

15 -ാം കേരള നിയമസഭ

14 -ാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നം ഇല്ലാത്ത ചോദ്യം നം. 832

17-09-2025 - ൽ മറുപടിയ്ക്ക്

ശബരിമലയിലെ യുവതി പ്രവേശനം

ചോദ്യം		ഉത്തരം	
ശ്രീമതി ഉമ തോമസ്		ശ്രീ. വി.എൻ വാസവൻ (തറമുഖ - സഹകരണ - ദേവസ്വം വകുപ്പ് മന്ത്രി)	
(എ)	ശബരിമലയിലെ യുവതി പ്രവേശനം സംബന്ധിച്ച് 2011-16 കാലയളവിലെ സർക്കാർ നൽകിയ സത്യവാങ്മൂലം മുൻ സർക്കാർ തിരുത്തി നൽകിയിട്ടുണ്ടോ; 2011-16 കാലയളവിലെ സർക്കാർ നൽകിയ സത്യവാങ്മൂലത്തിന്റെയും മുൻ സർക്കാർ നൽകിയ സത്യവാങ്മൂലത്തിന്റെയും പകർപ്പ് ലഭ്യമാക്കാമോ?	(എ)	ശബരിമലയിലെ യുവതി പ്രവേശനം സംബന്ധിച്ച് 2011-16 കാലയളവിലെ സർക്കാർ നൽകിയ അഡീഷണൽ സത്യവാങ്മൂലം മുൻ സർക്കാർ തിരുത്തി നൽകിയിട്ടില്ല. 2011-16 കാലയളവിലെ സർക്കാർ നൽകിയ സത്യവാങ്മൂലത്തിന്റെ പകർപ്പ് അനുബന്ധം ആയി ചേർക്കുന്നു.

സെക്ഷൻ ഓഫീസർ

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
WRIT PETITION (CIVIL) 373/2006

IN THE MATTER OF:

INDIAN YOUNG LAWYERS ASSOCIATION ... PETITIONERS
AND ORS

VERSUS

THE STATE OF KERALA AND ORS. ... RESPONDENTS

1.

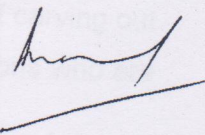
ADDITIONAL AFFIDAVIT ON BEHALF OF STATE OF KERALA

1. I, Jiji Thomson aged 59, s/o Easo Thomas residing at Thiruvananthapuram do hereby solemnly affirm and state as under:
2. That I am the Chief Secretary Government of Kerala and I am conversant with the facts of the case as derived from the records of the case and as such I am competent to swear this affidavit.
3. It is submitted that the State Government had filed an affidavit dated 13.11.2007 in the said matter. The said affidavit had stated that the State government was bound by the decision of the High Court of Kerala in OP 9015 of 1990 (AIR 1993 Ker 42), which remained unchallenged. In the said decision, on the basis of evidence adduced by Thanthris (priests) before the High Court that the prohibition of entry of women between the age of 10 and 50 was part of the old customs and usages of the temple, it was concluded that 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. In the affidavit filed on behalf of the State Government it was stated that "As such Government cannot render an independent

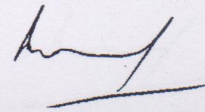
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direction against the present prevailing custom, regard being had to the finality of the said judgement over the disputed questions of facts which requires the necessity of adducing evidence also".

4. However thereafter the affidavit filed on behalf of Respondent No.1 and 5 went on to support the present Petition and stated interalia that "it is not fair to deny a section of women from entering Sabarimala Temple and make worship". The affidavit questions the efficacy of the established rituals, observances of the Sabarimala temple which are strictly matters of religion and also makes a case for changing the customs of the temple and makes a plea for appointment of a commission of scholars to submit their views on the issue of making the temple open to worship for all women irrespective of their age.
5. It is submitted that the said assertions which are contrary to the binding finding of fact recorded in OP 9015 of 1990 has no legal basis as it questions the binding decision in OP 9015 of 1990 of the existence of a religious belief prohibiting entry of women into Sabarimala. These assertions are also contrary to the stand taken by the government in the High Court in OP 9015 of 1990. It is submitted that it is not open for the State to have taken a stand at variance with the stand taken before the High Court which is also in clear derogation of the directions issued by the High Court which have attained finality and are binding on the State Government. Further the affidavit has erroneously sought to support the present writ petition questioning the legality of a state legislation viz Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965. In view of these mistakes, leave of this Hon'ble Court is sought to withdraw the earlier affidavit dated 13.11.2007 filed before this Hon'ble Court.
6. It is submitted that only when the matter was listed in Court in January 2016 that the authorities noticed the erroneous stand taken in the earlier affidavit dated 13.11.2007.



7. It is submitted that the Sabarimala Sree Dharama Sastha Temple is so unique that it allows all types of devotees in its precincts irrespective of their religion. It is also unique inasmuch as it has a special shrine in its premises for a holy man from Islamic faith. It is only after paying obeisance before Vavar Swami that the devotees enter the shrine of Lord Ayyappa.
8. It is submitted that Article 25 and 26 of the Constitution guarantee every person and community, the right and freedom to profess, practice and propagate religion and manage its own affairs in matters of religion. It is settled that a religion not only lays down a code of ethical rules but may also prescribe rituals and observances, ceremonies and modes of worship. These, when they constitute an integral/ essential part of the religion is protected under Article 25 and 26 of the Constitution. It is also settled that what constitutes an essential part of religion is primarily to be ascertained with reference to religious beliefs.
9. In the context of the Sabarimala temple, the administration of the temple vests with the Travancore Devaswom Board under the provisions of the Travancore- Cochin Hindu Religious Institutions Act, 1950. Under S. 31 of the said Act, there is a statutory duty cast on the Devasom Board to arrange worship in temples in accordance with the usage. Therefore in matters of religion, it is the opinion of the priests that is final.
10. It is settled that under ceremonial law pertaining to temples, who are entitled to enter into them for worship, where they are entitled to stand and worship and how worship is to be conducted are all matters of religion protected both under Article 25 and Article 26(b). This is clear also from Article 25(2)(b), which enables the State to make a law throwing open Hindu religious institutions of a public character to all classes and sections of Hindus. Implicit in the necessity of carving out such an exception is the fact that the right to exclude persons who are



not entitled to participate in worship according to the tenets of the religious institution in question is a matter of religion.

11. In the present case, the Thantris who are the priests of the Sabarimala Temple have tendered evidence in OP 9015 of 1990 that restriction on entry of women between the age group of 10 and 50 is a part of the customs and usages of the Sabarimala Temple. That the High Court of Kerala, after taking evidences of as many as many priests (thantris) conversant on the customs and usages of the temple, found thus:

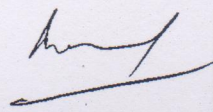
"There is a vital reason for imposing this restriction on young women. It appears to be more fundamental. The Thantri of the temple as well as some other witnesses have stated that the deity at Sabarimala is in the form of a Naisthik Brahmachari. "Brahmachari" means a student who has to live in the house 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 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 Naisthik Brahmchari 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)

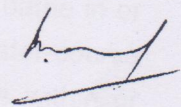
Manu Smriti Chapter II, Sloka 179.



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 Thanthrimukhya recognised by the Travancore Devaswom Board, while examined as C.W. 1 stated that God in **Sabarimala** is in the form of a Naisthik Bramchari. 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."

12. It is submitted that lakhs of women devotees visit Sabarimala every year. However the restriction of women between the age of 10 and 50 has been prevailing in Sabarimala from time immemorial. This is in keeping with the unique "pratishtha sangalp" or idol concept of the temple. The same is an essential and integral part of the right of practice of religion of a devotee and comes under protective guarantee of the Constitution under article 25 and 26 which has been held to contain a guarantee for rituals, observances, ceremonies and modes of worship which are an essential or integral part of religion. It is then immune from challenge under Article 14. This Hon'ble Court in *Ritu Prasad Sharma v. State of Assam*, (2015) 9 SCC 461 held that religious customs which are protected under Articles 25 and 26 are immune from challenge under other provisions of Part III of the Constitution. It is submitted that the challenge raised in the present writ petition must necessarily fail.



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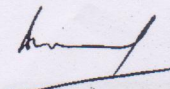
13. This Hon'ble Court in *Ritu Prasad Sharma's* case also noted as follows:

Religious freedoms protected by Articles 25 and 26 can be curtailed only by law, made by a competent legislature to the permissible extent. The Court can surely examine and strike down a State action or law on the grounds of Articles 14 and 15. But in a pluralist society as existing in India, the task of carrying out reforms affecting religious beliefs has to be left in the hands of the State. This line of thinking is supported by **Article 25(2)** which is clearly reformist in nature. It also provides scope for the State to study and understand all the relevant issues before undertaking the required changes and reforms in an area relating to religion which shall always be sensitive.

It is submitted that the present writ petition which seeks to change the beliefs and customs of crores of devotees by judicial process is wholly misplaced and liable to be dismissed.

14. It is submitted that the Petitioners have challenged the constitutionality of Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 which provides that women at such time during which they are not by custom and usage allowed to enter a place of public worship shall be included in the class of persons who shall not be entitled to offer worship in any place of worship. It is submitted that said Rule only reflects the guarantee under Articles 25 and 26(b) where rituals, ceremonies and modes of worship which are exclusively matters of religion are excluded from the legislation under Article 25(2)(b). A perusal of Rule 3(b) would make this clear.

3. The classes of persons mentioned hereunder shall not be entitled to enter or offer worship in any place of public worship or bathe in or use the waters of any sacred tank, well, spring or water-course appurtenant to a place of public worship whether situate within or outside the precincts thereof, or any requisite for obtaining access to the place of public worship-



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- (a) Persons who are not Hindus
- (b) Women at such time during which they are not by custom and usage allowed to enter a place of public worship.
- (c) Persons under pollution arising out of birth or death in their families
- (d) Drunken or disorderly person.
- (e) Persons suffering from any loathsome or contagious disease
- (f) Persons of unsound mind except when taken for worship under proper control and with the permission of the executive authority of the place of public worship concerned.
- (g) Professional beggars when their entry is solely for the purpose of begging.

It is clear that it is only customs and usages of temples and rules required to maintain order, decorum and safety of the temple which are protected by these rules and such exclusions are not on the basis of caste, birth, pedigree or sex but based on the beliefs, customs and usages of the temple. As far as Sabarimala is concerned, restriction of entry to persons who are not Hindus is not applicable and devotees of all religions worship at Sabarimala.

15. It is submitted that Sabarimala Temple attracts 3.5 to 4 crore pilgrims every year out of which roughly 3 crore pilgrims visiting during the special time called Mandalam which extends from November to January. It is submitted that the State Government is duty bound to protect the right to practice their religion of these devotees. It is therefore submitted that the present petition is devoid of merits and liable to be dismissed.



DEPONENT

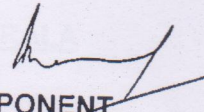
JIJI THOMSON
Chief Secretary

VERIFICATION

I, Jiji Thomson, the above named deponent do hereby solemnly affirm and swear that the facts stated in the above affidavit are true and correct and are based on the records of this case.

Verified at Thiruvananthapuram on the 4th day of February, 2016.




DEPONENT
JIJI THOMSON
Chief Secretary