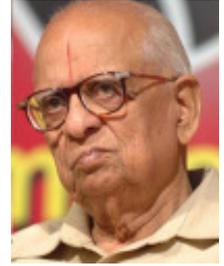


**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 373 of 2006**



In the matter of:

| | | |
|---|--------|-------------|
| Indian Young Lawyers Association & others | ... | Petitioners |
| | versus | |
| The State of Kerala & others | ... | Respondents |

**WRITTEN SUBMISSIONS BY SHRI. K. PARASARAN, SENIOR ADVOCATE ON
BEHALF OF NAIR SERVICE SOCIETY**

A. AS TO CHARACTER OF THE DEITY AND FORM OF THE IDOL:

1. It is submitted that the deity at Sabarimala is in the form of a Naistika Bramhachari who practices strict penance and the severest form of celibacy, whereby he cannot find himself in the presence of young women. Whether rational or irrational, this is the religious belief, and it is attached to the sanctity / sacredness of the form of the idol.
2. Religion is a matter of faith. Religious beliefs are held to be sacred by those who have faith. Thought, faith and belief are internal, while expression and worship are external manifestations thereof. See in this regard **Shirur Mutt**, 1954 SCR 1005 @ 1021. In the context of the Hindu religion, the form of the deity is of paramount importance. See in this regard:
 - i. **Shirur Mutt**, 1954 SCR 1005 @ 1023, wherein the definition of religion from an American case has been reproduced viz. "the term 'religion' has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His Will." Though this Hon'ble Court observes that this definition is not precise or adequate, it nevertheless goes to show that among other things, the "character" of the deity is important.
 - ii. **Venkataramana Devaru v. State of Mysore**, 1958 SCR 895 @ 909 wherein it has been observed that "The Gods have distinct forms ascribed to them and their worship at home and in temples is ordained as certain means of attaining salvation."
 - iii. **Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan** (1964) 1 SCR 561 @ 582 wherein emphasis is laid on the mode of worship adopted when Lord Krishna as a child is the main object of worship. See also @ 583 wherein it is observed that "believing in the paramount importance and efficacy of Bhakti, the followers of Vallabha attend the worship and services of the Nidhi Swaroops or idols from day-to-day in the belief that such devotional conduct would ultimately lead to their salvation."
3. It is submitted that followers / devotees of Lord Ayyappa hold a sacred religious belief that He is manifested as a Naistika Bramhachari in the idol at Sabarimala. As to the attributes of a Naistika Bramhachari, see Compilation – Vol. IV with regard to Vishwamitra, Hanuman and the meaning of 'Naistika' as given in the Practical Sanskrit-English Dictionary by Shri Vaman Shivaram Apte. In addition to the characteristic of a Naistika Bramhachari, Lord Ayyappa is also a Yogi. As to the characteristics of a Yogi, see Compilation – Vol. IV @ pgs. 4-5 with regard to Sivananda Lahari of Adi Sankara. There are other temples dedicated to the worship of Lord Ayyappa where He is not in the form of a Naistika Bramhachari. In those temples, the mode and manner of worship differs from Sabarimala since the deity manifests Himself in the idol with a different character / form.

4. It is submitted that in order to preserve the character of the deity and the sanctity / sacredness of the idol at Sabarimala, there is a restriction on the entry of women (between the ages of 10-50). This restriction is not linked with the alleged purity or impurity of any biological occurrence in women or the alleged capability or incapability of observing the 41-day *vratham*. The custom is rooted in the legend / lore of the temple and the character of the deity as a Naistika Bramhachari. By virtue of such character of the deity, the "restriction" *per se* is not on the women, but on the deity Himself, since He in a state of Naistika Bramhacharya and in Yoga and therefore cannot find Himself in the presence of women. It is consistent with His Nishta or Naistika Buddhi.

5. It is submitted that the devotees of Lord Ayyappa are expected to emulate this state of celibacy, which is why they are obligated to observe the *vratham*. If the Lord Himself cannot be in the presence of young women, his devotees also cannot be in the presence of young women since they are emulating "Naistika Bramhacharya." The emulation must not only be done, but must be seen to be done. The devotees are obligated to physically practice Naistika Bramhacharya while also being in Naistika Buddhi (mental state of Naistika Bramhachari). See in this regard, the relevant extract from the Bhagavadgita in Compilation – Vol. IV at page 22:

**यद्यदाचरति श्रेष्ठस्तत्तदेवेतरो जनः ।
स यत्प्रमाणं कुरुते लोकस्तदनुवर्तते**

Translation – For whatever a great man does, that very thing other men also do; whatever standard he sets up, the generality of men follow the same.

6. It is submitted that the custom is not arbitrary, in the sense that it does not bar all women from entering the temple. Women below the age of 10 are considered to be children, while those above the age of 50 are motherly figures. Therefore, they are permitted to enter the temple because their presence does not disturb the penance of the deity or bring about a change in his character as a Naistika Bramhachari. This being the reason behind the custom, there is no degradation or derogation of the dignity of women. It is only to protect the form of the deity, which is sacred, so that ALL worshippers – men and women – may worship the deity in that form.

7. It is submitted that in this background, Article 17 cannot be pressed into service for treating the restriction as a disability arising out of "Untouchability". The term "untouchability" is within inverted commas. Though left undefined, it is to be understood in its historical sense and not in the literal sense. See in this regard:

i. Devarajiah v. B. Padmanna AIR 1958 Mys 84 @ 85

ii. State of Karnataka v. Appa Balu Ingale 1995 Supp (4) SCC 469 @ 480, para 18.

iii. Bharatinath Namdeo Gavand v. Lakshman Mali 2007 (3) MhLJ 210 @ 220-222.

B. AS TO BELIEF AND FAITH AND ARTICLE 25:

I. ARTICLE 25(1):

8. It is submitted that Worshippers of Lord Ayyappa are entitled to the right guaranteed under Article 25(1) as individual devotees to practice their religion and profess their faith by worshipping at Sabarimala, which can be guaranteed only if the character of the deity as a Naistika Bramhachari is preserved. If women between the ages of 10-50 are permitted entry, resulting in a change in the very character/nature of the deity, the right of the devotees under Article 25(1) is directly impinged.

9. The right of the devotees (male and female), who worship Lord Ayyappa as a Naistika Bramhachari, under Article 25(1) is subject to public order, morality, health and other provisions of Part III. It is submitted that public order and health are not attracted in the present case. The term 'morality' has to be interpreted as Constitutional morality, or morality in the secular sense, and not religious morality. Whether the deity and those emulating Him ought not to be deviated / disturbed by the presence of young women in their midst is a question of religious morality. The submissions herein below will also attempt to establish that no provision of Part III is violated.

10. It is submitted that irrespective of the Act and the Rules, the custom has to be examined independently as it does not flow from the Act and Rules but is a part of institutional worship. Therefore, it has to be tested on the touchstone of the Constitution. However, submissions are also advanced herein below as to the validity of the Act and the Rules.

11. Article 25(1) provides that "Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." Read with the Preamble, the 'Equality' is of 'status and opportunity' and the 'Liberty' is of 'thought, expression, belief, faith and worship.' It is submitted that the right / entitlement guaranteed under Article 25(1) is to profess, practice and propagate religion, which is internal and which God alone can know. It cannot be said that this includes the right to determine what the faith / religion 'should' be. Only from the external act of expression and worship viz. the vratham of 41 days performed by the worshipper (even by a Grihastha), the internal faith viz. Naistika Buddhi can be inferred. The custom forms an essential religious practice in reference to the worship of Lord Ayyappa as a Naistika Bramhachari, and as observed by this Hon'ble Court in **Shirur Mutt's** case 1954 SCR 1005 @ 1025:

"... In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion ..."

The initial part of the submissions outlines the attributes of a Naistika Bramhachari. Therefore, if the Divine Spirit of His Idol diminishes or vanishes and he ceases to be a Naistika (on account of being put in the presence of young women), it will be a violation of the religious faith and belief followed by worshippers of Lord Ayyappa.

12. It is submitted that if one believes in Lord Ayyappa and chooses to offer worship at Sabarimala where He is in the form of a Naistika Bramhachari, one must adhere to the prevailing mode of worship without disturbing His state of penance. Observance of strict celibacy necessarily entails that the deity should not be in the presence of young women. Therefore, if a woman between the ages of 10-50 is a believer in Lord Ayyappa as a "Naisthik Bramhachari", she has to accept the prevailing custom and mode of worship at Sabarimala, and offer worship either before the age of 10 or after the age of 50.

13. Faith, belief and worship cannot be divorced from the deity sought to be worshipped. In the present case, women between the ages of 10-50 are free to offer worship at any other Ayyappa temple if they wish to seek His blessings. Their right under Article 25(1) continues to be preserved, since the exclusion is not total or universal; it is limited to a particular age at a particular temple only, so as to preserve the character of the deity. If

these women are believers in Lord Ayyappa, they are entitled to practice their faith at any other temple dedicated to His worship where they are permitted to enter irrespective of age. They have the equality of status and opportunity to enter and offer worship at ANY temple dedicated to Lord Ayyappa, including at Sabarimala, in conformity with the prevailing custom.

14. As held by this Hon'ble Court in *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615 @ 628, para 20:

"We do endorse the view suggested by Davar, J's observation that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Article 25 but subject, of course, to the inhibitions contained therein." [Emphasis Supplied]

15. Therefore, it is submitted, the right claimed by the Petitioners to enter the temple, who do not explicitly profess faith in the Lord, cannot override the right claimed by the devotees of Lord Ayyappa (male and female) under Article 25(1) to worship Him in the form of a Naistika Bramhachari in conformity with the prevailing custom.

II. ARTICLE 25(2)(a)

16. Article 25(2) provides as under:

"Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

17. Article 25(2) enables the State to make certain laws overriding Article 25(1). It is submitted that enacting the laws referred to in Articles 25(2)(a) and (b) is entirely within the domain of the Legislature alone.

18. The relevant law in the present case is the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, which is traceable to the mandate of the second part of Article 25(2)(b).

19. It may be noted that Article 25(2)(a) permits the State to make any law to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice, but not the religious practice itself. The essence of the religion continues to be preserved. This is to ensure that on the one hand, the religion continues and on the other, there is no maladministration of any secular activity associated therewith. However, the present case is more concerned with the interpretation of Article 25(2)(b).

III. ARTICLE 25(2)(b)

20. Article 25(2)(b) has two parts; one – providing for 'social welfare and reform' and two – 'throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.'

21. It is submitted that allowing entry of women between the ages of 10-50 in one temple in Kerala does not involve any social welfare or reform, but amounts to a religious reform viz. changing the very character of the deity. As observed by Ayyangar J. (one of the Judges in the majority) in **Syedna Taher Saifuddin Saheb v. State of Bombay**, 1962 Supp (2) SCR 496 @ pg. 552-553:

"... very different considerations arise when one has to deal with legislation which is claimed to be merely a measure "providing for social welfare and reform". To start with, it has to be admitted that this phrase is, as contrasted with the second portion of Article 25(2)(b), far from precise and is flexible in its content. In this connection it has to be borne in mind that limitations imposed on religious practices on the ground of public order, morality or health have already been saved by the opening words of Article 25(1) and the saving would cover beliefs and practices even though considered essential or vital by those professing the religion. I consider that in the context in which the phrase occurs, it is intended to save the validity only of those laws which do not invade the basic and essential practices of religion which are guaranteed by the operative portion of Article 25(1) for two reasons: (1) To read the saving as covering even the basic essential practices of religion, would in effect nullify and render meaningless the entire guarantee of religious freedom — a freedom not merely to profess, but to practice religion, for very few pieces of legislation for abrogating religious practices could fail to be subsumed under the caption of "a provision for social welfare or reform". (2) If the phrase just quoted was intended to have such a wide operation as cutting at even the essentials guaranteed by Article 25(1), there would have been no need for the special provision as to "throwing open of Hindu religious institutions" to all classes and sections of Hindus since the legislation contemplated by this provision would be par excellence one of social reform. 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 Article 25(2)(a) are obviously not of the essence of the religion, similarly the saving in Article 25(2)(b) is not intended to cover the basic essentials of the creed of a religion which is protected by Article 25(1). ..."
 [Emphasis Supplied]

22. It has to be borne in mind that out of all the temples in Kerala (or indeed, across the country), whether dedicated to the worship of Lord Ayyappa or other deities, Sabarimala is the only place where women between the ages of 10-50 are not allowed, owing to the character of the deity. Women are otherwise entitled to enter any temple situated anywhere. Therefore, it is submitted that there is no 'social welfare and reform' that can be carried out by allowing women of a particular age to enter one particular temple, without taking into consideration the form / nature / character of one particular deity.

23. It is submitted that insofar as 'throwing open' is concerned, it is restricted to "Hindu" religious institutions of a public character and is not extended to other religious institutions. The reason is to give effect to the mandate of Article 17. The phrase "all classes and sections of Hindus" must be read in that light viz. those classes and sections of Hindus

to whom Hindu religious institutions of a public character were not previously open at all (total exclusion), on account of their caste and/or exclusionary practices rooted in "untouchability." The Article uses the phrase 'throwing open', so as to convey that the access must be opened to those who have been systemically, generally and historically denied such access across board. In contrast, females as a class are entitled to offer worship at any temple, including at Sabarimala; their entry is regulated only to preserve the sacred form / character of the deity. Therefore, the words 'thrown open' cannot be interpreted to mean that access should be opened for those whom it is already open.

24. It is submitted that the 'throwing open' is to ensure equality of classes and sections of Hindus. Hindu females between the ages of 10-50 may form one class or section thereof, who are precluded from worship because of their age. However, those very females below the age of 50, either upon attaining the age of 50 or before attaining the age of 10, are entitled to worship as they are eligible to worship. Therefore, it is not a question of 'throwing open' but is a question of eligibility to worship. The belief is that God manifests Himself in the idol; only those whose worship will not have the effect of changing the form / character of God can worship there. No person claiming the right to equality is entitled to change the physical or philosophical form in which the idol is worshipped. For instance, a writ cannot lie if a Hindu worshipper prays for changing the physical form of Lord Ganesh's idol as He has the head of an elephant.

25. It is submitted that Article 25(2)(b) is not to be interpreted in a manner which will have the effect of changing or reforming the 'thought, expression, belief, faith and worship' of the rest of the worshippers. The Constitution has to be interpreted meaningfully and contextually. See in this regard, the observations of Lokur J. in **Supreme Court Advocates-on-Record Assn. v. UoI**, (2016) 5 SCC 1 @ 589, paras 693-694:

*"693. ... The Constitution being an organic and living document must be and has been interpreted positively and meaningfully.
694. It is this philosophy, of the Constitution being an organic and living document that ought to be positively and meaningfully interpreted, that is to be found in Samsher Singh. It is this constructive interpretation read with CAD that made the advice of the Council of Ministers binding on the President and not a "take it or leave it" advice. Similarly, "consultation" with the Chief Justice of India has to be understood in this light and not as a "consulted and opinion rejected" situation."*

See also, the observations at page 613, para 773:

"It is trite that the Constitution is a living document. Keeping this in mind, could it be said that a strained interpretation has been given to Articles 124(2) and 217(1) of the Constitution, particularly when the substitution of "consultation" with "concurrence" in the draft of Article 124 was discussed in the Constituent Assembly and not accepted? Definitely not, particularly if one looks at the context in which "consultation" is used and the purpose for which it is used, namely, to fetter the discretion of the President by someone who knows what is in the best interests of the judiciary." [Emphasis Supplied]

26. It is submitted that the 'throwing open' to 'all classes and sections of Hindus' is intended to redress caste-based injustices and not affect gender-based religious practices. At Sabarimala, a woman below 10 and above 50 is entitled to enter irrespective of caste and a woman between the ages of 10-50 is prohibited irrespective of caste. This is because the character of the deity – His Naistika Buddhi and state of celibacy and being a Yogi – has a

nexus with gender, not caste. In the matter of entry to the temple, so-called upper caste women and scheduled caste women are treated at par, and so-called upper caste men and scheduled caste men are treated at par. If the impugned custom was traceable to caste, all scheduled caste men and all scheduled caste women below 10 and above 50 would be prohibited from entering altogether. However, this is not the case inasmuch as all scheduled caste men (like all so-called upper caste men) and all scheduled caste women below the age of 10 and above the age of 50 (like all so-called upper caste women within the permissible age-bracket) are entitled to enter the temple. The matter of entry is linked with eligibility to worship – while all men are eligible, only women below 10 and above 50 are eligible, owing to the character of the deity as a Naistika Bramhachari and Yogi, irrespective of the caste of the (male or female) worshipper. (Please see **Sastri Yagnapurushadji & Anr. Vs Muldas Brudardas Vaishya and Anr.**1966 (3) SCR 242 at 258 and 259 Vol II page 280-281).

27. The Constitution is secular and treats all religions equally. The Hindu religion is singled out insofar as ‘throwing open’ is concerned because, historically, the concept of ‘caste’ does not exist in other religions. Therefore, unless there is an allegation as to discrimination on the basis of ‘caste’, Article 25(2)(b) cannot be pressed into service for ‘throwing open’ Hindu religious institutions. If discrimination (with regard to a religious practice) is alleged on any other ground viz. age, sex, religion, etc. then the issue has to be tested under Article 25(1) alone, as it specifically secures equality to all persons.

28. The legislation enacted in pursuance of Article 25(2)(b) is the Kerala Hindu Places of Worship (Authorization of Entry) Act. Section 3 thereof provides as under:

*"Notwithstanding anything to the contrary contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law or any decree or order of court, 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:
Provided 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 matters of religion."*

It is submitted that the above provision cannot be interpreted to mean that even customs or usages forming an essential part of the religion are overridden, so as to change the existence or identity of the religion, unless such customs or usages are in the teeth of Article 17. The Act has to be interpreted in the same light as the Constitutional provision it is traceable to.

29. It is submitted that the impugned custom, also protected by the impugned Rule 3(b), does not flow from any practice envisaged under Article 17, since women are not subjected to any form of ‘untouchability.’ The custom is not based on any alleged impurity or disability. Therefore, it cannot be said to be in the teeth of Article 17.

30. Therefore, *qua* any religious practice pertaining to any religion (including Hindu religion), it is submitted that if discrimination is alleged on the basis of sex/gender, the issue can be tested only under Article 25(1) – as to whether all sexes/genders are ‘equally’

entitled to profess, practise and propagate religion. In the present case, the right of the devotees and that of the Petitioners (or women claiming under them, if any) has to be tested under Article 25(1) – whether women between the ages of 10 to 50 are equally entitled to worship at Sabarimala as other women below the age of 10 and above the age of 50 and men of all ages.

31. In this context, reference may be had to the decision of this Hon’ble Court in **TMA Pai Foundation v. State of Karnataka** (2002) 8 SCC 481 whereby the mandate enshrined in both, Article 29(2) and Article 30(1), is protected. This Hon’ble Court observes at page 582 at para 149:

“The word “only” used in Article 29(2) is of considerable significance and has been used for some avowed purpose. Denying admission to non-minorities for the purpose of accommodating minority students to a reasonable extent will not be only on grounds of religion etc., but is primarily meant to preserve the minority character of the institution and to effectuate the guarantee under Article 30(1). ... the institution will have to admit students of the non-minority group to a reasonable extent, whereby the character of the institution is not annihilated, and at the same time, the rights of the citizen engrafted under Article 29(2) are not subverted. It is for this reason that a variable percentage of admission of minority students depending on the type of institution and education is desirable, and indeed, necessary, to promote the constitutional guarantee enshrined in both Article 29(2) and Article 30.”
[Emphasis supplied]

Thus, a balance is struck between: (a) preserving the minority character of the institution under Article 30(1), whereunder the minorities continue to have a right to establish and administer educational institutions of their choice, and; (b) effectuating the rights of citizens to seek admission into any educational institution maintained by the State or receiving aid out of State funds irrespective of religion, race, caste or language.

32. Similarly, it is submitted that in the present case also, a balance is struck between preserving the character of the deity so as to effectuate the right of devotees of Lord Ayyappa under Article 25(1), to worship Him in the form of a Naistika Bramhachari and Yogi, and effectuating the constitutional mandate of gender equality by allowing entry of women below 10 and above 50, as opposed to excluding them altogether. It is like a situation where the bottle is half empty when seen from the aspect of ‘what’ is filled but it is half full when seen from the aspect of ‘whether’ it is filled. The question has to be approached from the point of view of harmonizing two competing claims and give effect to both.

33. It is submitted that at Guruvayoor Temple in Kerala, if a worshipper wishes to perform the ‘Udayasthamana Puja’, they have to wait for about 30 years; those whose requests were registered in the year 1994 are performing the puja only now. If a worshipper is ready to wait for so long due to a secular reason (viz. long waitlist), it is *a fortiori* that the worshipper (who believes in and worships Lord Ayyappa, particularly in the form of a Naistika Bramhachari) will be ready to wait to become eligible to worship at Sabarimala for a religious reason. The religious reason is an essential religious practice that has been going on for a long time, and cannot be done away with even though it results in a limited restriction on women viz. waiting to worship for 40 years (after attaining the age of 50), if worship is not offered before the age of 10.

C. AS TO ARTICLES 15 AND 14:

34. It is submitted that since equality is already enshrined in Article 25(1), there is no cause for resorting to Articles 15 and 14 in isolation from Article 25.

35. Article 15 does not include temples or places of public worship within its ambit. The Constituent Assembly Debates reflect that the proposal to include temples and places of worship in Article 15 was categorically negated. See pages 32, 34, 36, 51, 52, 53, 54, 56 of the Compilation of Constituent Assembly Debates. Therefore, it is submitted that customs manifesting essential practices of worship will not be hit by Article 15 but will have to be tested under Articles 25 and 26.

36. While interpreting Article 29, this Hon'ble Court in **TMA Pai Foundation v. State of Karnataka** (2002) 8 SCC 481 at page 582 at para 149, has observed that:

"The word "only" used in Article 29(2) is of considerable significance and has been used for some avowed purpose. Denying admission to non-minorities for the purpose of accommodating minority students to a reasonable extent will not be only on grounds of religion etc., but is primarily meant to preserve the minority character of the institution and to effectuate the guarantee under Article 30(1). ..." [Emphasis supplied]

It is submitted that the said principle may also be applied when interpreting Article 15 of the Constitution which prohibits discrimination 'only' on grounds mentioned therein.

37. See also, **Ewanlangki-E-Rymbai v. Jaintia Hills District Council**, (2006) 4 SCC 748 at page 759-760, paras 26-27, wherein it has been observed as follows:

"26. ... We have earlier noticed the findings of the High Court to the effect that it is the tribal custom of the elaka that the Dolloi of Elaka Jowai must perform both the administrative and religious functions of his office. The High Court has exhaustively considered the evidence on record and considered the various rituals and observances, practices, poojas, ceremonies, customary religious functions which are regarded as integral part of religious customs, and which the Dolloi must perform in the discharge of his duties as the Dolloi. Such rituals, observances, ceremonies, etc. are many in number. The material on record leaves no room for doubt that the office of Dolloi with its dual functions, administrative and religious, is a part of the tribal religion and culture, governed by custom since time immemorial. It logically follows that the Dolloi must be one who is conversant with the indigenous religious practices of the inhabitants of the elaka. He must be one who should be able to lead the people of the elaka in the religious ceremonies according to their custom, and must also be competent to perform the rituals, practices, poojas, ceremonies, etc. which he is required to perform as a duty attached to his office. It is not disputed that a Christian cannot perform the indigenous religious functions which a Dolloi is required to perform, apart from his administrative functions. By long-standing custom, the Dolloi must perform both administrative and religious functions, and such duties cannot be bifurcated by appointing one other to perform the religious functions only. ... The High Court has also noticed the judicial recognition given to the customary practice in the Khasi and Jaintia Hills that a Dolloi cannot be a Christian.
27. Having regard to all these facts, we are in agreement with the High Court that by excluding Christians from contesting for the post of Dolloi, Articles

14, 15 and 16 are not violated. The exclusion is justified by good reason, since admittedly the religious duties of a Dolloi of Elaka Jowai cannot be performed by a Christian. Thus the ground for exclusion of Christians is not solely the ground of religion, but on account of the admitted fact that a Christian cannot perform the religious functions attached to the office of the Dolloi. The reason cannot be said to be either unreasonable or arbitrary.” [Emphasis supplied]

38. In the present case also, the restriction on women between the ages of 10-50 is not solely on account of sex/age but on account of the character of the deity. The custom balances the right of both male and female devotees to worship Lord Ayyappa, while preserving His character as a Naistika Bramhachari, thus also protecting institutional worship.

39. It is submitted that Article 14 is also not attracted because religious customs and practices cannot be tested solely on a secular touchstone. Such beliefs cannot be subjected to principles of rationality so as to determine whether they are constitutional. The ‘classification’ of women in the present case has a ‘religious’ object to be achieved, and not an object which can be tested on the principles of rationality. If the test of Article 14 is applied to religious practices, religion itself will be in doubt. Where the religious belief is predominant, the dispute is one which will not fall within judicially manageable standards. It will be protected by Article 25(1).

40. Therefore, it is submitted that the question of permissibility or impermissibility of the said custom is one that falls outside the realm of judicially manageable standards, for it invites an examination of the character of the deity – whether as a Naistika Bramhachari, He can allow Himself to be in the presence of women who are neither children nor motherly figures.

D. CONCLUSION

41. It is submitted that the custom of restriction on the entry of women between the ages of 10-50 is valid and in conformity with the Constitutional provisions, as well as the Act and Rules. It is not rooted in “untouchability” or any alleged impurity/disability attributable to women on account of any biological occurrence. Rather, it seeks to achieve a religious object viz. preserving the character of the deity, so as to protect and ensure continuance of institutional worship. The character of the deity in the form of a Naistika Bramhachari is of paramount importance in shaping the mode of worship, and the validity of this religious belief cannot be examined in a writ petition under Article 32. The right of the devotees of Lord Ayyappa who worship Him in the form of a Naistika Bramhachari is protected under Article 25(1), and the constitutional mandate of gender equality is also fulfilled by permitting the entry of women of a certain age so as to preserve the character of the deity. The right of these devotees under Article 25(1) cannot be made subject to the claim of the Petitioners to enter the temple purportedly under Articles 14, 15, 17 or 25 or Section 3 of the Act, since they do not profess faith in the Lord themselves but claim to be social activists. They also do not claim to have filed the writ petition on behalf of the worshippers who desire to worship at Sabarimala. Therefore, the petition does not seek to enforce any fundamental right to worship under Article 25 at all and is not maintainable under Article 32.

