No V.I.P. treatment was given to her grandchild on that day. The same facility was afforded to others also. Her daughter got married on 13-7-1984 and was not begetting a child for a considerably long time. She took a vow that the first rice-feeding ceremony would be performed at Sabarimala in case she begets a child. Hence the reason why the first rice-feeding ceremony of the child delivered by her was performed at that temple. The entry of young ladies in the temple during monthly poojas is not against the customs and practices followed in the temple.

10. The Chief Secretary of Kerala filed a counter-affidavit on behalf of 3rd respondent. In that affidavit it is stated that the Travancore Devaswom Board has to manage and arrange for the conduct of daily worship and ceremonies and festivals in every temple according to its usage as per the provision contained in Section 31 of the Travancore-Cochin Hindu Religious Institutions Act. The Board is entrusted with administration as well as making of rules. Regarding the entry in temples, necessary provision has been made in the Travancore-Cochin Temple (Removal of Disabilities) Act and by Act 7 of 1965. Every Hindu shall be entitled to enter a temple and offer worship there by virtue of Section 3 of that Act. The Travancore Devaswom Board had framed rules before the enactment of Act 7/1965 under Section 9 of the Temple Entry Act. Rule 6(c) framed thereunder relates to entry of women. The restriction is for entry of women at such times during which they are not by custom and usage allowed to enter temples. The Board issues notifications every year informing the public about the prohibition regarding entry of women of the age group of 10 to 50 in the Sabarimala temple and Pathinattampadi during Mandalam, Makaravilakku festival and Vishu. Third respondent further contends that the complaint voiced by the petitioner is not one maintainable under Article 226 of the Constitution of India and seeks dismissal of the petition.

11. Since the questions involved in this petition are fundamental in nature and have far-reaching consequences regarding the belief and faith of the Hindus in respect of Sabarimala temple, we heard counsel for the petitioner Sri Balagangadhara Menon and counsel appearing for the respondents at length. We heard also the counsel appearing for the two interveners.

12. The questions which require answers in this original petition are:

- (1) Whether women of the age group 10 to 50 can be permitted to enter the Sabarimala temple at any period of the year or during any of the festivals or poojas conducted in the temple.
- (2) Whether the denial of entry of that class of women amounts to discrimination and violative of Articles 15, 25 and 26 of the Constitution of India, and
- (3) Whether directions can be issued by this Court to the Devaswom Board and the Government of Kerala to restrict the entry of such women to the temple?

13. The Devaswom Board had questioned the maintainability of the original petition and the power of judicial review of this Court in respect of decisions taken by the Board. Counsel for the Board Sri Chandrasakhardas submitted that the Board is prepared to abide by the opinion given by Sri Thazharam Neelakandara, Thanthri of the Sabarimala temple in the matter and to implement the same. In the light of this submission it was categorically stated by counsel for the Board that adjudication of the other pleas raised regarding the maintainability of the petition and the reviewability of the matter in issue under Article 226 of the Constitution do not call for consideration in this case. This submission of the counsel was recorded in the proceedings. The Board has expressly stated that it shall abide by the opinion given by the Thanthri of Sabarimala temple and that such opinion is final. But the learned counsel appearing for the Women Lawyers' Federation has raised a contention that prevention of entry of women of the age group of 10 to 50 will affect the fundamental rights of those persons guaranteed under Articles 15 and 25 of the Constitution of India. Prevention of such women from entering the temple amounts to discrimination on the ground of sex, according to Smt. Seertandini, learned counsel appearing for the intervener, the Women Lawyers' Federation of India. She had also drawn our attention to various authorities on that aspect. It is only proper to consider those decisions to see whether any of the provisions of the Constitution is violated on account of such prevention of entry.

14. Article 15 of the Constitution says that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 25 confers freedom of conscience and freedom to profess, practice and propagate religion subject to public order, morality and health and all other provisions of Part III. But every religious denomination or any section thereof shall have the right to manage their religious affairs subject to public order, morality and health. Every religious denomination is conferred such freedom under Article 26 of the Constitution and they shall have the right.

- (a) to establish and maintain institutions for religious and charitable purposes,

- (b) to manage its own affairs in matters of religion,
- (c) to own and acquire movable or immovable property, and
- (d) to administer such property in accordance with law.

Learned counsel for petitioner Sri Balagangadhara Menon and Sri Govind Bharathan, learned counsel appearing for one of the intervenors, rely on Article 26(b) of the Constitution to support their contention that Ayyappa devotees form a denomination by themselves, and have every right to regulate and manage its own affairs in matters of religion. According to them the restriction imposed on woman of a particular age group from entering the temple is a matter of religion and a matter of religious faith. The contention is that "the religious denomination" has got every right and freedom to prevent a section of the people from entering the temple if it is a matter of religion or religious faith.

15. What is a religious denomination and what is its identity were considered by the Supreme Court in *Raja Bira Kishore Deb v. State of Orissa*, MANU/SC/0038/1964 : AIR 1964 SC 1501. The Supreme Court held that the identity of a religious denomination consists in the identity of its doctrines, creeds and tenets and these are intended to ensure the unity of the faith which its adherents profess and the identity of the religious views are the bonds of the union which binds them together as one community. In a separate judgment, supporting the majority view, Rajagopala Ayyangar, J. said:-

"A denomination within Article 26 and persons who are members of that denomination are under Article 25 entitled to ensure the continuity of the denomination and such continuity is possible only by maintaining the bond of religious discipline which would secure the adherence of its members to certain essentials like faith, doctrine, tenets and practices."

16. While interpreting Article 26(b) of the Constitution the Supreme Court in -- *D. R. R. Varu v. State of Andhra Pradesh* -- held that a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion. No outside authority has any jurisdiction to interfere with its decision in such matters. Regarding the right of a religious denomination to administer property, it was observed that the fundamental right under Article 26(d) enables the religious denomination to administer the property in accordance with law and that law therefore must leave the right of administration to the religious denomination itself subject to such regulations and restrictions as it might choose to impose. It was further laid down that a law which takes away the right of administration from the hands of a religious denomination altogether and vests in any other authority would amount to a violation of the right guaranteed under Clause (d) of Article 26.

17. The scope of Clause (b) of Article 26 had come up for consideration before the Supreme Court in *Commr. H.R. & C. E., Madras v. Sree Lakshmindra Thirtha Swamiar of Sri Shiruru Mutt*, MANU/SC/0136/1954 : AIR 1954 SC 282. The Supreme Court posed the question : What are matters of religion to which Clause (b) of Article 26 applies and answered thus :-

"A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress."

The Supreme Court quoted a passage contained in *Adelaide Co. v. The Commonwealth* (1943) 67 CLR 116. Latham C.J. of the High Court of Australia, while dealing with Section 116 of the Australian Constitution which inter alia forbids the Commonwealth prohibit "free exercise of any religion" said :

"The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion".

Relying on this passage the Supreme Court held that these observations apply fully to protection of religion as guaranteed by the Indian Constitution.

18. A contention was raised before the Supreme Court that all secular activities which may be associated with religion, but do not really constitute an essential part of it are amenable to State regulation. Answering this contention the Supreme Court observed that what constitutes the essential part of religion is primarily to be ascertained with reference to the doctrines of religious belief. If the tenets of any religious sect of Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests or servants or the use of marketable commodities would not make the secular activities partaking of a commercial or economic character. The Supreme Court held that all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b) of the Constitution. The Supreme Court added that freedom of speech in our Constitution is not confined to religious beliefs only, but it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down. Ultimately the Supreme Court held that every religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. It was laid down that any law which takes away the right of administration from the hands of a religious denomination altogether and vests it in any other authority would amount to a violation of the right guaranteed under Clause (b) of Article 26. A Full Bench of Five Judges of this Court in *T. Krishnan v. Guruvayoor Devaswom Managing Committee* MANU/KER/0019/1978 (the first Guruvayoor case) held that no tampering with the religious rights can be countenanced so long as the Constitution stands as it is today. The Bench observed that any attempt to do so would be not only an act of breach of faith, but would be constitutionally impermissible and liable to be struck down by the Courts. The following passage contained in that decision was quoted by

80

the Supreme Court with approval in *S. P. Mittal v. Union of India*, : MANU/SC/0532/1982 : (1983) 1 SCC 51; AIR 1983 SC 1:

".....the real purpose and intendment of Articles 25 and 26 is to guarantee especially to the religious minorities in this country the freedom to profess, practise and propagate their religion, to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire properties and to administer such properties in accordance with law subject only to the limitations and restrictions indicated in those Articles. No doubt, the freedom guaranteed by these two Articles applies not merely to religious minorities but to all persons (Article 25) and all religious denominations or sections thereof (Article 26). But, in interpreting the scope and content of the guarantee contained in the two Articles the Court will always have to keep in mind the real purpose underlying the incorporation of these provisions in the fundamental rights chapter. When a challenge is raised before a Court against the validity of any statute as contravening the fundamental rights guaranteed under Articles 25 and 26 it is from the, above perspective that the Court will approach the question and the tests to be applied for adjudging the validity of the statute will be the same irrespective of whether the person or denomination complaining about the infringement of the said fundamental right belongs to a religious minority or not."

19. Incidentally the Full Bench considered what secularism means and said :

"There is no mysticism in the secular character of the State. Secularism is neither anti-God, nor pro-God; it treats alike the devout, the agnostic and the atheist. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion."

On the question as to whether the Court has power to adjudicate on such matters, a Full Bench of this Court in (MANU/KER/0035/1985 : 1985 Ker LT 629 : AIR 1985 Ker 160) (*Narayanan Nambudiri v. State of Kerala*) held that it is a matter for adjudication by a Civil Court and the decision of the Civil Court will be binding on all members of the denomination, if there is any dispute among the members of the denomination with respect to religious, spiritual, ritual or ceremonial matters pertaining to the Devaswom.

20. What is meant by the expression "matters of religion" in Article 26(b) of the Constitution was considered by the Supreme Court in *Vankataramana Davaru v. State of Mysore*, MANU/SC/0026/1957 : AIR 1958 SC 255. Venkatarama Aiyer, J. held that the expression embraces not merely matters of doctrine and belief pertaining to the religion, but also the practice of it, or to put it in terms of Hindu theology, not merely its *Grana*, but also its *Bhakti* and *Karama Kandas*. In that case the Supreme Court held that the right of a denomination to wholly exclude members of the public from worshipping in a temple though comprised in Article 26(b), must yield to the overriding right declared by Article 25(2)(b) in favour of the public to enter into the temple for worship.

21. Whether any practice is an integral part of the religion or not has to be decided on the basis of evidence. In the decision in *Tilkayat Shri Govindaji Maharaj v. State of Rajasthan* (MANU/SC/0028/1963 : (1964) 1 SCR 561 : AIR 1963 SC 1638) the Supreme Court held that the question will always have to be decided by the Court and in doing so the Court may have to enquire whether the practice in question is religious in character and, if it is, whether it can be regarded as an integral or essential part of the religion and the finding on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion.

22. The position that emerges is that a religious denomination or organisation enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion. No outside authority has any jurisdiction to interfere with the decision of such religious denomination. Article 26(b) gives complete freedom to the religious denomination to manage its own affairs in matters of religion. The only restriction imposed by that article is that the exercise of the right is subject to public order, morality and health. The freedom of conscience and freedom to speak, profess and propagate religion guaranteed under Article 25 of the Constitution is subject not only to public order, morality and health, but also subject to the other provisions of Chapter III. It necessarily implies that the right to freedom of religion guaranteed under Article 25 is subject to the freedom to manage religious affairs guaranteed under Article 26(b) of the Constitution.

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

24. *Sadasyathilakan Sri T. K. Velu Pillai* in his *Travancore State Manual*, Vol. 1 at p. 353 says :

"The essential characteristic of Hinduism is faith. Purity of character is ensured by rules which regulate the practice of the worshippers as well as that of the priests".

At page 594 it is stated thus :

"We thus find that the worship in temples is regulated in strict accordance with the rules laid down in the *Agama Sastras*. Form is in religion the twin sister of faith and the temples in Travancore present a continuity of tradition which cannot fail to be a stimulus to a well-regulated religious life. The essentials of discipline are the same in private temples as well as those under the management of Government. The head of the Devaswom Department is responsible for the proper conduct of the temple affairs but his authority is confined to the administrative side; the spiritual questions being decided by the *Thanthris* and other men of religion. The *Thanthris* are the arch-priests of Malabar temples. Ceremonies of exceptional importance, such as consecration of the idol, are performed by them. The office is generally hereditary. The *Thanthris* are expected to have a correct knowledge of the details of worship, the performance of ceremonies and all kindred subjects. They have the authority to correct the mistakes of the priests. They are consulted in all matters connected with the Devaswoms so far as the spiritual side is concerned."

25. Since the spiritual questions are to be decided by the Thantris, we summoned and examined the Thantri of Sabarimala temple and other Thanthrimukhyas of Kerala in order to ascertain the practice followed in Sabarimala temple and whether the practice has the approval of the community.

26. Before advertng to the evidence tendered by the Thantris one contention raised by learned counsel for the Woman Lawyers' Federation deserves consideration. She argues that the place of worship is open to all sections and classes of Hindus. Attention is drawn to the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act 1965, Act 7/1965. Section 3 of the Act provides that every place of public worship which is open to Hindus generally or to any section or class thereof shall be open to all sections and classes of Hindus and no Hindu of whatsoever section or class shall, in any manner, be prevented, obstructed or discouraged from entering such place of public worship, or from worshipping or offering prayers thereat, or performing any religious service therein, in the like manner and to the like extent as any other Hindu of whatsoever section or class may so enter, worship, pray or perform. But the section contains a proviso that in the case of a place of public worship which is a temple founded for the benefit of any religious denomination or section thereof, the provisions of this section shall be subject to the right of that religious denomination or section, as the case may be, to manage its own affairs in the matters of religion. Every place of public worship which is open to Hindus generally or to any section or class thereof shall be open to all sections and classes of Hindus. "Section or class" includes any division, sub-division, caste, sub-caste, sect or denomination whatsoever. Section 4(1) enables the trustee or any other person in charge of any place of public worship to make regulations for the maintenance of order and decorum in the place of public worship and the due observance of the religious rites and ceremonies performed therein. That section contains a proviso that no regulation made under that sub-section shall discriminate in any manner whatsoever, against any Hindu on the ground that he belongs to a particular section or class. Rules were framed under this Act. R. 3 prohibits the persons enumerated therein from entering or offering worship in any place of public worship. They include women at such time during which they are not by custom and usage allowed to enter a place of public worship. Learned counsel contends that prevention of entry of women in Sabarimala temple amounts to discrimination and offends Section 3 of Act 7/1965 which confers on every Hindu the right to enter a place of public worship and offer prayers there. This plea is not acceptable. Section 3 only prevents the restriction between one section and another section or between one class and another class among Hindus in the matter of entry to a temple. Moreover the right conferred under Section 3 is subject to the restrictions imposed in R. 3. Women who are not by custom and usage allowed to enter a place of public worship shall not be entitled to enter or offer worship in any place of public worship. That amounts to a reasonable restriction and the entry in Sabarimala temple is prohibited only in respect of women of a particular age group and not women as a class.

27. The management of the Devaswoms, both incorporated and unincorporated, in the erstwhile area of Travancore vests in the Travancore Devaswom Board under the Travancore-Cochin Hindu Religious Institutions Act, 1950, Act 15/1950. All the Hindu religious endowments and properties and funds except the Sree Padmanabha Swami Temple, Sree Pandaravaka properties and all other properties and funds of the said temple had vested in that Devaswoms in the area of Travancore. S. 31 of the Act enjoins a duty on the Board to arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage; The temples in Travancore were thrown open to all Hindus without any restriction being imposed on any Hindu either due to birth, caste or community. That historical proclamation was made by the Maharaja of Travancore on 27th Thulam 1112 corresponding 12th of November, 1936. Twelve days thereafter the Maharaja issued another proclamation by which conditions were imposed in the matter of entry in temples. We are concerned with Rule 6(c) which provides that women at such times during which they are not by custom and usage allowed to enter temples shall not enter within the compound walls of a temple or its premises in case there is no compound wall. R. 14 stipulates that no one shall do any act which would tend to derogate the purity and cleanliness of the temple and its premises. After the integration of the Princely States of Travancore and Cochin, an ordinance was promulgated by the Rajapramukh as Ordinance 4/1124 in respect of the administration of the Padmanabhaswami temple and the Devaswoms, both incorporated and unincorporated. The Ordinance provides that the management of the Devaswom shall continue to be carried on as hereto before. Another ordinance was promulgated by the Rajapramukh on 1st day of August, 1949, which is called "The Hindu Religious Institutions Ordinance, 1124". Section 31 of that Ordinance also directs the Devaswom Board to arrange for the conduct of the daily worship and ceremonies and festivals in every temple according to its usage. A duty is therefore cast on the Travancore Devaswom Board to arrange for the conduct of the daily worship and ceremonies in accordance with its usage. In other words, the Board has a statutory duty to enforce the usage prevalent in the temple. The Board has no right to alter or modify the same. The Travancore-Cochin Religious Endowments Act and its precursors had consistently enjoined this duty on the Travancore Devaswom Board.

28. The Government of Kerala is aware of this position. The counter affidavit filed by the Chief Secretary on behalf of the 3rd respondent states that it is the Board which shall manage and arrange for the conduct of daily worship and Ceremonies and festivals in every temple according to its usages. It is further averred that the scheme of the Act has made it clear that the Board is entrusted with administration as well as making of rules. It is therefore clear that Government have no power or authority to issue any order or direction in this matter and the management is within the prerogative of the Devaswom Board subject to the provisions of the Travancore-Cochin Hindu Religious Endowments Act. We have made special mention of this fact in view of the stand taken by the learned Government Pleader that the State can take remedial measures including amendment of relevant rules to see that the Board does not deviate from the powers conferred on it. According to the Government Pleader the State can take a plea against the stand of the Devaswom Board. We are afraid that this stand of the Government Pleader is against the authoritative pronouncement of the Supreme Court referred to earlier. The Supreme Court had in unmistakable terms held in MANU/SC/0138/1954 : AIR 1954 SC 388 that in regard to affairs in matters of religion the right of management given to a religious body is a guaranteed fundamental right which no legislature can take away. We have serious doubts whether the State can impose restrictions on the powers of the Travancore Devaswom Board in the matter of regulating its affairs.

29. It has to be mentioned that this contention of the Government Pleader is contrary to the averment in the counter affidavit of the 3rd respondent wherein, after referring to Section 31 of the T-C Hindu Religious Endowment Act, it is stated that the Devaswom Board shall manage and arrange for the conduct of daily worship and ceremonies and festivals in every temple according to its usages. There is a further averment that it is the Board which is entrusted with administration as well as making of rules. There is a statutory duty cast on the Board under Section 31 of the Act to arrange worship in the temples in accordance with the usage. That statutory duty had been cast on the Board even earlier. In other words, the Travancore Devaswom Board can arrange worship in the temples under their control only in accordance with the prevailing usages.

82

30. What is the usage prevailing in Sabarimala Temple in respect of entry of woman above the age of 10 and below the age of 50? The Board has agreed to abide by the opinion of Sri. Thazharam Neelakandaru who is the present Thanthri of Sabarimala Temple. The statement of the Board contains the following averment :

"The members of the Thazharam Ilam are the hereditary Thanthri of the Sabarimala temple and the present Thanthri is Thazharam Madathil Kandar Neelakandaru and he is the final authority to take a decision in any controversial issues with regard to the religious practice and custom, as well as the rituals and Pujas in Sabarimala temple."

It is further averred that the religious question like the one posed in this writ petition can be decided finally only by the Thanthri concerned and not any other Thanthries who do not have any authority over the Sabarimala Sastha Temple. We have therefore examined the Thanthri of Sabarimala temple. Other Thanthries were also examined before this Court. A member of the Pandalam Kovilakam and the Secretary of the Ayyappa Seva Sangham were also examined. Some of the Thanthries have no personal knowledge about the usage prevailing in Sabarimala temple. But P.W. 1, a member of Pandalam Kovilakam, had spoken about the usage. The Secretary of the Ayyappa Seva Sangham has also tendered evidence more or less in similar terms. We proceed to consider first the testimony of the Sabarimala Thanthri Sri Neelakandaru of Thazharam Ilam.

31. The present Thanthri Sri Neelakandaru is doing thanthram in Sabarimala temple for the past 50 years. As C.W. 6 he stated that he was intimately connected with that temple even before the reinstallation of the deity in 1950. According to him, woman belonging to the age group of 10 to 50 were prohibited from entering the temple even before 1950. He deposed that the present daily (idol) was installed by his paternal uncle Kandar Sankaran and the first pooja after the reinstallation was conducted by him as per the directions of his paternal uncle. The witness stated that his uncle had instructed him and the temple officials who were present on that occasion to follow the old customs and usages. According to him these customs and usages are to be followed for the welfare of the temple. He added that only persons who had taken penance and followed the customs are eligible to enter the temple and it is not proper for young women to enter the temple since that is contrary to customs and usages.

32. The Secretary of the Ayyappa Seva Sangham Sri K.P.S. Nair deposed that he had conducted pilgrimage to Sabarimala every year for the past 60 years. The Sangham has passed a resolution that women above 10 and below 50 years of age should not enter the Sabarimala temple. He stated that he had, seen young women in Sabarimala only during the past 10 to 15 years. The Sangham had orally complained to the authorities about this but to no avail. He has spoken about an instance which he had witnessed about five years back when a young woman was seen attempting to ascend the sacred steps. One of the volunteers of the Sangham brought to the notice of the Circle Inspector on duty. The witness stated that the Circle Inspector restrained the volunteer and the woman ascended the steps and entered the temple. He further stated that tourists from other States go to Sabarimala in large numbers, of whom there were young women also. Even newly married couples were seen among those tourists. The witness stated that the sanctity and purity of the surroundings are evaded on account of this.

33. The other witness who has got personal knowledge about the temple and the customs and usages followed there is Sri Ravivarma Raja of Pandalam Kovilakam. He is aged 75. He stated that the temple belonged to Pandalam Royal family but he had not seen any document connecting the temple with the Royal family. The evidence tendered by him can be summarised as follows :

Till the integration of the States of Travancore and Cochin, the Pandalam palace was consulted on all matters and before any function is conducted at Sabarimala. The ornaments to be adomed on the idol on Makaravilakku day are kept in the Pandalam palace. The ornaments are carried to the temple in a procession. One of the male members of the family accompanies the procession up to Pamph. On the 3rd of Makaram the Raja will proceed to Sabarimala for darsan. He is received at the bottom of Pathinattam padi by the Malsanthi of the temple and after washing his feet will be escorted to the temple. According to him Vratnam (penance) for 51 days is necessary for the pilgrimage. He had spoken about two instances when the Board attempted to change the age old usage. While Sri Prakkulam Bhasi was the Devaswom Board President, a suggestion was made to carry the ornaments in a van. The members of the palace raised objections and the Board withdrew the suggestion. The second instance was when Sri Upendranatha Kurup was the President of the Board. A suggestion came before the Board to permit women of the age of 10 to 50 to enter the temple. The Board issued a press statement later saying that the Board had no intention of allowing such women to conduct the pilgrimage. Ext. P2 is a copy of the press release published in the Mathrubhoomi daily dated 12-1-1983. The view of the members of the palace including himself is that women above the age of 10 and below the age of 50 should not be permitted to conduct pilgrimage to Sabarimala. If this usage is violated, he apprehends that the palace members will be afflicted with the curse of God.

34. The testimony of three persons who have direct and personal knowledge about the usage in the temple is therefore available before this Court. Of them one is the Thanthri of the temple who can authoritatively speak about the usage followed in the temple. His knowledge extends to a period of more than 40 years. The Secretary of the Ayyappa Seva Sangham had been a regular pilgrim to Sabarimala shrine for a period of 60 years. A senior member of the Pandalam palace has also testified about the practice followed and the view of the members of the palace to which the temple at one time belonged. The testimony of these witnesses would therefore conclusively establish the usage followed in the temple of not permitting women of the age group 10 to 50 to worship in the temple. It necessarily follows that women of that age group were also not permitted either to enter the precincts of the temple or to trek Sabarimala for the purpose of pilgrimage.

35. A copy of the reply sent by Sri Maheshwaran, Thanthri of the temple, to Sri Kurmanam Rajasekharan, State Secretary of Hindu Munnani, was produced by C. W. 5. This letter (Ext. C2) was sent in reply to a letter sent by Sri Rajasekharan informing Sri Maheshwaran about dance performance by young woman and marriage ceremonies conducted at the temple and shooting of films there. Sri Maheshwaran was the Thanthri of the temple at the time of devaprasnam in 1985. He had expressed his opinion in the reply. He informed Sri Rajasekharan that permitting women between the age group 12 to 50 will be contrary to the customs of the temple. It is also mentioned that it was revealed so in all the Devaprasnam conducted at Sabarimala by well known astrologers. There cannot thus be two opinions about the practice and usage followed in not permitting women aged more than 10 and below 50 worship at Sabarimala temple.

36. The Thanthri of the temple Sri Maheshwaran had mentioned about the Devaprasnam conducted at Sabarimala by well known astrologers in

Ext. C2. He had mentioned in that reply that in all the Devaprasnams it was revealed that young women should not be permitted to worship at the temple. The report of the Devaprasnam conducted in 1985 (from 5-4-1985 to 8-4-1985) was exhibited as Ext. Clause That is a Devaswom publication, the authenticity of which is not in dispute. The English translation of the relevant portion contained at page 7 of the original report reads as follows :

"It is seen that the deity does not like young ladies entering the precincts of the temple".

C.W. 5, the Secretary of the Ayyappa Seva Sangham, who was present at the time of Devaprasnam had spoken about what was revealed at the Devaprasnam. First respondent in its counter affidavit has mentioned about the practice followed to set right controversial religious and ritualistic problems. It is stated that the Thanthri will suggest that it can be resolved, by a Devaprasnam. The practice of resorting to Devaprasnam to ascertain the wishes of the deity had been in vogue from time immorial and the Thanthri of Sabarimala also had suggested conduct of Devaprasnam whenever occasion arose. The report of the Devaprasnam is rather conclusive or decisive. The wishes of the Lord were thus revealed through the well-known method of Devaprasnam and the temple authorities and worshippers cannot go against such wishes. If the wish of Lord Ayyappa as revealed in the Devaprasnam conducted at the temple is to prohibit woman of a particular age group from worshipping in the temple, the same has to be honoured and followed by the worshippers and the temple authorities. The Board has a duty to implement the astrological findings and prediction on Devaprasnam. The Board has therefore no power to act against that report which will be virtually disregarding the wishes of the deity revealed in the prasnam

37. The Devaswom Board has therefore to arrange for the conduct of the daily worship in Sabarimala temple according to the usage. What is the usage in respect of entry of women had been spoken to by three witnesses. Usage as defined in New Wabster's Dictionary means habitual or customary use or practice. In Venkataramaya's Law Lexicon and Legal Maxims, "usage" is defined as one regularly and ordinarily practised by the inhabitants of the place. According to him it is not necessary to require proof of its existence for any length of time in order to establish "usage". The word "usage" would include what the people are now or recently in the habit of doing in a particular place. He would further state that this particular habit may be only of a very recent origin or it may be one which has existed for a long time. That there is a continuous practice of women of a particular age group being prohibited from worshipping in Sabarimala temple has been spoken to by the Thanthri of the temple, the President of the Ayyappa Seva Sangham and a member of the Royal family of Pandalam. These three persons have personal knowledge of the practices followed in the temple at least for half a century. The usage of young women not being permitted to trek Sabarimala on pilgrimage and to offer worship at the temple has therefore been established.

38. Is there any basis for this restriction? Is it only a blind belief handed down from generation to generation without any rationale behind that restriction? The counter affidavit filed by the Board makes mention of the reasons why young women were not permitted to worship at the temple. In olden days pilgrims to this holy temple had to carry with them their own provisions in headloads taken by them. Transport facilities improved recently as a result of which a pilgrim can now reach Sabarimala without trekking the original route followed by pilgrim of olden days. Even according to the counter affidavit of the Board, the distance to be trekked has now been reduced to 5 kms. Pilgrims are expected to observe penance. Purity in thought, word and deed is insisted during the period of penance (Vratham). A pilgrim starts trekking the Sabarimala only after completing the penance for a period of 41 days. Women of the age group 10 to 50 will not be in a position to observe Vratham continuously for a period of 41 days due to physiological reasons. These appear to be the main reasons why females of a particular age group were not permitted to go on a pilgrimage to Sabarimala. It has to be remembered that there is no distinction of caste, creed or colour in Sabarimala temple and there had not been any even in olden times. Even while a section of Hindus were forbidden to enter other temples in the State, there was no bar for any among them to go on a pilgrimage to Sabarimala or worship the deity there.

39. There is a vital reason for imposing this restriction on young women. It appears to be more fundamental. The Thanthri of the temple as well as some other witnesses have stated that the deity at Sabarimala is in the form of a Naisthik Brahmachari. "Brahmachari" means a student who has to live in the house of his preceptor and study the Vedas living the life of utmost austerity and discipline. A student who accompanied his Guru wherever he goes and learns Vedas from him is a "Naisthikan". Four asramas were prescribed for all persons belonging to the twice born castes. The first is of a student or Brahmchari, the second is of a householder after getting married, the third is the Vanaprastha or a life of recluse and the last is of an ascetic or Sanyasi. Sri B. K. Mukherjee, the fourth Chief Justice of India, in his Lordship's Tagore Law Lectures on the Hindu Law of Religious and Charitable Trust says at page 16 of the second addition thus :

"Ordinarily therefore a man after finishing his period of studentship would marry and become a house-holder, and compulsory celibacy was never encouraged or sanctioned by the Vedas. A man however who was not inclined to marry might remain what is called a Naisthik Brahmachari or perpetual student and might pursue his studies living the life of a bachelor all his days".

A Brahmchari should control his-senses. He has to observe certain rules of conduct which include refraining from indulging in gambling with dice, idle gossips, scandal, falsehood, erring, and casting lustful eyes on females, and doing injury to others.

(vernacular matter omitted)

Mann Smriti Chapter II, Sloka 179.

40. The deity in Sabarimala temple is in the form of a Yogi or a Brahmchari according to the Thanthri of the temple. He stated that there are Sasta temples at Achankovil, Aryankavu and Kulathupuzha, but the deities there are in different forms. Puthumana Narayanan Namboodiri, a Thanthrimukhyarecognised by the Travancore Devaswom Board, while examined as C.W. 1 stated that God in Sabarimala is in the form of a Naisthik Brahmchari. That, according to him, is the reason why young women are not permitted to offer prayers in the temple.

41. Since the deity is in the form of a Naisthik Brahmachari, it is therefore believed that young women should not offer worship in the temple so that even the slightest deviation from celibacy and austerity observed by the deity is not caused by the presence of such women.

42. In this connection it has to be mentioned that Sabarimala temple is not the only temple in Kerala where there is restraint on the entry of women. Sri Malankal Krishna Pillai, a Malayalam poet of repute and a former Regional Deputy Director of Education, after visiting all the important temples in the State, had published a book titled "Maha Kshhetrangal kku Munnill" (in front of great temples). While writing about the Siva temple in Teliparambu in Eranur District, he has mentioned about the custom there in not permitting women to enter the temple and offer prayers during day time. They are permitted to enter and worship only after the Athazhappja (the last pooja of the day) is over. The belief is that Lord Siva will be seated with his consort Goddess Parvathy at that time and Lord Siva is in a happy mood to shower boons on the devotees. That is supposed to be the appropriate or auspicious time for women to pray before the God revered as Rajadhirajan (King of all Kings). This custom or usage is understood to have been in prevalence for the past several centuries.

43. The Devaswom Board and the 2nd respondent Smt. Chandrika, former Devaswom Board Commissioner, have a contention that the restriction of entry is only during the Mandalam, Maharavilakku and Vishu days. The temple will be opened in every month for five days and poojas are conducted on those days. According to the Board persons who go to the temple during these days are not expected to observe the penance for any particular period. Ayyappadevotees used to visit the temple on these days irrespective of their age, according to the Board, and this practice has been in vogue for the past 40 years. No serious complaint was received by the Board from men of religion against permitting women during these days. The Thanthri also has not objected to this practice, according to the Board. Many female worshippers of the age group of 10 to 50 used to go to the temple during these days for the first rice-feeding ceremony of their children. Receipts are issued by the Board on payment of the prescribed charges and the rice-feeding ceremony is being conducted at the temple. The Board has therefore taken a stand that the restriction is prevalent only during Mandalam, Makaravilakku and Vishu days, when there will be rush of pilgrims. Neither the Thanthri nor any of the other witnesses have spoken about the practice of permitting women during other days either for conducting the first rice-feeding ceremony of their children or to offer worship at the temple. The restriction imposed has been in vogue for a continuously long period for proper reasons. That some of the pilgrims who go to the temple during monthly pooja days had not observed penance for the prescribed days in no reason why young women should be permitted to enter the temple during those days. As per the custom followed in the temple, no pilgrim without "Nunadikkettu" can ascend the sacred steps and enter the temple in order to offer worship. But it may be said that a male pilgrim or a woman permitted to enter the temple who does not carry an "Nunadikkettu" on his or her head can be permitted to enter the temple through the northern gate for which there is no such restriction or prohibition. The question arises whether that privilege can be extended to young female worshippers also. The belief is that every pilgrim who undertakes a pilgrimage to Sabarimala has observed the penance for the prescribed number of days. Whether he had really observed it or not is a matter which that person alone can say. Such a restriction has been imposed because of the peculiar nature of the pilgrimage and the arduous nature of the trekking of the forest and that too for several days. That the rigour of the journey has now been reduced due to transport facilities is no reason why the age-old practice of observing penance for 41 days should be discontinued. We are therefore of the opinion that the usage of woman of the age group 10 to 50 not being permitted to enter the temple and its precincts had been made applicable throughout the year and there is no reason why they should be permitted to offer worship during specified days when they are not in a position to observe penance for 41 days due to physiological reasons. In short, woman after menarche up to menopause are not entitled to enter the temple and offer prayers there at any time of the year.

44. Our conclusions are as follows :

- (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 restriction imposed by the Devaswom Board is not violative of Articles 15, 25 and 26 of the Constitution of India.
- (3) Such restriction is also not violative of the provisions of Hindu Place of Public Worship (Authorisation of Entry) Act, 1965 since there is no restriction between one section and another section or between one class and another class among the Hindus in the matter of entry to a temple whereas the prohibition is only in respect of women of a particular age group and not women as a class.

45. In the light of the aforesaid conclusions we direct the first respondent, the Travancore Devaswom Board, not to permit women above the age of 10 and below the age of 50 to trek the holy hills of Sabarimala in connection with the pilgrimage to the Sabarimala temple and from offering worship at Sabarimala Shrine during any period of the year. We also direct the 3rd respondent, Government of Kerala, to render all necessary assistance inclusive of police and to see that the direction which we have issued to the Devaswom Board is implemented and complied with.

46. Before parting with the case we wish to express our sincere gratitude to Sri P. Balagangadhara Menon, counsel for petitioner, for the able guidance which we obtained from him. He had spared no pains in placing all the relevant materials including the available literature on the matter in controversy.

47. In our order dt. 3-10-1990 we had made it clear that the entire expenses of the petitioner including counsel's fee as fixed by this Court shall be borne by the Travancore Devaswom Board since the petitioner has initiated these proceedings to set at rest a controversy in larger public interest. Sri Balagangadhara Menon made a fervent appeal to us to exonerate him from accepting any fee in this case since he has only assisted the court in a public interest litigation. In view of that request we are not making any direction as to costs.

The original petition is disposed of as above.

796

Annexure-c

THE

88

TRAVANCORE STATE MANUAL

VOL. I



SADASYATILAKA T. K. VELU PILLAI B. A. & B. L.

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2. Navikaranam. This is conducted when the image has to be shifted from one place to another or where a new image has to be substituted in place of the old which has become unfit for use and in such other cases.

3. Dhwaja prathishta. This ceremony is performed in connection with the installation of permanent dhwajams (flag staff) in temples.

4. Jiodhwasam. This is the rite performed when the dhwajam or Valiyabelikkal is so damaged that its removal is found necessary.

5. Jiodhwasam of Śribeli bimbam. is performed when the Śribeli bimbam is so damaged that its rejection becomes necessary.

6. Sthūpikāsthāpanam. This rite has to be performed when the sthūpika is fixed over the Śrī Kōvil.

7. Expiatory rites on account of nimitam. Certain circumstances (including natural) are treated as causing pollution to temples. Purificatory ceremonies are prescribed to prevent the destruction of the power of the bimbam to reflect divine essence. Expiatory rites are performed to counteract the evil effects of those happenings.

We thus find that the worship in temples is regulated in strict accordance with the rules laid down in the Āgama Śāstrās. Form is in religion the twin sister of faith and the temples in Travancore present a continuity of tradition which cannot fail to be a stimulus to a well-regulated religious life. The essentials of discipline are the same in private temples as well as those under the management of Government. The head of the Dōvaswom Department is responsible for the proper conduct of the temple affairs but his authority is confined to the administrative side; the spiritual questions being decided by the Thanthris and other men of religion. The Thanthris are the arch-priests of Malabar temples. Ceremonies of exceptional importance, such as consecration of the idol, are performed by them. The

office is generally hereditary. The Thanthris are expected to have a correct knowledge of the details of worship, the performance of ceremonies and all kindred subjects. They have the authority to correct the mistakes of the priests. They are consulted in all matters connected with the Deva-swoms so far as the spiritual side is concerned.

The laws and customs of the land, the checks and balances in the management of temples and an administration rendered efficient by the personal interest of the ruling Mahārāja have combined to turn the temples in the State to the spiritual advantage of all classes of Hindus. Says Mahāthma Gandhi:—"I certainly left Travancore with spiritual treasures that I have newly discovered. For, what I saw there was beyond my expectation and more than delighted my heart. The temples gave me a loftier and nobler idea of temples and temple worship. I had visited temples before in North India but I had not done so in a devout spirit, and they had failed to stir me. But the majestic Travancore temples spoke to me. Every carving, every little image, every little oil lamp had a meaning for me." He adds:—"These temples are so many bridges between the unseen, invisible and indefinite God and ourselves who are infinitesimal drops in the infinite ocean. We the human family are not all philosophers. We are of the earth very earthy, and we are not satisfied with contemplating the invisible God. Somehow or other we want something which we can touch, something which we can see, something before which we can kneel down.....If you will approach these temples with faith in them, you will know each time you visit them, you will come away purified and with your faith more and more in the living God." Some of the important temples in the State are described below.

The temple of Bhagavathi at Kanyākumāri is one of the oldest. In the *Taitarīya* Upanishad mention is made of Kanyā Kumāri. Ptolemy, A. D. 150, and the author of

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[National](#) | [Previous](#)

Thantri is the final authority: study

By G. Prabhakaran

PALAKKAD, NOV. 4. The controversy over the 'purification rites' conducted at the Guruvayur Sree Krishna Temple after the Congress(I) leader, Mr. Vayalar Ravi's son had visited the temple was a case of much ado about nothing, said Dr. P.R.G. Mathur, anthropologist and chairman, South Indian Regional Centre, Commission on Urgent Anthropological Research under the International Union of Anthropological and Ethnological Sciences.

Dr. Mathur, who has done an in-depth study on 'Ksetrasampada of Guruvayur', especially its rituals and spiritual heritage, said that in such matters the authority of the thantri cannot be questioned under the Guruvayur Devaswom Act of 1978 and various court orders besides the tradition and the rules laid down in the 'Tantrasamuccayam Samuccayam'.

In his study conducted for the Indira Gandhi National Centre for the Arts, New Delhi, in 1998, Dr. Mathur said 'Tantrasamuccaya', a text written in 1428 AD prescribing the norms and rules from the construction of a temple building to the rites and rituals, is universally adopted in Kerala temples. 'Tantrasamuccaya' is the work of the scholar, Cheenas Narayananan Namboodiripad.

A High Court judgment in O.P. No. 2071 of 1993 had held that the position of the thantri was sacrosanct. The judgment was in response to a petition that the 'dakshina' paid to the thantri was high. It said: "All concerned should bear in mind the pivotal position of the thantri and the finality attached to his opinion on religious and spiritual matters. The thantri is the high priest. In one sense, he is the guardian and protector of the deity. Under Section 35 of the Guruvayur Devaswom Act, the thantri is the final authority on all religious matters. Payment of 'dakshina' is part of the religious ritual. Of course, the thantri should be fair and reasonable, but in our view, a few members of the managing committee and the administrator have unnecessarily raised a bogey of exorbitant dakshina being demanded by the thantri."

Another Division Bench judgment of the Kerala High Court (199(3) KLT 195) also had upheld the supreme authority of the thantri in the spiritual administration of the temple. The court held that the decision of the thantri on all religious, spiritual, ritual and ceremonial matters pertaining to the devaswom shall be final.

Dr. Mathur, who met the thantri, Chennas Divakaran Namboodiripad, recently to discuss the issue, was told by the latter that he had only performed his duty as the thantri. The thantri said the "Devaswom Board followed certain formalities and remedial measures and what I did strictly adhered to the temple rules. The

temple devaswom has laid down measures to preserve the sanctity of the temple and I have no power to violate them at any stage or for any specific individual. Even the courts had ruled in the past to follow certain norms in the temple and I did that".

89

Till 1958, marriages were held in the main concourse of the Guruvayur temple, near the flag staff. However, when there was an increase in the number of marriages solemnised at the temple, the venue was shifted to the Eastern Gateway where marriage booths were constructed. Hindu marriages were conducted in the booths and the involvement of the temple was restricted to receiving a fee and deputing a 'purakoima', a Brahmin employee of the temple, who officiated as the priest at the marriage ceremony for which he was paid 'dakshina'.

Though non-Hindus are not allowed entry into the temple, they are provided facilities to conduct marriages outside the marriage booth as also to make offerings such as 'Thulabharam'. The marriage of Mr. Ravi's son was conducted outside the marriage booth. In this case, the devaswom authorities had not deputed a 'purakoima'. It was reported that the senior Congress(I) leader, Mr. K. Karunakaran, had performed the rituals by handing over the garlands to the bride and bridegroom. If Mr. Ravi's son was a Hindu, the marriage should have been solemnised in the marriage booth and not outside it and a 'purakoima' should have been deputed by the devaswom, Dr. Mathur said.

After the marriage was solemnised, the couple made a circumambulation along the Prathikshina Vidhi without entering the Nalambalam. This was brought to the notice of the authorities following which, as per the custom, the 'punyaham' was performed by five 'Othikkans'. The cost of the 'punyaham' was met by the aggrieved party and as such the controversy should have ended there, Dr. Mathur said.

The allegation that untouchability was practised at the Guruvayur temple was baseless. Under the Devaswom Act, the Sopanam watchmen were appointed for a period of six months, and on several occasions, persons belonging to Scheduled Castes were appointed as watchmen at the Sopanam. Their role is to control the crowd in front of the Sopanam. Thus the question of practising untouchability did not arise here, he said.

The 'punyaham' is performed to strengthen the 'Chaithanya' of the idol. This is precisely what was done under the direction of the thantri. So, the system should continue and it is the duty of every devotee to help continue this cultural heritage, Dr. Mathur said in his study.

Dr. Mathur said some vested interests were demanding that the Guruvayur temple should be thrown open to people of all religions on grounds that the Sabarimala Ayyappa temple was open to members of all religious groups. However, in this temple too, there were restrictions on the entry of women who had attained puberty. There is also a court order in this regard.

Entry to the public is restricted at the Padamanabhaswamy Temple in Thiruvananthapuram between 7 a.m. and 8-15 a.m. when the Maharaja of Travancore worships at the temple. However, this custom cannot be interpreted as a practice of untouchability in the temple.

Dr. Mathur's study on the role and duties of the thantri said the thantri was the supreme spiritual administrator of the temple and its rituals and ceremony. The thantri's spiritual supremacy is reaffirmed by judgments of the High Court also.

90

Dr. Mathur's study also highlighted that the thantri's ruling should continue to be not only essential but final. The Guruvayur temple has its own heritage and traditions. This cultural heritage of the temple should be preserved, protected and defended, Dr. Mathur said.

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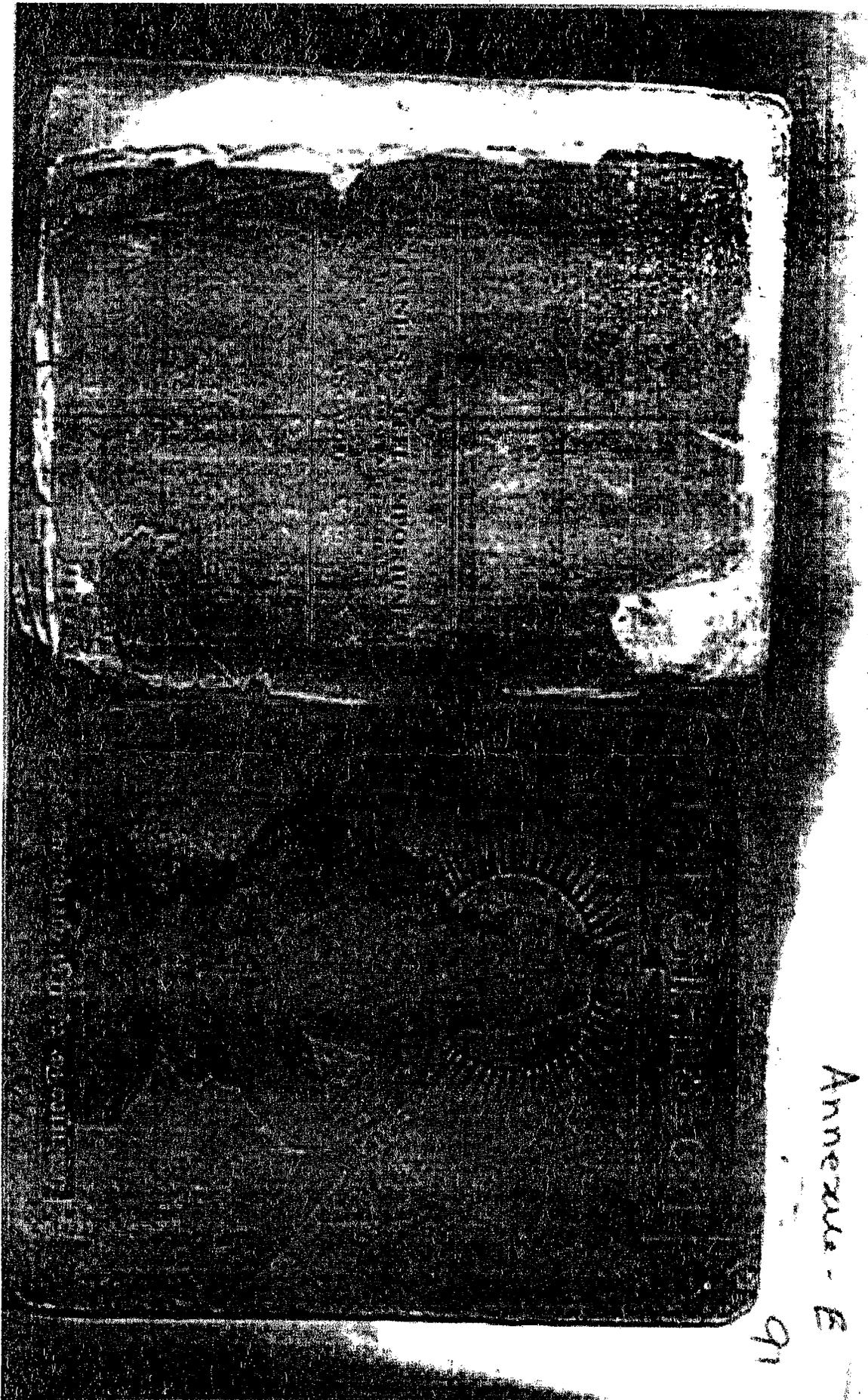
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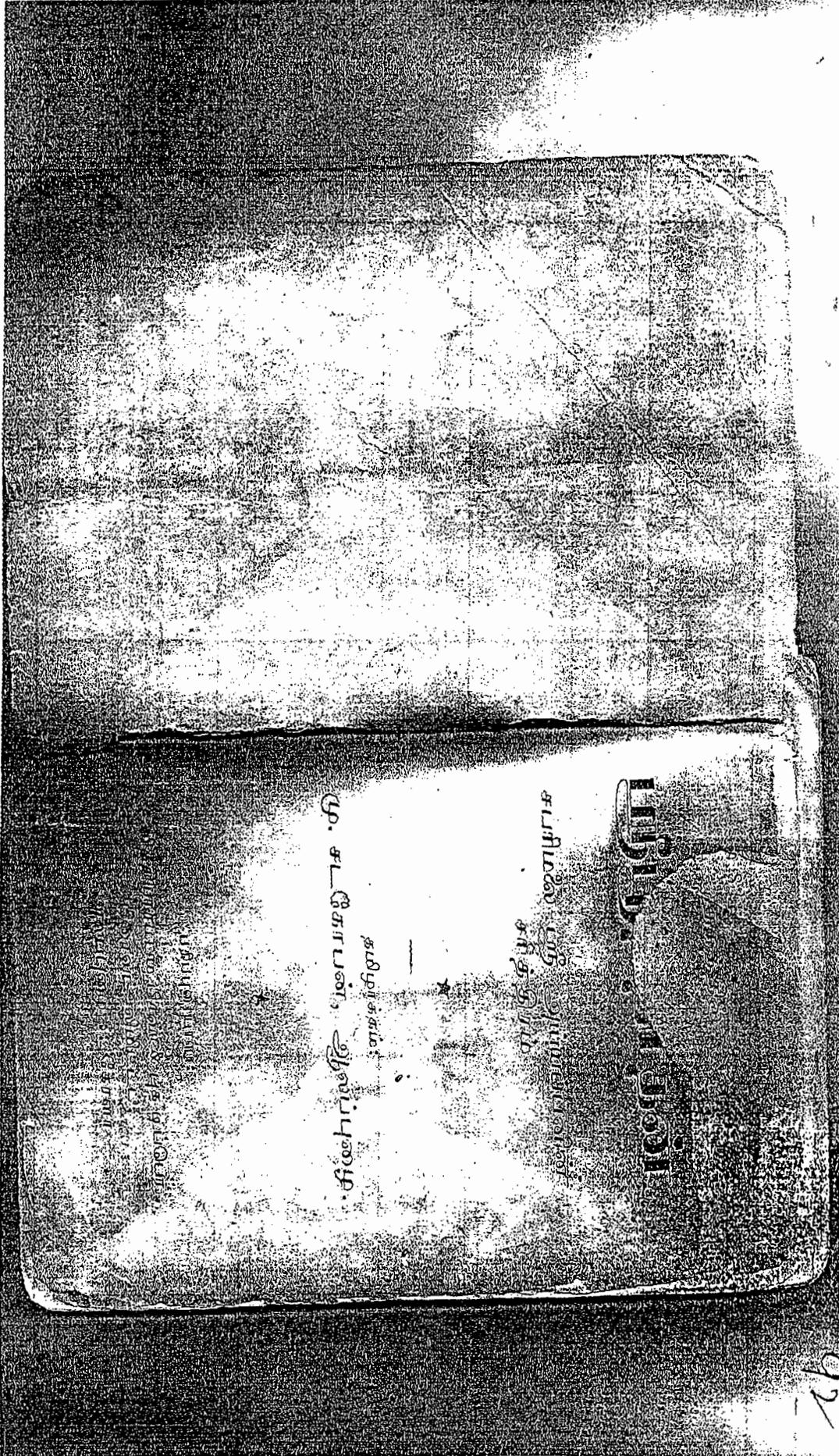
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Annexa - E

91



புத்தகம்

சுயநிலை ஸ்ரீ அரங்கநகரம்
சுந்தரம்

தமிழகம்
மு. சடகையன், ஆஸ்ப்புலி

சுயநிலை ஸ்ரீ அரங்கநகரம்
சுந்தரம்

92

டிசம்பர் 1965

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2

புத்திரன் பறவியும் பித்திரன்
புத்திரன் அவதாரம் 13
அமுராவதிகைய ஆக்கிரமித்தல் 14
புத்திரன் முன்முதலும் கதை 16
புத்திரன் பிறப்பு

பகுதி 2 17
புத்திரன் ஒன்றுபோல 18
புத்திரன் இறங்குகளை வாங்கல் 19
புத்திரன் கடைதல் 20
புத்திரன் கடைவது 20
புத்திரன் மொழிவி அவதாரம்

பகுதி 3 20
புத்திரன் அவதாரம் 23
புத்திரன் வாய் வாய் வாய் வாய் 21
புத்திரன் மகிழ்வது

பகுதி 4 25
புத்திரன் வித்தகதற்குறும் வளம் சகலம் 26
புத்திரன் பாண்டியன் வேட்டைக்கேடுகள் 27
புத்திரன் பம்பா வரகைக் கண்டெடுத்தல்

பகுதி 5 28
புத்திரன் கல்வி கற்றல் 29
புத்திரன் மகிமை 30
புத்திரன் மனைவி பேறபெறல்

அகலியாபம் 15

- 1 பண்டிய பன்னை பாவின் ஆலாய் அகாக்க
பபந்திக்கேகல்
- 2 அரவன் பென்னம்பல தெரிவாய் இயற்கல்
- 3 பண்டியின் குறி
- 4 பகலாள் பண்டியனை உபதேசிந். 9
குறிகை அருளல்
- 5 அரவன் தேவேந்திரனை அடிபணிய வைத்தது
- 6 ஆலயத்திறப்பணிக்கு கல்வட்டல்
- 7 பண்டியன் பம்பொருளின் பண்டிய
விக்கிரகங்களை தெரிவித்தல்
- 8 சபரிக்கி திருக்கோளில் உபாபிகைய
பீர்த்தித்தல்
- 9 திருவிழா கடைத்தலைவன் லகைய பற்றி
அருளல்
- 10 பண்டியன் அரவி கொழியனை
பிரலாபகுரெய்கல்
- 11 பண்டியன் பந்தன நகர் திருப்பல்
- 12 அரவன் தமவறம் பூசல்
- 13 பண்டியன் பரம்பநாடைநல்
- 14 பர வாக்ரு

ஸ்ரீ பூதநாதன்
முத்தி அர்

சபரிமலை சால்தாவான ஐயப்ப
சுவாமிகளை தெரிசனய்செய்ய இப்பொ
முது தமிழகத்திலிருந்து பத்த கோடி
கள்ளூராள்மரக வந்து போகிறார்கள்.
மொழியின் சரித்திரத்தை சரிபாக அறி
திருப்பவர்கள் கருக்கம். ஐயப்ப
மொழியின் சரித்திரம் தமிழ் மொழி
மொழி நோது இல்லை என்று எண்ணுகி
மொழி பத்தர்கள் வரலாற்றை அறித்
மொழி கொள்வதுடன் பத்தி விரதங்கள்
மொழிவேண்டிய விதத்தைப் பற்றியும்
மொழி நூலில் சொல்லப் படுகிறது.
மொழிமொழியில் செய்யுள் வடிவத்தில்
மொழி பூதநாதோபாயானம்” என்ற
மொழிவிராக்கும் மூலத்தை ஸ்ரீ. கிரு
மொழிண்ணி மலையாள மொழியில்
மொழிமொழியில் “ஸ்ரீ பூதநாதன்”
மொழி மொழி மொழி திருக்கிரா.

விருகை
 ஸ்ரீ பூதநாதன்
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 அடைந்து இரம்பன் பஞ்சாக்கினியின் மகதி
 கரம்பன் ஜலமத்தியிலிருந்து அக்கினி
 குழித்துத் தவமியழறினார்கள். கொஞ்ச
 பின் அவர்களின் தவசக்தியால் தன்னு
 ள்பிரயன்டுமோ என்று அஞ்சிய இந்திரன்
 மிடிவெடுத்து ஜலத்தின் மத்தியில் தவமியழ
 மிபிளிடம் சென்று அவனை நீரில் அமிழ்த்திக்
 மிடிட்டான். தம்பியின் முடிவை அறிந்த
 இனி சிதைத்திருப்பதில் பிரபோஜன
 என்று என்சனி தன் லாளால் தன் சமுத்திர
 பிரண்டு விட முயன்றான். அக்கனிதேவன்
 யுமாரி அவனைத் தடுத்த அவனுக்கு யாது
 ஸ்ரீமெனக் கேட்டருளினான். "முன்று
 யும் வென்று அடக்கியாளக்கடியவனும்
 அசுரராலும் மனிதராலும் வதைக்க
 ளான ஒரு புத்திரன் அருளல் வேண்டும்"
 மிடினான், இரம்பாசுரன். "நீ எந்தப்

மு. கடகோபன்

விருகை
 ஸ்ரீ பூதநாதன்
 முதல் அத்தியாயம்
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 ளான ஒரு புத்திரன் அருளல் வேண்டும்"
 மிடினான், இரம்பாசுரன். "நீ எந்தப்

என் அண்டவளு அனங்கானுஜன், மணிகண்டலால் தழுவுப்பட்டதும், அந்த மகிஷதேசத்திலிருந்து திவ்யமும், அழகின் அதிதேவதையுமாய் விவக்கும் ஒழுகருணீமணி, திவ்யாபரண வஸ்திர பூஷணதி அநிவகாரபரிசோபித, அங்கவிலேபித, திவ்ய நாரிகண, ஸய்யுத்த அவராத் பரிசேவையாகத் தோன்றி, வானத்தில் விமானருடையாக, ஆவிர்ப்பளித்தான். தேவர்கள் வணங்கி, வழிபட்டார்கள். "அந்த விமானேச்வரியான தேவி, மணிகண்டனை "தேவா! உன் கிருபா கடாசுத்தால் நான் சாபமோசனம் பெற்றேன். நான் உன்னுடைய சக்தி(பத்தினியானகையால் என்னைத் தாரமாக ஏற்றுக்கொள்ளவேண்டும்" என்று பிரார்த்தனை செய்தாள்.

"நீ என் சக்தி என்பது உன்மையே ஆனால் இப்பிறப்பில் நான் பிரமச்சாரியாக வாழவேண்டியவன். ஆகையால் நான் உன்னை ஏற்றுக்கொள்ள வழியில்லை. நீ என் சக்திதரியாக, மஞ்சமாதா, என்ற நாமத்தில் என்னை வலது பக்கத்தில் சற்று அகல தின்றுகொள்வாயாக! தேவாதி தேவர்களும், எமது பக்தர்களும் உன்னை பூஜித்துப் பலம் பெறுவார்கள்" என்று திருமொழி செய்தான். அன்னபூர்ணேச்வரியான மஞ்சாரதா அது கேட்டு மகிழ்ந்து, வானவீதியில் மலறந்தாள்.

மேலூசனின் ஆக்கிரமும், மகிஷதேசத்தை அடக்கம் செய்தலும்.

மும்மூற்றிகளும், மணிகண்டதேவனை ஆவிங்கயம் செய்து ஆசி கூறினார்கள். சங்கரன் தன் மைந்தனிடம் குழந்தாய் உன்னால் தேவகாரியம் மங்காமானது. இனிபும் பல காரியங்களை நீ செய்யவேண்டிய திருக்கிறது. காட்டிற்குப் போன உன்னைக் காணாமல் விசனத்தால் உண்ணுறக்கமின்றி, சீரம் மெலிந்து

வாட்ட முற்றிலுக்கும் உன் தந்தையான பாண்டிய வேந்தனைப் போய் பார்த்து அவனைச் சமாதானப் படுத்து. அவனுடைய சங்கடசாந்திக்காத வேதாந்த தத்துவங்களை உபதேசித்து, மனைதத் தேற்றிவிட்டு, நீ ராமாவதாரம் செய்து காலை, சபரி என்ற தவப் பெண் உன்னை மனமுவந்து உபசரித்து ஆராதித்தாள். உன்னை நிறைந்து, சீர்த் தியாகம் செய்தாள். அவளுக்கு முக்தி கிடைக்கவில்லை, அவள் மறுபடியும் பிறந்தாள். அதே பெயருடன் யோகினியாக பம்பா நதிக்குக் கிழக்கே நீலமலை (நீலமலை) சாரலில் உன்னை நிற்குணாக மனத்தில் எண்ணித் தியானித்துக் கொண்டு, உன் வரவை எதிர்பார்த்துக்கொண்டிருக்கிறாள். நீ சென்று அவளுக்கு சாயுஜ்ஜியமளித்து, அனுக்ரஹிப்பாயாக! சபரி வாழ்ந்துவரும் மலையாக்கையால் அந்த மலைக்கு சபரிமலை என்ற பெயர் வழங்கட்டும். அதனால்தப் புண்ணியவதியின் நாமத்தை ஜனங்கள் மறக்காதிருக்கட்டும். அந்த மலையில் பாண்டிய மன்னன், உனக்கு ஒரு ஆலயம் அமைப்பான். உன்னை அங்கு பிரதிஷ்டை செய்த வழிபடுவான். நீ நற்குணவாலாக அந்தக் கோணலிலும், முனிவர்கள் அமைக்கப்பட்ட பொன்னம்பலத்திலும் வாழ்ந்து, பக்தர்களின் இயதயக்கோவில்களிலும், நிலைகொள்வாயாக! பெருந்தேவியின் தலைநோவிற்கு புலிப்பால் கொண்டு வர வந்தவன் அதை மறந்தவட்டாய். கே. கிரமாக புலிகளையும் கொண்டு, செல்வாயாக! தேவஸ்திரிகள் பெண்புலிகளாகவும், தேவர்கள் அனைக்களின் குட்டிகளாகவும், உன்னைத் தொடர்வார்கள். தேவநாதலூதிய அமரேந்திரன் ஆண்புலியாக உன் வர்க்கமாக வருவான். நீ அந்த வேங்கை மீது ஆரோசனித்துப் புலிக்கட்டங்களுடன் நூரை அடைவாயாக" என்று அருளிச் செய்து, மைக்கண்டம் விடைபெற்றுச் சென்றான்.

Annex - B

श्रीकृष्णः शरणं मम
श्रीराधाकृष्णाभ्यां नमः
महर्षिवेदव्यासप्रणीतं

97

श्रीमद्भागवतमहापुराणम्

श्रीधरस्वामिधिरचित-मावाधंदीपिका, श्रीशंखीधरकृत-भावाधंदीपिकाप्रकाशः, श्रीगङ्गासहायप्रणीत-अग्नितायप्रकाशिका
श्रीमद्वीररायभाचार्यभाषित-भाषणतन्त्रिका, श्रीमद्विजयध्वजतीर्थरचित-पदरत्नावली,
श्रीमज्जीयगोस्वामिनिष्पादित-कमलदंभः, श्रीमद्विश्वनाथचक्रवर्तिसाधित-साठवैरिणी,
श्रीमच्छुकदेवनिर्घरित-सिद्धान्तप्रदीपः, गोस्वामिश्रीगिरिधरलालविहित-
नालप्रबोधिनी, श्रीभगवत्प्रस्तादाचार्यप्रणीत-भक्तमनोरञ्जनी, इत्येतास्त्विष्यामिः

भाषानुयादेत च

समलङ्कृतम्

अथः सस्कन्धः



सम्पादकः

श्रीदत्तसुखरासात्मजः कृष्णशास्त्रः शास्त्री

प्रकाशकः

कृष्णशास्त्रः शास्त्री

कृष्णराजभाई ठाकरसी

जयराजभाई द्वारकादासः

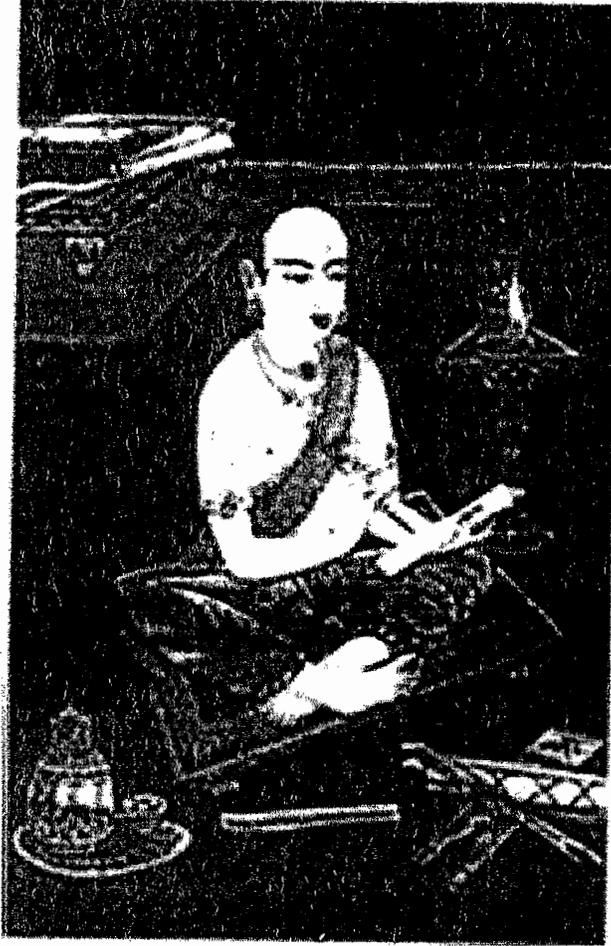
(श्रीविद्याहितनिधिसंस्थाः)

Annexure - G

99

ĀPASTAMBA

Dharma & Grihya Sutras



Translated by various Scholars
Edited by Sri Rama Rāmānuja Ācāri
srimatham.com

15. [a student] should not do anything for his own pleasure in places which his teacher frequents.

'Anything for his own pleasure,' i.e. having conversations with friends, making his toilet, 'hanging out' etc.

strībhīr yāvad artha sambhāṣī || 16 ||

16. Let him talk with women as much [only] as is necessary.

mṛduḥ || 17 ||

17. One should be gentle.

sāntaḥ || 18 ||

18. One should refrain from unsuitable pursuits (or be peaceful).

dāntaḥ || 19 ||

19. And be tireless in fulfilling one's duties;

The explanations of the last two terms, *sānta* [Sūtra 18] and *dānta* [Sūtra 19], are different from those given usually. *Sānta* is usually explained as 'the exclusive direction of the mind towards God,' and *dānta* as 'the restraining of the senses' or self-discipline.

Hrīmān || 20 ||

20. [He should be] Modest;

dṛḍha dhṛtiḥ || 21 ||

21. Self-controlled

aglāmsnuḥ || 22 ||

22. Energetic;

akrodhanaḥ || 23 ||

23. Free from anger; (Manu 2:178.)

anasūyuh || 24 ||

24. Free from envy.

*sarvaṃ lābham āhuraṃ gurave sāyujṃ prātar amantreṇa bhikṣā caryam
cared, [bhikṣamāno- 'anyatra-apapātrebhyo- 'abhiśastāc ca]* || 25 ||

25. Bringing all he obtains to his teacher, he shall go begging with a vessel in the morning and in the evening, [and he may] beg [from everybody] except low-caste people unfit for association [with āryas – *apapātra*] and *Abhiśastas*.

Regarding the explanation of the term *Abhiśasta*, see below, 1;7:21:17. Haradatta —

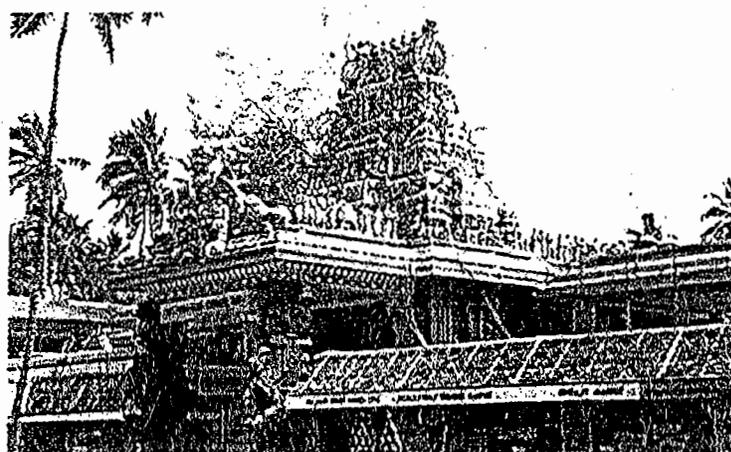
Women's only temples aplenty



MOHAMMED ANAS

Updated : March 11, 2016, 12:52 PM

Print



As the issue of banning the entry of women to Shani Shignapur, Sabarimala and other temples keeps raging, no spotlight is shed on those temples where only women can enter. Temples like Attakul in Thiruvananthapuram and Chakkulathukavu in Alappuzha in Kerala organise naari puja (women worship) and women-only annual festivals (pongals).

Kamakhya temple in Devipuram, Vishakhapatnam, Andhra Pradesh, bars the entry of women for four or five days a month, to mark privacy during the menstruation period. The Savitri temple in Pushkar, Rajasthan, and Shri Path temple in Chandauli in Uttar Pradesh are women-only temples and bar the entry of men completely. The Attakul temple in Kerala is also known as the "women's Sabarimala" and holds the Guinness Book of World Records for having witnessed the largest gathering of women. Around 1.5 million women visited the temple in 1997, during the annual Attakul pongal

managing committee of the temple said that it was devoted to celebrate the "divine power of women in defeating the demonic forces in society, according to Hindu mythology". He added that he hoped that the devotional message of the temple would inspire the youth all across the country to respect women and make "women fight back", including in other faiths where there exist discriminatory practices against women, and where women are protesting such unequal treatment.

The Chakkulathukavu temple, also in Kerala, is dedicated to the Bhagavathi and follows an annual ritual called "naari puja". On the first Friday of Dhanu (December), the male priests wash the feet of female devotees who have fasted for 10 days. "This system takes root in the belief that female devotees visiting on this particular day are the incarnation of Chakkulathu Amma (Goddess), who is considered to be the epitome of compassion towards the needy. Therefore, a sumptuous free lunch is organised to feed all on various occasions by the temple," said S. Sathya, the manager of the temple.

According to A. Patnaik, a journalist covering Vishakhapatnam, the Kamakhya temple in the city is believed to be celebrating the creative divinity of women. He said that the temple bars the entry of men for four-five days "to observe the privacy of women during the period of menstruation". "I have not seen any issues being raised on this during my stay here," he said.

The Savitri temple on the Ratnagiri hills in Rajasthan's Pushkar, according to believers, is a curious place of worship where men are barred entry as the temple marks the rage of its deity, Goddess Savitri. "According to religious beliefs, Savitri, the wife of Lord Brahma, was enraged when Brahma married for the second time. She cursed Brahma and

women. Men are strictly not allowed to enter here," said Nitesh, a local resident. Nitish said that from his family, his grandmother has been visiting the temple.

103

The Sri Path temple in Seekaldiha tehsil of Uttar Pradesh's Chandauli district seems to be more radical in its approach towards men. According to some locals and journalists active in the area, the faithful believe that only women can pray inside the temple and if men try to pray there, bad luck visits them. "The accuracy of such claims is difficult to establish, but such a belief is in currency here and that's why even if men accompany their womenfolk to the temple, they prefer to stay outside," said a local.

Some religious scholars like Delhi-based Pawan Sinha believe that even though there are "women-specific" temples in India, they do not discriminate against men, but only observe some conditions to provide privacy from men. "I am of the firm belief that the shastras (Hindu religious books) do not discriminate between the sexes when it comes to visiting places of worship and praying there. So whosoever does that also do not follow the shastras in their proper spirit. As far as the said 'women-specific' temples are concerned, they do not discriminate against women, they only maintain the privacy of women during certain rituals where the presence of men may not be proper. It's like men are not allowed to be present during some marriage rituals like the mehndi ceremony of the bride, etc.", said Sinha.

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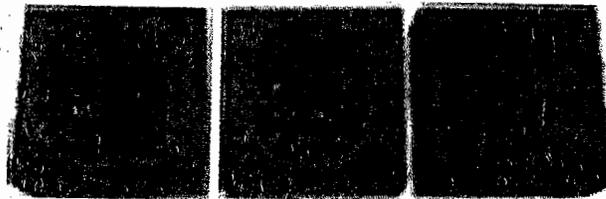
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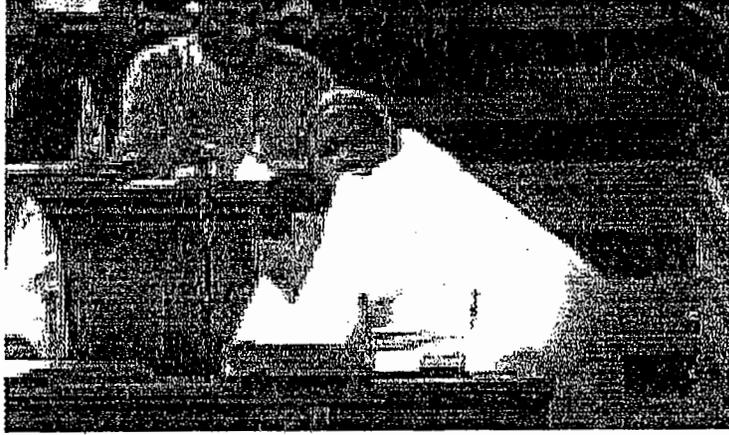
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105

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Temple

Celebrating the menstruating Goddess in a Kerala temple? Not completely

(/article/celebrating-menstruating-goddess-kerala-temple-not-completely-32604)

What makes this temple unusual and unlike other temples is that it attributes a human trait to the divine – Parvati menstruates here, and the duty of the head priest is to watch out for blood stains on her clothing every morning.

Haritha John (<https://www.thenewsminute.com/author-articles/Haritha-John>) |

Sunday, July 26, 2015 - 05:30

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<https://www.thenewsminute.com/article/celebrating-menstruating-goddess-kerala-temple-not-completely-32604>) ([https://plus.google.com/share?url=Celebrating](https://plus.google.com/share?url=Celebrating the menstruating Goddess in a Kerala temple? Not completely)

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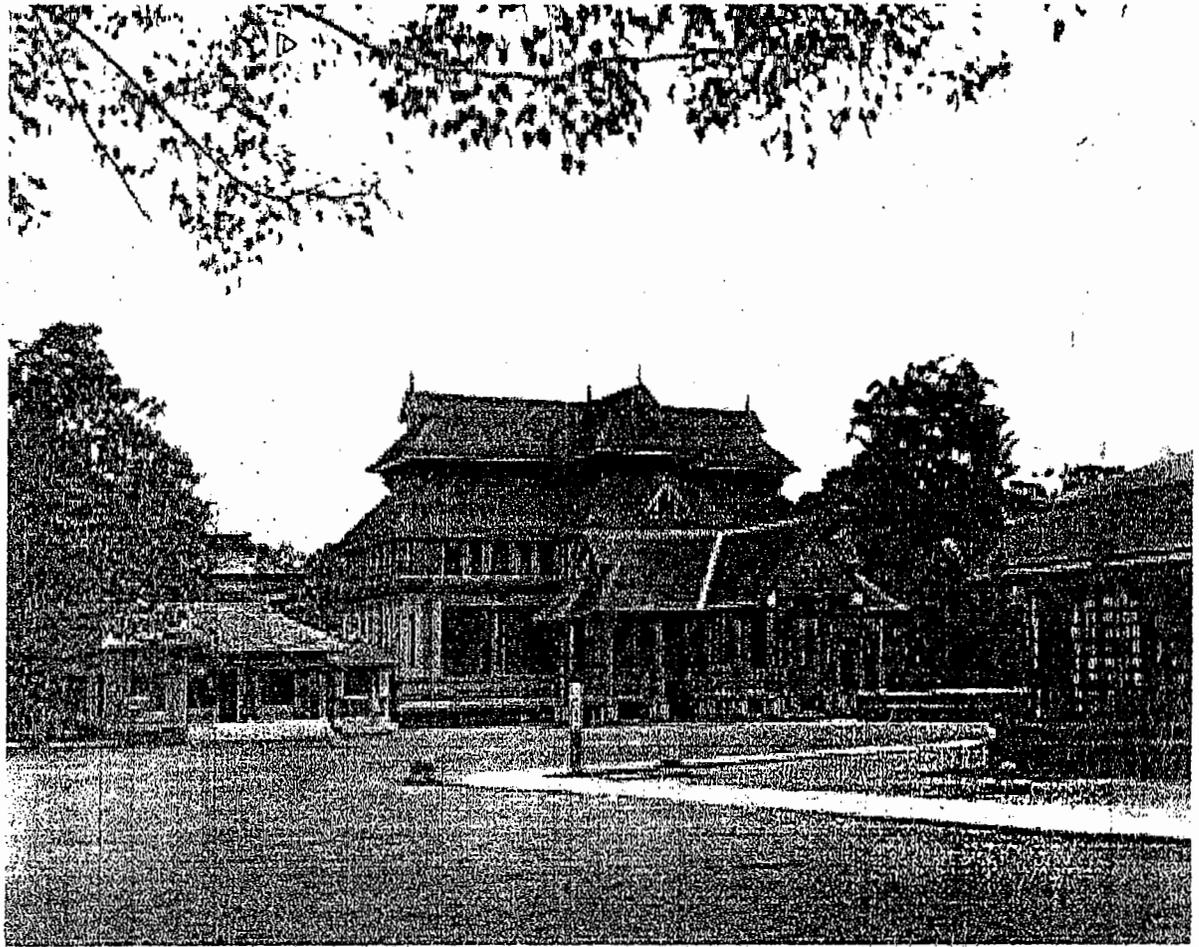
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[url=https://www.thenewsminute.com/article/celebrating-menstruating-goddess-temple-not-completely-32604&title=Celebrating the menstruating Goddess in a temple? Not completely\)](https://www.thenewsminute.com/article/celebrating-menstruating-goddess-temple-not-completely-32604&title=Celebrating%20the%20menstruating%20Goddess%20in%20a%20temple%3F%20Not%20completely)



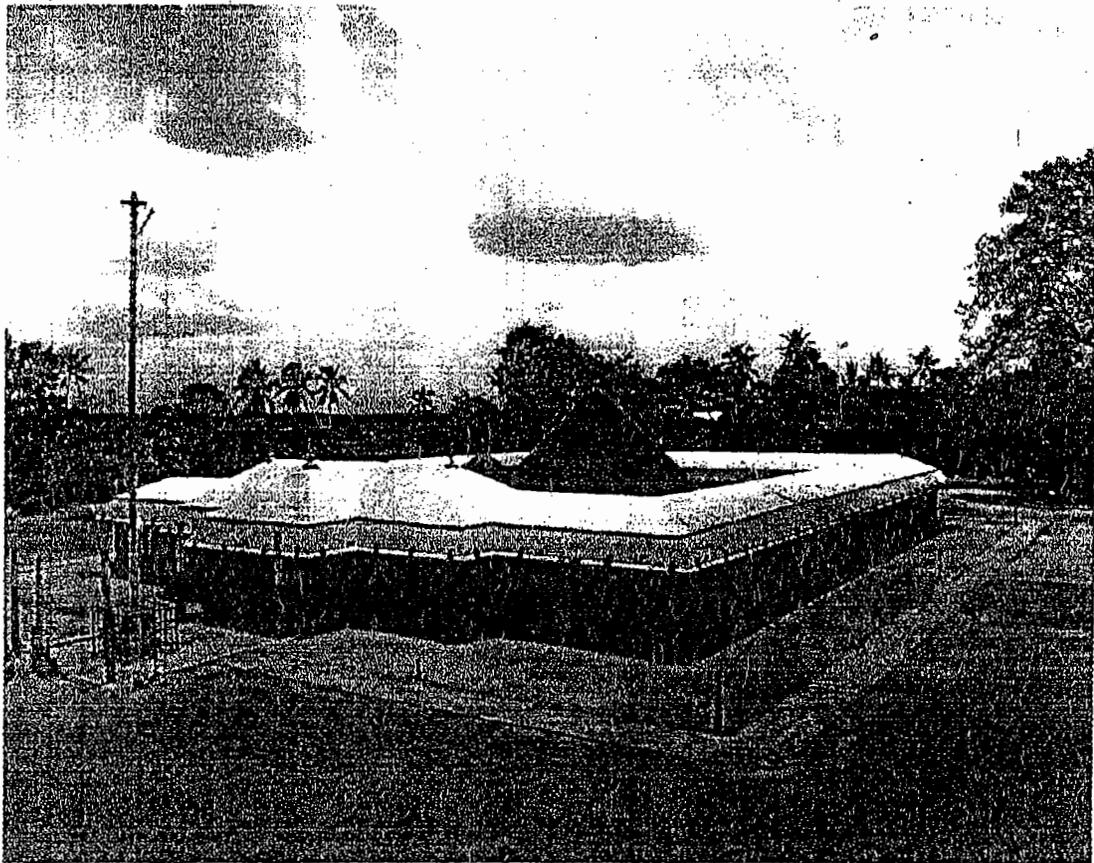
At first glance, the Chengannur Mahadeva Kshetram (temple) in Alappuzha district looks like any other temple in the state – an expansive complex with the sanctum right in the middle.

The temple, one of the oldest in Kerala, was built in AD 300 and is believed to have been designed by a legendary figure in Kerala's folklore, master architect Perunthachan. A large portion of the temple was reduced to ashes in a fire in the 18th century, rebuilt later by carpenters from Thanjavur.

But what makes this temple unusual and unlike other temples is that it attributes a human trait to the divine – Parvati menstruates here, and the duty of the head priest is to watch out for blood stains on her clothing every morning.

Parvati and her husband Shiva are the presiding goddess and god of the temple, but Parvathi's idol is taken out "on those days".

Once a 'blood stain' is seen, the abbess or eldest woman of a Brahmin family, Thazman Matt, where the priests of the temple belongs, is called upon to confirm if the Devi is indeed menstruating. If yes, then Parvati's idol is shifted into a small room off the sanctum sanctorum and the temple remains closed for four days.



On the fourth day, Parvati's idol is taken to the Pamba river for an 'arr bath. With pomp and splendor, the Devi is brought back to the temple. Lord Shiva's idol awaits her at the entrance, the festival is called 'Thriputharattu'.

Parvathi 'menstruates' once in two or three months, but devotees say that until a few years ago, it used to be a monthly affair.

The legend

Advocate Unnikrishnan Nair, a temple historian, says the Chengannur temple is unlike other temples Shiva temples in the state because of the story of its origins.

"When all the Devas (gods) gathered together in the Himalayas for Shiva and Parvathi's wedding, Lord Brahma feared that since all the Devas were gathered in the North, the world would lose its balance. He sent Agasthya Muni (a saint) to the south to balance the weight."



After the wedding, the newlyweds came to the southern bank of the Pamba river, where Agasthya was living, to meet him. Unnikrishnan says that the temple's menstruation ritual comes from the story that Parvati got her first period – the menarche – during this visit.

"The temple was constructed on the spot in which the Muni resided, and Parvathi's visit was special and so they became the deities. But since girl attaining puberty is a moment to celebrate, that became the most important ritual of the temple," Unnikrishnan says.

History and society may have influenced the practice, but "on those days", even this goddess is not allowed to reside in the sanctum of the temple that celebrates her menstruation.

"Like any other temple women can't enter this one during their menstruation. During the menstruation time Devi will be shifted to a different room," says Unnikrishnan.

Can an idol menstruate? "Yes, that is our belief. The legend goes that a European officer Colonel Munro poked fun at the ritual and stopped it. Soon his wife had intense pain and heavy bleeding. He was forced to restart the ritual," Unnikrishnan added.

Photos : Unnikrishnan Nair

Health

Shigella infection kills toddler in Kozhikode taking death toll to 4

0

State officials issued an alert in June after 3 people had died from the shigella infection.

Nimeshika Jayachandran (<https://www.thenewsminute.com//author-articles//Nimeshika-Jayachandran>)

Monday, July 23, 2018 - 11:38

(whatsapp://send?text=Shigella infection kills toddler in Kozhikode taking death toll to 4<https://www.thenewsminute.com/article/shigella-infection-kills-toddler-kozhikode-taking-death-toll-4-85241>)
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infection-kills-toddler-kozhikode-taking-death-toll-4-85241) (11)

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The death of a toddler from shigella infection in Kerala's Kozhikode Medical College and Hospital is bringing the state under a blanket of panic, yet again.

Earlier, officials had issued a warning

(<https://english.manoramaonline.com/news/kerala/kerala-health-department-issues-shigella-dysentery-alert.html>) about shigella after three people died in the state due to suspected shigella infection.

The 2-year-old boy, Ziyar, was undergoing treatment at the hospital in Kozhikode for the infection.

In June, state Health Department Officials issued a shigella dysentery alert after 2 people from Kozhikode and 1 from Thiruvananthapuram died from dysentery related deaths.

Shigella is a bacteria, which has been noted (<http://www.who.int/immunization/topics/shigella/en/>) to be one of the leading causes of dysentery in the world.

It is spread through contaminated food, water, or even through contact with infected people.

The incubation period for the bacteria is usually within one week, after which time, infected persons may experience abdominal pain, cramps, or bloating. People may also present with fever or diarrhoea, which is blood or mucous stained. Nausea and vomiting are also commonly seen.

In young children, shigella infection has also been known to cause seizures. Unlike most other dysenteries which are caused by viruses, shigella-related dysentery is caused by a bacteria.

"Shigella is a diarrheal disease and is highly contagious. It mostly affects children under the age of 5," said Dr Jayashree Kozhikode DMO, "It is highly advisable that people follow appropriate personal, food, and water hygiene measures. We also are telling everyone to wash their hands and follow routine hygiene measures."

In addition to practicing the above, she also encouraged people to drink boiled water.

She further stated that the toddler had most probably contracted the infection from food which was bought from outside.

"The infection is more or less self-limiting and only becomes serious in some persons. As long as personal and environmental hygiene measures are followed, there is not much to worry about," added Dr Jayashree.

SCORE	
SI 332/10 & 275/5	SA 124/10 & 290/10

NEWS18 » BUZZ

1-MIN READ

First Time In 400 Years, Men Allowed Inside This Temple in Odisha

The Ma Panchubarahi temple in Odisha's Satabhaya village is run only by Dalit women.

Rakhi Bose | News18.com Updated: April 23, 2018, 1:37 PM IST



(Image Representational / Reuters)

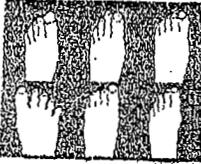
For the first time in four centuries, men were allowed to touch the five idols at the Ma Panchubarahi temple in Odisha, which is exclusively run by married, Dalit women.

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114

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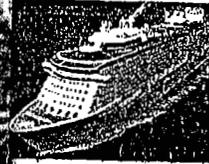
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These Indian Disney Princesses Look Better Than Originals



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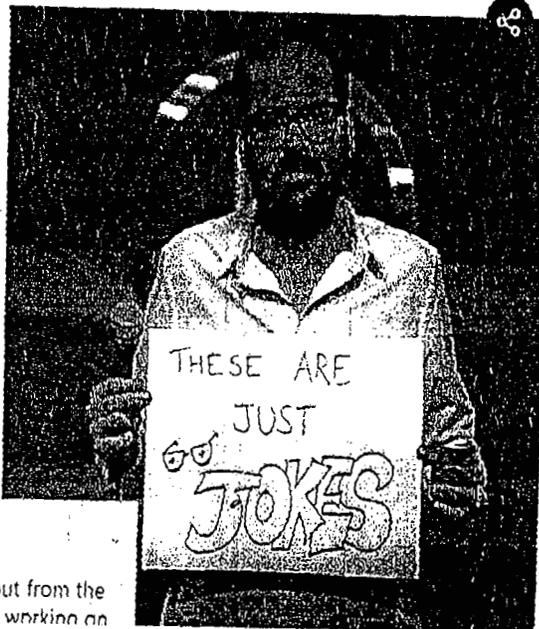
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Baroda's MS University Cancelled Comedian Kunal Kamra's Show for Being 'Anti-National'

Funny political views are apparently literal and not all that funny.

Raka Mukherjee Updated: July 23, 2018, 1:19 PM IST

MS UNIVERSITY CANCELS COMEDIAN'S SHOW AFTER PETITION THAT HE IS "ANTI-NATIONAL"



Kunal Kamra

Ever been so cool that you find out from the news that you're not going to be working on

Funny political views are apparently literal and not all that funny.

Comedy is becoming less and less of a laughing matter.

115

Comedian Kunal Kamra, famous for his podcast *Shut Up Ya, Kunal* who had spoken up in January for the backlash

Read full article

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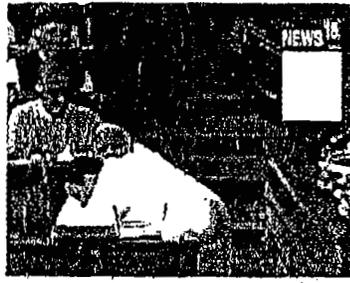
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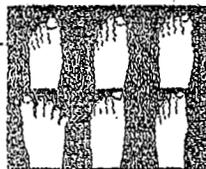
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First Published: July 23, 2018, 1:19 PM IST

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116

NEWS18 » BUZZ

Obama, Dinosaurs And Jesus Christ: Twitter is On Wishful Thinking Spree With #IWouldBringBack

From former US President Barack Obama to the old MTV and even the old Taylor Swift, Twitterati did not shy away from engaging in some Monday morning wishful thinking exercise.

Parth Sharma Updated: July 23, 2018, 1:26 PM IST

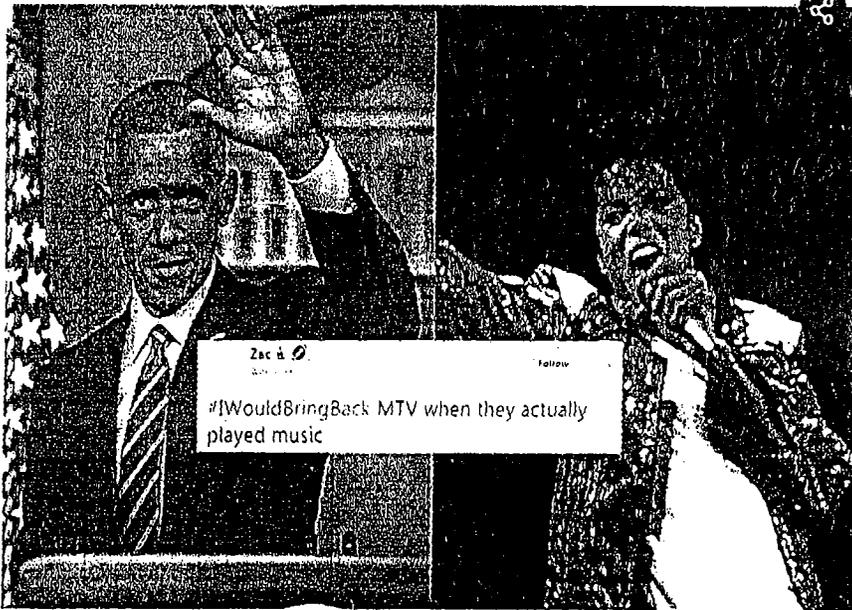


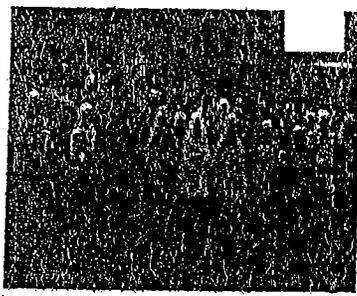
Image Credits: PTI / Reuters

Too often we wish we could bring back things from the past.

A bunch of people got together to tell the world what they

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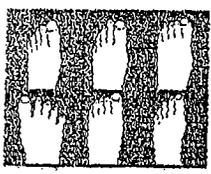


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First Published: July 23, 2018, 12:44 PM IST | Edited by: Parth Sharma

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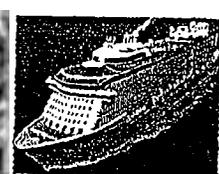
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8 Movie Nerds Who Grew Up To Become Stunning

This Indian-Origin Kid's Performance With a Harmonium at the 'Voice Kids UK' is Out of This World

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This is the best thing you'll watch today.

Anurag Verma  @kitAnurag, Updated: July 23, 2018, 12:26 PM IST

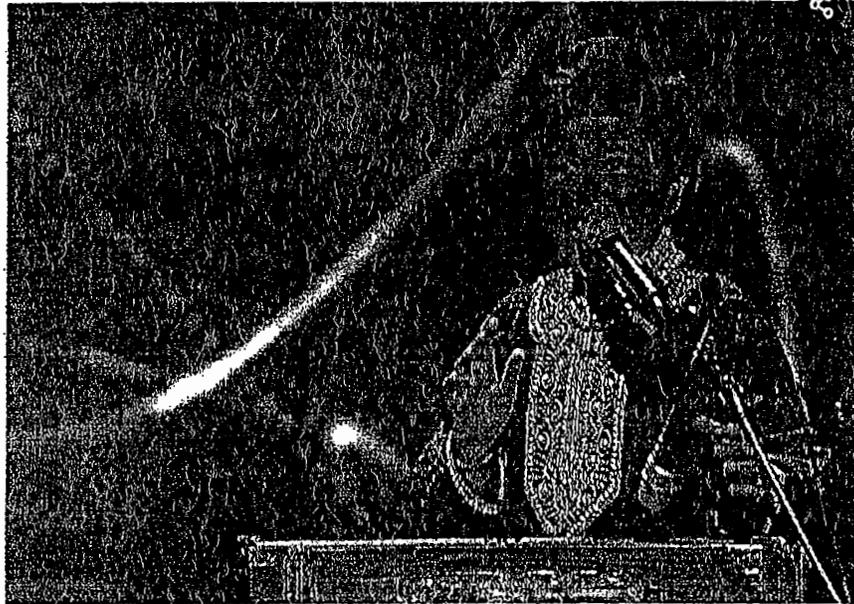


Image credits: The Voice Kids UK / YouTube

Coaches Danny Jones, Pixie Lott, and Will.i.am were in for a surprise when Krishna took to stage at 'The Voice Kids UK 2018' last week.

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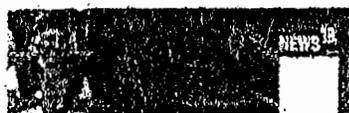
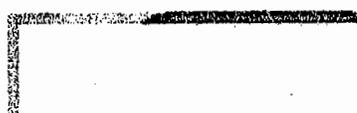
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Pixie Lott

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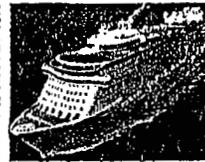
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DEVASWOM MANUAL

VOLUME II.

CHAPTER I.

Constitution of the Department.

The Devaswom Proclamation dated the 12th April 1922.

PROCLAMATION

BY

HIS HIGHNESS SRI PADMANABHA DASA VANCHI PALA SIB RAMA VARMA KULASEKHARA KIRITAPATHI MANNEY SULTAN MAHA RAJA RAJA RAMA RAJA BAHADUR SHAMSHER JANG, KNIGHT GRAND COMMANDER OF THE MOST EXALTED ORDER OF THE STAR OF INDIA, KNIGHT GRAND COMMANDER OF THE MOST EMINENT ORDER OF THE INDIAN EMPIRE, F. M. U., M. R. A. S., F. R. G. S., OFFICER DE L' INSTRUCTION PUBLIQUE, MAHA RAJA OF TRAVANCORE, ISSUED UNDER DATE THE 12TH APRIL 1922, CORRESPONDING TO THE 30TH MEENAM, 1097.

Whereas, in virtue of the Melkoima right vested in the State, the administration of certain Devaswoms along with their endowments was owing to their mismanagement, assumed by it in 1887 M. E. with a view to their better management and to the maintenance of the said temples and their appurtenances in good condition ;

And whereas the income from the immovable property alone of the said Devaswoms amounted at the time of assumption to 45,80,491 paras of paddy and Rs. 53,092 in cash ;

And whereas the said incomes from Devaswoms had, in course of time, become absorbed in the general revenues of the State and the expenditure therefor was met out of such general revenues ;

And whereas, owing to various causes, a large portion of the immovable property of the said Devaswoms had been treated in course of time as Pandaravaga lands and in consequence become incapable of identification and separation ;

And whereas by proceedings of Government No D. 4905, dated the 25th October 1912, Our Government resolved that, in view of their position in respect of the said Devaswoms, it was their duty so to regulate the next land revenue settlement as to ensure to the said Devaswoms the full revenue from their immovable property ;

G. P. T. 2414. 263. 16-2-113.



And whereas the above said resolution, if given effect to, is calculated to operate detrimentally on the material welfare of Our beloved subjects;

And whereas the conversion into Pandaravaga tenure of all Devaswom lands is calculated to be beneficial to Our beloved subjects;

And whereas the income from the immovable property of the said Devaswoms and of those whose management has been assumed since 987 M. E., had it been kept separate, should, along with their other income, be ordinarily sufficient for their proper maintenance;

And whereas in view of Our faith and religion it is Our solemn right and duty to maintain efficiently and in good condition, Hindu religious institutions in Our State, irrespective of the income from such institutions or the cost of such maintenance, and in pursuance of such right and duty Our State has, from time immemorial, contributed from its Exchequer to the cost of such maintenance to the extent necessary;

And whereas doubts have been expressed as to the position of Our Government in relation to the said Devaswoms;

And whereas it is necessary to remove those doubts and to provide for the better management and more effective control of the said Devaswoms;

We are pleased to command as follows :—

1. (1) This Proclamation shall be called the Devaswom Proclamation, 1097.

(2) It shall come into force on the 1st Chingom 1098.

(3) It shall apply to the Devaswoms mentioned in the Schedule.

2. "Schedule" means the schedule attached to this Proclamation.

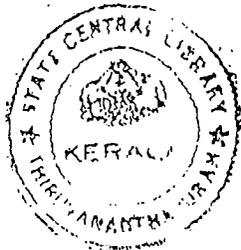
3. Our Government shall, out of the Devaswom Fund constituted under Section 4, maintain the Devaswoms mentioned in the Schedule, keep in a state of good repair and to the extent they consider necessary, the temples, buildings and other appurtenances thereto, and administer the Devaswoms in accordance with such usage and custom as may be recognised by Our Government.

4. There shall be constituted for the Devaswoms mentioned in the Schedule a fund called the "Devaswom Fund." Such fund shall consist of:—

(1) allotment made in the State Budget every year for the said Devaswoms, such allotment not being less than forty per cent of the Ayacut and Sanchayam land revenue of the State;

(2) the moneys realised from time to time by the sale of movable properties belonging to the said Devaswoms;

(3) all voluntary contributions and offerings made by devotees;



123

(4) interest on investments of funds belonging to the said Devaswoms; and

(5) all other moneys belonging to or other income received by the said Devaswoms.

5. Any unspent balance out of the allotment mentioned in subsection (1) of Section 4 shall be added on to the Devaswom Fund.

6. All immovable properties belonging to the Devaswoms mentioned in the Schedule and now shown in the Revenue accounts as "Devaswom Vaga" shall hereafter for all intents and purposes be deemed to be Pandaravaga and dealt with as such.

7. (1) Our Government may for the better and more efficient management and more effective control of the Devaswoms mentioned in the Schedule organise a Devaswom Department of the State consisting of such number of officers and other servants as they think fit.

(2) The expenditure in connection with the said department shall, notwithstanding anything contained in Sections 3 and 4, be met out of the general revenues of the State.

8. Our Government may, from time to time:—

(1) define the powers and duties of the officers of the Devaswom Department;

(2) regulate the scale of expenditure of the Devaswoms;

(3) make rules generally for carrying out the purposes of this Proclamation.

9. No suit shall lie in any civil court against Our Government:—

(1) for anything done in relation to the Devaswoms mentioned in the Schedule and their properties before the commencement of this Proclamation; and

(2) for anything done or purporting to be done in pursuance of this Proclamation.

10. Nothing contained in this Proclamation shall in any way affect Our right to contribute out of the State funds:—

(1) towards Sri Pandaravaga expenditure to the extent deemed necessary by Us; or

(2) to other Devaswoms in or outside the State; or

(3) to the performance of the customary religious ceremonies conducted under Our command.

SIGN MANUAL

