

**CHIEF JUSTICE'S COURT**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MRS. JUSTICE B.V. NAGARATHNA**  
**HON'BLE MR. JUSTICE M.M. SUNDRESH**  
**HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH**  
**HON'BLE MR. JUSTICE ARAVIND KUMAR**  
**HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH**  
**HON'BLE MR. JUSTICE PRASANNA B. VARALE**  
**HON'BLE MR. JUSTICE R. MAHADEVAN**  
**HON'BLE MR. JUSTICE JOYMALYA BAGCHI**

**COURT NO.1**  
**SUPREME COURT OF INDIA**  
**RECORD OF PROCEEDINGS**

**R.P. (C) No. 3358/2018 In W.P. (C) No. 373/2006**

**KANTARU RAJEEVARU**

**Petitioner(s)**

**VERSUS**

**INDIAN YOUNG LAWYERS ASSOCIATION THR, ITS GENERAL  
SECRETARY MS. BHAKTI PASRIJA AND ORS**

**Respondent(s)**

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TRANSCRIPT OF HEARING

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10:30 AM IST

1 **MOHAMMAD NIZAMUDDIN PASHA:** [NO AUDIO] pages 22 to 56 that's my original  
 2 written submissions. Your Lordship starts at page 25. 22 and all is the index, etc. I'm grateful  
 3 to Your Lordship. Your Lordship, on page 1 of my present written note...

4 Sir, Syed Altamash Nizami, who is one of the *Peerzadas* of the Hazrat Nizamuddin Dargah.  
 5 Your Lordship, the reason why we have... we were constrained to file this Intervention  
 6 Application, was because the writ petition came to be filed in the Delhi High Court pursuant  
 7 to the judgment in the ***Sabarimala*** case by Five-Judge Bench of My Lords. The writ petition  
 8 said that it was... the Petitioner was a law student who came to Delhi for internship, happened  
 9 to visit the Hazrat Nizamuddin Dargah, and there was stopped from entering the so-called so  
 10 to speak sanctum sanctorum, the small enclosure where the grave itself is housed and said that  
 11 that was a violation of her ***Sabarimala*** - declared rights and therefore, the High Court was  
 12 asked to pass a writ prohibiting that the practice of prohibition of women for their entry inside  
 13 the sanctum sanctorum of the Holy Dargah of Nizamuddin Auliya is illegal and  
 14 unconstitutional. So, the question that My Ladyship has been asking, that a complete third  
 15 party interloper non-believer should walk into a religious place of worship and demand that  
 16 all matters of faith yield to their whims and fancies - this is the starkest example that is  
 17 possible, where a law student said I came for internship, I wanted to enter the sanctum  
 18 sanctorum and I'm being stopped and this is a violation of my ***Sabarimala*** - declared rights.

19 Your Lordship, just by way of background, a Dargah, Your Lordship knows, is a place where a  
 20 saint is buried. While there are sharp divisions within Islam on what is the status of persons  
 21 who have passed away and saints who have passed away, but insofar as the Sufi system of  
 22 belief is concerned, there is a lot of reverence which is attached to the place of interment of a  
 23 Saint. Your Lordship, what is also important is, I want to mention that the learned Solicitor  
 24 said that in the context of the Ajmer Dargah and Nizamuddin Dargah that everybody goes  
 25 there, therefore, it is not a religious denomination in that sense. While I'll come to the question  
 26 of religious denomination later, but I just wish to also point out that while ***Durgah***  
 27 ***Committee*** was decided on the assumption without going into the case of whether or not it  
 28 amounts to a denomination, they said we'll assume and proceed, but ***Devaru*** itself had, had  
 29 held, My Lords had held that the mere fact that other persons non-adherents are allowed to  
 30 enter, doesn't take away the denominational character of a place of worship. So, Your  
 31 Lordship, the Sufi *silsila*, as the Sufi systems and the Sufi system of belief, there are four major  
 32 systems in India, the *Chishtiyya*, the *Qadiriyya*, the *Naqshbandiyya*, and the  
 33 *Suhrawardiyya*. This is the *Chishtiyya silsila*. Your Lordship, the system is... first I wish to

1 point out definitely a religious denomination, because the if you read the books, for instance,  
 2 the *Fawā'id al-Fu'ād* which is the, the sayings of Nizamuddin Auliya himself, there is a lot of  
 3 emphasis on following the practices of Islam; so, *roza*, *namaz*, *Hajj*, *zakat* and first of all of  
 4 course faith - *iman* - all of them are *sine qua non* of being a Sufi and in addition to that certain  
 5 other esoteric practices by way of devotional and spiritual means of attaining the divine are  
 6 prescribed in addition to and not in derogation of the main core. So, it is very definitely an  
 7 Islamic school. And to enter a Sufi *silsila* or become part of a Sufi *silsila*, you have to take  
 8 *Bai'at*, which is an oath of allegiance on the hands of a Sheikh who is permitted to take the  
 9 system forward... And so, in that sense it has a rite of passage. So, a religious faith which has  
 10 a rite of passage in this, in the sense in which the word 'denomination' has been understood is  
 11 very much a denomination for purposes of Article 26. And while I have something to say on  
 12 denominations for Article 26, I'll come to that later.

13 **JUSTICE AHSANUDDIN AMANULLAH:** Just a minute. Would you take your argument  
 14 on a higher pedestal that Dargah is basically a Sufi... Sufi type of an institution.

15 **MOHAMMAD NIZAMUDDIN PASHA:** Your Lordship, yes.

16 **JUSTICE AHSANUDDIN AMANULLAH:** All Dargahs are under the Sufi tradition. Now,  
 17 Sufism itself is a denomination and any section thereof, for all the individual Dargahs become  
 18 section thereof...

19 **MOHAMMAD NIZAMUDDIN PASHA:** I'm grateful, Your Lordship. Your Lordship so...

20 **JUSTICE AHSANUDDIN AMANULLAH:** The language itself would...

21 **MOHAMMAD NIZAMUDDIN PASHA:** Grateful, Your Lordship. In fact, for purpose of  
 22 Article 26, my argument will be and I'll come to that later, that because it includes  
 23 denomination or any section thereof, no religious institution or place of worship will be left  
 24 without a protection of Article 26, because if you take the view that some groups and schools  
 25 amount to a denomination and some don't, that leads to the absurd consequence that some  
 26 places of worship have no right of internal management and some do, which is not the purpose  
 27 of Article 26 at all. And I'll come to that later, but I'm very grateful for My Lord's question. I'll  
 28 answer it when I address that issue in turn, if My Lords permit.

29 Your Lordship, so therefore, a Sufi *silsila* is very much a religious denomination even as  
 30 presently understood pursuant to My Lord's judgments. Your Lordship, an argument that Mr.  
 31 Giri made, I just want to emphasize that a place of worship cannot be separated or segregated  
 32 from the faith or belief attached to it. That's... a piece of land in Hazrat Nizamuddin Basti is  
 33 nothing if not the Dargah of Hazrat Nizamuddin Auliya. So, to say that it exists in any  
 34 dimension other than the faith that exists around that place, is to misunderstand the concept

1 of a place of worship or a place of religious significance because if you don't take the faith as  
2 you find it, and have an objection to the faith itself, then what is that place to you and why are  
3 you there are questions which automatically arise for consideration, because Your Lordship,  
4 if the right of a person under Article 25 and 26 is to be made subservient to the right of a tourist  
5 or a passerby or a curious onlooker to take a walk, Your Lordship, then it makes a mockery of  
6 Article 25 and 26. Because, it's not as if it is a place of... like there is a denial, for instance, what  
7 Article 17 contemplated, that public wells... places of any kind of public resource etc., are being  
8 kept aside for only one... one caste, community, gender. It's a belief system and that place of  
9 worship is nothing but the belief system, there is nothing more to it and that same goes for the  
10 Sabarimala temple; it's just a hill, if not, for the fact that there is a temple of Ayyappa there.  
11 So, Your Lordship therefore, when that right is demanded that I should be allowed to go on a  
12 whim, because it's nothing more than a whim, then to reduce that right to subservience to a  
13 whim is to make a mockery of Article 25; that's my first point.

14 Therefore, Your Lordship, my conclusion in paragraph 8, that therefore, a person who does  
15 not share the belief has no constitutional entitlement to enter a place of worship on the basis  
16 of a claimed right to equal access and certainly cannot invoke PIL jurisdiction as a vehicle to  
17 subserve these whimsical desires. Your Lordship this is insofar as non-adherents are  
18 concerned, which is the question that My Ladyship had been...

19 I'll move... I'll move then to what is the status of adherence in the course of my argument. Your  
20 Lordship on the first, this is the because the seventh issue automatically stands answered with  
21 these submissions on the *locus standi* of a person who's, who doesn't belong to the community.  
22 Your Lordship, on the first issue which is the scope and ambit of Article 25, if Your Lordship  
23 will just have my written submissions and this is the history has already been shown to My  
24 Lord, so I'm not repeating that, but just for the visual aid if Your Lordships may have page 33  
25 of my written original written submissions at Volume I.3.

26 **CJI SURYA KANT:** There you have reproduced the different texts which were proposed as  
27 to...

28 **MOHAMMAD NIZAMUDDIN PASHA:** That's right, Your Lordship. Just as a visual aid  
29 for ready reference if Your Lordship has that table, Your Lordship sees that in the first two  
30 boxes in that table, the present Article 25(2) exists as an explanation.

31 **CJI SURYA KANT:** Maybe, probably you have, what you want to say you have summed up  
32 in 17.

33 **MOHAMMAD NIZAMUDDIN PASHA:** And therefore, Your Lordship, the argument itself  
34 I've made in my new note that what was originally crafted as an explanation, and Your

1 Lordship that's also an aid to its understanding, because in principles of statutory  
2 interpretation, an explanation has a certain ambit and a certain role. An explanation cannot  
3 take away from the main section what is not there, what is there in the main section, it cannot  
4 add to the main section what is not there in the main section. Therefore, it can only explain  
5 parts of the main provision itself. And Your Lordship, what I'm pointing out is, I've gone  
6 through all the debates surrounding the evolution of Article 25, the conversion from an  
7 explanation to a sub-clause was merely an exercise in renumbering with no debate or  
8 discussion. Therefore, it doesn't seem that there is some thought behind that it is now to be  
9 elevated to the status of article, of a sub-article. It was merely renumbered at some stage, some  
10 latter stage in it, in the course of its drafting. It was always contemplated as an explanation to  
11 the main article. And today Your Lordship, if we see it as an explanation to our article sub-  
12 clause (2)... as an explanation to of Article 25(1), Your Lordship that throws light on the  
13 meaning and the scope and ambit of Article sub-clause (2), because one, 2(a), which is the  
14 social, political, financial and secular activities, will be an explanation to religion by defining  
15 what religion is not. And I've made that argument in my written submissions of essentially  
16 religious and essentially secular which has already been made; so, I'm not repeating that. But  
17 Article 25(2)(a), which is "Regulating or restricting any economic, financial, political or other  
18 secular activity which comes to be associated with religious practice" is defining what religion  
19 in 25(1) is not. Therefore, what is essentially religious is in 25(1), what is essentially secular is  
20 dealt with by way of explanation, explanation to say that therefore, that is not squarely covered  
21 by the protection of Article 25(1).

22 Your Lordship, and the second part, 25(2)(b), will operate within the ambit of the power which  
23 is already given in 25(1) which is public order, morality, health and other provision of this part.  
24 Therefore, if there is a concern of public health, how will that concern be introduced into the  
25 law? It will be by way of a law, by the State and social reform will, therefore, be coloured by  
26 one of these four. Social reform cannot be anything other than one of these four. So, social  
27 reform as anything outside of either public health or morality or public order or...

28 **JUSTICE M.M. SUNDRESH:** It is bit difficult to accept, we note it down.

29 **MOHAMMAD NIZAMUDDIN PASHA:** Your Lordship, for the reason, because otherwise  
30 social reform is an absolute power with no checks and balances in the Constitution which is  
31 antithetical to our understanding of the Constitution. Therefore, Your Lordship, to see it as an  
32 explanation therefore, (2)(a) then qualifies public order, morality, health and other provisions  
33 of this part that under these heads, the State can pass laws on reform or social welfare.

1 So, Your Lordship, therefore, in my submissions, I have cited judgments on statutory  
2 interpretation of an explanation to say that it cannot take away, or it cannot add something  
3 which is there not in the main section because this was simply an exercise in renumbering.

4 Your Lordship, now, I come now to the Essential Religious Practices test which has come to  
5 also be read into Article 25(1), because the first issue deals with the scope and ambit of 25(1).  
6 Your Lordship, if in Justice Ayyangar's judgment in **Sardar Syedna's** case, Justice Ayyangar  
7 reads "essential practices at as what is impervious to even social reform". Therefore, in his  
8 understanding essential practices was an additional level of protection that your religious  
9 practices are protected but your essential religious practices are not even subject to social  
10 reform under sub-clause (2). So, what was originally being seen... of course, in origin it was  
11 essentially religion and essentially secular, but when it started becoming Essential Religious  
12 Practice, one of the first statements of that, one is of course **Durgah Committee**, which we  
13 are all questioning and the other was Justice Ayyangar's concurring opinion in **Sardar**  
14 **Syedna** where he says what is essentially religious is impervious even to power of social  
15 reform. Because in the name of social reform, you can't take away the core of a religion and  
16 the identity of a religion. And for this, Your Lordship, one example that that comes to mind is  
17 that of self-flagellation by Shias during Muharram. Nobody can say that self-flagellation is not  
18 contrary to health, but it is for the State to decide on a policy prescription whether this requires  
19 interference on the ground of health under 25(2)(a) read with the health or being core to the  
20 practice of the persons who do it, because the entire schism in Sunni and Shia Islam was  
21 around the of Battle of Karbala on the 10th of Muharram and so, that is integral to the Shia  
22 faith in that sense. So therefore, in Justice Ayyangar's understanding that is impervious even  
23 to social reform because it is an essential practice; so all practices are protected, but some  
24 practices are outside the reach of the State is how Justice Ayyangar reads Article 25 and I  
25 commend Justice Ayyangar's view to My Lords for acceptance that, that is the understanding  
26 that core religious practices are outside even the purview of social reform on the grounds of  
27 public health, morality, public order, or other provisions of this part.

28 Now Your Lordship, I come to the interplay between 25 and 26. Here, I just wish to point out  
29 that 25 and 26 have been used in the latter judgments almost synonymously, as if this is... a  
30 practice is sought to be protected, saying this is my 25 right and my 26 right, without really an  
31 attempt to make a distinction between 25 and 26. Your Lordship, there will no doubt be an  
32 overlap, but in my humble submission, the degree of overlap between 25 and 26 is far smaller  
33 than it has come to be in the course of latter judgments, because 25 protects religion and  
34 religious practice and 26 protects the right to manage affairs in relation to religious... religion  
35 and religious practice which is in (1). So, the practice is in (1), the right to manage affairs in  
36 relation to that practice is in (2), and therefore, while there will be an overlap, but the overlap

1 is not as large as it is made out to be, because anything will either be a practice or will be the  
2 right to management of affairs in relation to the practices. So, for instance, Justice Bagchi gave  
3 the example of cannibalism or mass suicide, while there has to be a policy prescription and the  
4 right of the State's to control something like that, but Your Lordship that automatically comes  
5 into the domain of practice. So, in my humble submission, something like that is not within  
6 the domain of management of affairs in relation to religion, if you are prescribing that  
7 everybody commits mass suicide or that people engage in cannibalism. The practice itself is  
8 the focus here and the practice is covered in 25(1) and therefore, subject to other provisions of  
9 this part, and also subject to the right of the State to make a legislation for social reform.

10 For this, if Your Lordship has page 4 of my written note and I've reproduced that for my  
11 submission, so, Your Lordship can just continue on this note. Your Lordship sees para 21. The  
12 reason why I say that consciously 26 was placed on a higher pedestal to 25, and 25 is made  
13 subject to 26 and not the other way round, is because under 25, an individual has a right under  
14 freedom of conscience to choose not to believe in God. An individual has a right, under Article  
15 25 to believe in God but not to practice organized religion. An individual has a right in 25 to  
16 believe in an organized religion while declining to participate in certain practices of that  
17 organized religion.

18 **CJI SURYA KANT:** That we have understood.

19 **MOHAMMAD NIZAMUDDIN PASHA:** And only at the last stage having chosen not to  
20 exercise these rights, when an individual comes to an organized religion, an institutionalised  
21 religion, the individual is giving up all these rights and choosing to sub serve his own right or  
22 her own right under Article 25 to practice religion 'to the collectives.' And that is why the  
23 collective must have a higher right, because there are three levels of choice before you enter  
24 this space and it is not... nobody is forcing you to practice organized religion.

25 **CJI SURYA KANT:** Yes.

26 **MOHAMMAD NIZAMUDDIN PASHA:** When you choose to, you have automatically  
27 surrendered some rights.

28 Your Lordship, here I would like to take the example of a company. Now, an individual has a  
29 right under Article 19(1)(a) to express an opinion. An opinion may be on an international issue,  
30 say of an ongoing war. I may take a position I may voice an opinion in relation to Ukraine or  
31 Iran or Palestine or any conflict which is going on. But I can't as a matter of right demand that  
32 a company of which I am a Shareholder, must of necessity, reflect that opinion and say boycott  
33 the goods produced in one of these aggressor countries, or not trade with an entity which is  
34 located in one of these countries. The corporation's right is not subservient to the right of the

1 Shareholder, because the corporation has certain levels of management. And that's the point  
2 that I'm trying to come to that, management is regulated by board resolutions, Shareholder  
3 resolutions, special resolutions and so, the management will not be interfered with on the basis  
4 that the individual right is...

5 **JUSTICE M.M. SUNDRESH:** The example will not come under this, that's why we say this  
6 is wrong example. We appreciate what you're saying yes, we are dealing with the company, we  
7 are dealing with the rights of the individual, yes...

8 **MOHAMMAD NIZAMUDDIN PASHA:** Your Lordship therefore, I'm saying that the  
9 collective and I'm making that analogy to co-operative societies or to the to Mr. Rohatgi gave  
10 the example of a club, that eventually the right on what you can and cannot do in that club will  
11 belong to the collective, and therefore, the collective's right have consciously been placed  
12 above the right of the individual. That's my submission.

13 Your Lordship, and therefore, in this prescription, when we come to 26(b) and 25(2), since in  
14 this formulation, the right of the collective to indoor management is what in my submission is  
15 covered in 26(b) and the right of the actual practice is covered in 25(2), what lies at the cusp  
16 of this outward manifestation of practice and indoor management is entry. Because if you're  
17 looking at this inside-outside perspective, then the point at which the inside and the outside  
18 meet, which is the entry to a religious place and that's why the question of entry is not simply  
19 only in 25 or only in 26. And the Constitution makers have chosen consciously to keep a certain  
20 aspect of entry which is, a policy prescription or a constitutional imperative in Article 17, has  
21 been built into 25(2) and only to that extent... for the reason that yes, like *Devaru* itself says  
22 that right to regulate entry is part of management. However, as insofar as entry of the  
23 oppressed classes into places of worship and the imperative Article 17 is concerned, that read  
24 with 25, the second part of 25(2)(b) will be a caveat or a takeaway from the right to religion  
25 itself. But however, any other form of entry, like I said, in this cusp of indoor versus outward  
26 manifestation, all other forms of entry will be in 26, because a religious institution, will in  
27 other modes and manners, have a right to decide who can and cannot enter the institution. So,  
28 when the learned Solicitor took an example that we all go to Hazrat Nizamuddin Dargah, that  
29 is true, but that is a right that the management chooses to exercise of entry by allowing entry  
30 of persons who are outside, who are non-adherents to the denomination, so that doesn't take  
31 away from the right, but it is an exercise of that right to prescribe....

32 **JUSTICE M.M. SUNDRESH:** *Devaru* says so. No difficulty.

33 **MOHAMMAD NIZAMUDDIN PASHA:** Your Lordship, please?

34 **JUSTICE M.M. SUNDRESH:** *Devaru* says so.

1 **MOHAMMAD NIZAMUDDIN PASHA:** Your Lordship, please, *Devaru*, I'm grateful.  
2 Your Lordship, now on the question of denomination, the question that My Lord Justice  
3 Amanullah asked and I said I'll come back to it, Your Lordship in my reading, if we look at,  
4 and, the Constituent Assembly debates at no point suggest otherwise, if we read at Article 25,  
5 26 to see, is there or is there not a denominational right in relation to this place of worship, it  
6 will lead to the absurd consequence that what we see as parts of right of management, for  
7 instance, hours that the place of worship remains open. In what form or manner, you can  
8 come? Like Mr. Rohatgi gave the example of shirtless or... in... or without shoes. A non-  
9 denominational institution will have no right of management, because we are saying that right  
10 of management vests solely in a denomination; so, where there is no denomination, there is  
11 no right of management, is the necessary *sequitur*. So, Your Lordship, my submission is that  
12 the correct inquiry in Article 26 is not, is there a denominational right in this place of worship  
13 or not? The correct inquiry is who is the right holder for purpose of this particular institution  
14 of place of worship? Because in every instance of every religious institution and every place of  
15 worship, there will be a right holder of Article 26 and that's why it says "or section thereof",  
16 that are in a sense a non-denominational mosque is not a mosque which has no Article 26  
17 right; it's just that it is a, say a section of the larger Sunni faith or a section of the larger Shia  
18 faith. So, there will always be a denomination or a section of a denomination. The only inquiry  
19 will be: who is the right holder? It could be that the local Masjid Committee, which is organised  
20 by the neighbourhood, which uses that mosque. They will still be a right holder and there will  
21 still be a right because otherwise, there will be no right of management in this masjid. It must  
22 be open at all hours, anyone must be able to walk in and do whatever they please because there  
23 is no right of management which is given by the Constitution. So therefore, the correct inquiry  
24 even, is not, is this denominational or not, but the correct inquiry is to find the right holder  
25 and in every single case, I submit with the greatest of respect, there will be a right holder.

26 **JUSTICE AHSANUDDIN AMANULLAH:** If I understood you correctly, you mean to say  
27 that the basic focus should be that the right is to manage. Now everything, there is a modality  
28 to everything; there cannot be anarchy. Suppose there is a Dargah or a Temple, there will be  
29 elements associated with the entry, with the modality, how you worship, the sequence, now  
30 somebody has to do that.

31 **MOHAMMAD NIZAMUDDIN PASHA:** I'm grateful.

32 **JUSTICE AHSANUDDIN AMANULLAH:** ...there is nobody, I walk in, I do whatever and  
33 I come back, all the gates are left open 24 hours, so who is that body who manages? When that  
34 will come into the protection because it has to be regulated, *per se* entry cannot be banned,  
35 they cannot be discrimination on the broader constitutional parameters, but then for every  
36 institution there has to be some norm. Who sets the norms; it cannot be that I decide my norm,

1 you decide your norm, every individual decides their norm. There has to be a body and that  
2 body has been given the protection to decide.

3 **MOHAMMAD NIZAMUDDIN PASHA:** I'm grateful, Your Lordship. Therefore, there will  
4 be no place of worship which is devoid of the right of... under Article 26, because otherwise if  
5 it's just an Article 25 right, then situation will arise saying that Dargah is a place of worship,  
6 you may have a right to go there and offer namaz, but I have a right to go there and do *aarti*  
7 and *bhajan*. So, Your Lordship, therefore, just a 25 right becomes competing rights, you  
8 exercise yours, I exercise mine, nobody has the right to manage. Therefore, every place of  
9 worship will have a right of the community that manages that place of worship which will be  
10 the right holder. So, the only judicial inquiry is who is the right holder under Article 26? Not  
11 is there a right under Article 26? That question itself, with greatest of respect Your Lordship,  
12 has been a misplaced question which has been raised and therefore answered in some  
13 judgments. The only question and only inquiry is, who is the right holder for purpose of 26?  
14 And that right will always exist. Your Lordship because otherwise the anomaly that My Lord  
15 Justice Amanullah points out will arise where, say a Dawoodi Bohra place of worship, because  
16 they are a denomination, will have certain rights. A Khwaja place of worship, because there is  
17 certain denomination, will have certain rights. But a Masjid, say formed by the residents of a  
18 residential society or a neighbourhood, which is for open to all sections of Muslims, will have  
19 no right of management and therefore, anybody can enter, like I said, and demand any right.  
20 So, Your Lordship, that right that I can't go into, walk into a Masjid and demand that I give  
21 these *azaan*, irrespective of whether it is a denominational Temple or not, and nobody can  
22 walk into a Masjid and ring bells and conduct *bhajan* irrespective of whether it is a  
23 denominational mosque or not, is a concomitant of Article 26 and the right holder will just be  
24 the local community. So, the only inquiry is, what is that community? Is it the housing society?  
25 Is it... and so Your Lordship, it is a religious denomination because it is a religious place of  
26 worship. So, the Muslims in place A, who are operating through a Masjid Committee because  
27 a lot of them... Your Lordship sees litigation around protection of mosques comes through  
28 Masjid Committees, which are largely informal bodies formed of *namazis* who are regular in  
29 that Masjid and they select, elect from amongst themselves on the Muslim principle of election  
30 or *Shura*, the persons who are to represent; that will be the right holder. So, that religious  
31 group will be the denomination or section thereof which is in question for Article 26, is my  
32 humble submission.

33 Now on the question of constitutional morality...

34 **CJI SURYA KANT:** What else is left? 40 minutes.

1 **MOHAMMAD NIZAMUDDIN PASHA:** Your Lordship, just then I'll wrap up with just two  
2 remaining submissions. Your Lordship on constitutional morality, my submission is, a lot has  
3 been said on how morality is, and I am just saying that morality has to be a legislative  
4 prescription, for the reason that there is the body of representatives which is elected to  
5 Parliament and they speak for the people that this is today's idea of morality. That morality is  
6 the morality which is under... for using law of social reform and lead with morality, can  
7 regulate religion. But My Lords will have to determine that that morality is not majoritarian  
8 morality, because Your Lordship, if you look at morality in Islam, alcohol is immoral and  
9 pernicious, but...

10 **JUSTICE M.M. SUNDRESH:** ...constitutional morality...

11 **MOHAMMAD NIZAMUDDIN PASHA:** Your Lordships, I'm just coming to that. So, in  
12 Islam alcohol is pernicious and immoral, but in a Church for the baptized, the blood of Christ  
13 is wine. But if you allow one larger collective to determine what is morality, they will... it will  
14 always have a majoritarian element.

15 **JUSTICE M.M. SUNDRESH:** Public morality, we understand that. No problem.

16 **MOHAMMAD NIZAMUDDIN PASHA:** And so, when My Lord, sit in judicial review of a  
17 legislative prescription for morality, what comes out is constitutional morality. Because Your  
18 Lordships makes sure that morality is not outside the bounds of constitutional permit,  
19 permitted bounds and it is not majoritarian, it is keeping in view the rights of the minority,  
20 and that when Your Lordships allow or disallow and what remains of that; so in that sense in  
21 constitutional morality here is a there are concentric circles, it is a subset of morality. So,  
22 morality as necessarily first in the first instance determined by the Legislature as examined on  
23 the on judicial review by My Lords, what emerges then is constitutional morality is my  
24 submission, because constitutional morality has a different view in every context is what My  
25 Lords have held. And in this context, My Lord, in my humble submission, this is the morality  
26 because again the principle of *noscitur a sociis*, if public order, health and morality are treated  
27 separately, My Lords always defer to the opinion of Experts and the Legislature and the  
28 Executive is the expert on this matter, on matters of public order and matters of health, My  
29 Lords won't in the first instance say in our opinion this is contrary to health; they will have to  
30 be a policy prescription around health or around public order. My Lords, for instance, the first  
31 instance will say in our view this is contrary to public order because...

32 **JUSTICE B.V. NAGARATHNA:** It is a public sense of morality. Public sense of morality,  
33 that is the way, what the public feels about it.

1 **MOHAMMAD NIZAMUDDIN PASHA:** Correct, Your Lordship. So, Your Lordship and  
2 therefore, that will speak through the... our elected representatives in Parliament and My  
3 Lords will then examine on judicial review whether it is outside constitutional parameters, and  
4 that then is constitutional morality for this context, is my humble submission.

5 **CJI SURYA KANT:** Understood.

6 **MOHAMMAD NIZAMUDDIN PASHA:** Your Lordship, just the last point. On the  
7 Essential Religious Practices element that Mr. Shamshad was dealing with, I just want to take  
8 two minutes and I...

9 **CJI SURYA KANT:** [INAUDIBLE]

10 **MOHAMMAD NIZAMUDDIN PASHA:** Your Lordship, there's something to be said on  
11 that, which is that the Quran is actually a minimalistic document. It has principles, it has  
12 parables, it has morals and, in some cases, it has specifics, but as My Lord Justice Amanullah  
13 also pointed out, it doesn't even have how you pray, how many times you pray, what time you  
14 pray. So, while the Quran is a skeleton, the prophetic practice in Islam is the flesh and blood  
15 of religion. Now, Your Lordship, Quran was not actually written down in the life of the Prophet.  
16 Once the Prophet had passed away and it had been a few years, it was memorised in his  
17 lifetime, but there came a time when 72 *Hafizes* or persons who had memorised the Quran  
18 passed away or were martyred in a battle, and suddenly that fear arose that the Quran might  
19 cease to be with our lifetime and that is when it was actually written down and a conscious  
20 choice was taken not to write down prophetic practice, so that at no point is there any  
21 confusion or difference of opinion on how prophetic practice is actually, whether it's in this  
22 book or that book. As a consequence of that decision not to reduce prophetic practice to  
23 writing, prophetic practice was reduced to writing about 100 to 150 years after the life of the  
24 Prophet. And therefore, a *Hadith* narration takes the form of 'I heard from so-and-so that he  
25 heard from so-and-so that he heard from so-and-so, whose father told him'. Now on this  
26 account, there is a lot of difference of opinion on whether one particular narration is right or  
27 not, one particular book is right or not. All sects and denominations and distinction in Islam  
28 arise on account of different people ascribing authenticity to different texts. So, when the  
29 question is asked, as a monolith, is this an essential practice in Islam or not, that question is  
30 ill-founded. Whether... and the consequence of that is, for instance, in the *hijab* matter, the  
31 right of someone who believes that it is mandatory to wear a *hijab* was made subject to school  
32 discipline. Why? Because, the High Court, when it understood that it is not an essential  
33 religious practice, the High Court judgment was on the basis this is not an essential religious  
34 practice, therefore, not protected, has no protection under 25; therefore, it doesn't have to be  
35 on public health, doesn't have to be on morality, doesn't have to be on health, it can only, can

1 even be regulated on the grounds of school discipline. So, like the example Mr. Shamshad gave  
2 was of military discipline and the Justice Bagchi rightly pointed out that there is Article 33 and  
3 while there may be something to be read because that case was around the interpretation of  
4 the rule to say that 'prohibited except when demanded by religion,' is that only for Sikh officers  
5 or is it also for Muslim officers? And to that, the answer was given saying that it is not essential  
6 to Muslim officers and therefore that right is not available, so in that sense that is also one of  
7 the victims in that sense, that right is of the essentiality test. But here Your Lordship, the right  
8 to wear a *hijab* was made subject to school discipline and that can't be the...

9 **CJI SURYA KANT:** Mr. Pasha?

10 **MOHAMMAD NIZAMUDDIN PASHA:** Your Lordship, please?

11 **CJI SURYA KANT:** Mr. Pasha, that is not an issue before us. Essential practice we  
12 understood, the word 'essential', everybody has explained that how this essential...

13 **MOHAMMAD NIZAMUDDIN PASHA:** And therefore, it cannot be only essential  
14 practices, because if it is essential to that student to wear a *hijab* to school...

15 **CJI SURYA KANT:** Go with the...

16 **JUSTICE M.M. SUNDRESH:** All right.

17 **JUSTICE PRASANNA B. VARALE:** Mr. Pasha? In a lighter way you said that all this  
18 confusion is created by us. There's a beautiful couplet by Ghalib for believers, non-believers -  
19 *jab kuchh na tha to Khuda tha, na kuchh hota to Khuda hota, mere hone ne mujhko duboya,*  
20 *main na hota to kya hota,* so all this is created by us.

21 **MOHAMMAD NIZAMUDDIN PASHA:** That is true, Your Lordship, I'm, I'm grateful Your  
22 Lordship.

23 **JUSTICE PRASANNA B. VARALE:** Ghalib.

24 **CJI SURYA KANT:** Thank you, thank you. Mr. Pasha.

25 **MOHAMMAD NIZAMUDDIN PASHA:** Grateful, Your Lordship.

26 **CJI SURYA KANT:** Mr. Sridhar?

27 **SRIDHAR POTARAJU:** May I please, Your Lordships? I'll be referring to Volume 1.7, My  
28 Lord. There are excerpts of books I have given. It's handed over.

29 **CJI SURYA KANT:** Are you also supporting review petitioners?

30 **SRIDHAR POTARAJU:** Yes, My Lords.

1 **MADHAVI GORADIA DIVAN:** My Lords, yes, I... just 15 minutes on... We represent a  
2 group for the sacred groves, for sacred groves and just a few perspectives I want to point out.  
3 I ...

4 **CJI SURYA KANT:** We just want to... we want to identify you, this side or that side?

5 **MADHAVI GORADIA DIVAN:** This side. This side.

6 **CJI SURYA KANT:** Yes, Sridhar.

7 **MADHAVI GORADIA DIVAN:** I was not sitting on the fence.

8 **CJI SURYA KANT:** All right. Yes, Sridhar.

9 **SRIDHAR POTARAJU:** Your Lordships, I have handed over an argument note today, My  
10 Lords. I've recrafted the original submissions because much has been said.

11 **CJI SURYA KANT:** Yes, you can state.

12 **SRIDHAR POTARAJU:** Yes. I'll straightaway take Your Lordships to this note and then  
13 Your Lordships would kindly see my Volume 1.7, the excerpts which is part of the compilation  
14 the nodal Counsels have given. I've footnoted most of the things, Your Lordships would kindly  
15 see.

16 My argument is broadly premised on the need for freedoms guaranteed under Part III. The  
17 Constitutional framers had acknowledged the historic challenges that this nation has faced  
18 and the Constitution Assembly debates and also the judgments of this Honourable Court have  
19 extensive referred to the historical challenges of slavery, etc., etc. I have referred to them in  
20 my Part 1. "Fundamental rights in Part III of the Constitution..." Para 1, the heading I have  
21 given. "Fundamental rights in Part III of the Constitution need to be understood having regard  
22 to the history of the nation." Here I have accepted My Lords, from Your Lordship's publication,  
23 the Courts of India, past to present I'll just read. "The 5000 years of India's history from the  
24 very dawn of that history which might be considered almost the dawn of human history till  
25 today." So therefore, Your Lordships, when we are looking at the fundamental rights Chapter  
26 25 to 28 of religion, conscience, etc., Your Lordships would bear in mind the history of this  
27 land as judicially acknowledged.

28 Now Your Lordships, the second aspect is what were the challenges that we faced in these last  
29 1000 years as Justice Kuldeep Singh has said, "This country remained under shackles of  
30 slavery for over 1000 years." In his opinion, *Indira Sawhney*, I have referred to in  
31 paragraph 4. So, what were the challenges, My Lords, I have actually extracted that by way of  
32 a history of religious persecution from 997 A.D. onwards, in a table that's in Annexure A. That  
33 is only to give a background as to how the framers of the Constitution, had the history of lived

1 experience of the people of this land? Your Lordship, the Preamble says, "We the people". So  
2 therefore, we the people have reserved certain rights when the Constitution comes into force,  
3 and we have distributed those rights through the three organs of the State. My submission  
4 would be in this backdrop that the sovereign has parted certain powers and reserved certain  
5 powers. Now Your Lordships are being called upon to interpret the powers which have been  
6 reserved by the sovereign in Part III, especially 25 to 28.

7 Your Lordships would kindly see that here, in the Indian pantheon, there was no concept of  
8 religion. In fact, the expression "Hindu" is an appellation given to us by foreigners. Neither we  
9 call ourselves Hindu nor we call ourselves India. We call ourselves as a followers of *Dharma*,  
10 and the *Dharma* has been the eternal *Dharma* which does not have any concept of infidelity,  
11 blasphemy or any such others. For us, there are multiple philosophies. Those philosophies are  
12 in practice of the people, each to his own conscience. Some may be satiated through certain  
13 philosophies; some may be satiated through a combination of rituals and philosophies. So  
14 therefore, Your Lordship is now being called upon to test these diversities because if India is a  
15 geographical appellation and then Hindu is referred to with reference to the geographical  
16 entity of the subcontinent, now what are we defining Hindus as? Because the Constitution has  
17 chosen not to define "Hinduism." It only uses 25(2)(b) explanation to include for the purpose  
18 of 25(2)(b), Sikhs, Buddhists and Jainas. But it again doesn't define Hindus as to who are  
19 Hindus? It's only an inclusive definition which invariably would include everyone who  
20 inhabits in this land but of course, subject to certain broader understanding. In this context, I  
21 have placed on record in my excerpt from book, Swami Vivekananda, Aurobindo and also  
22 Paramacharya of Kanchi who have actually explained this concept and the distinction from  
23 Will Durant's story of civilization and Al-Biruni also. See the diversity of practices that Al-  
24 Biruni notices in 11th century A.D, he describes those practices in detail. Now, if you talk about  
25 this, if you are a *Dharma* adhering society, what are we looking at? We are looking at  
26 *purusharthas; Dharma, Artha, Kama, Moksha*. Now for my *Dharma*, I would pursue my  
27 philosophical or spiritual paths. For *Artha* and *Kama*, I may believe in certain rituals and  
28 practices and *prayaschittas* or *yagnas*. Those practices are the rituals through which I would  
29 achieve certain end goals to pass an exam, to be at the lowest or to become probably a very  
30 high constitutional office at the highest. There are rituals, there are prescriptions and there  
31 are also *prayaschittas* for actually participating in a process of what we call as, condoning or  
32 probably seeking condemnation for the sins we would have committed knowingly or  
33 unknowingly. So, there are certain rituals. Now there are multiple aspects of life which are  
34 *Brahmacharya, Vanaprastha, Grihastha* and *Sanyasa*.

35 Now if you look at this larger plan of life, so the right that I'm canvassing is Article 21 with  
36 personal liberty to choose the path I believe in, with all its variations. Probably, I'm in a

1 missionary school, I actually go to a Church. Sometimes, I go to other places of worship also.  
 2 I revere, because for me as an *Advaitan* practice, there is no other for me. So, I can see and  
 3 connect through any other modes of worship. Now in this background, Your Lordships would  
 4 kindly see **Venkataramana Devaru's** fact, page 4, para 10. Much has been said, I'm not  
 5 going to go into the nuances of the law, the reality of history of this land, **Venkataramana**  
 6 **Devaru's** quote, the extract Your Lordships would see in bold, "The Gauda Saraswata  
 7 Brahmins' journey in this country in the distant past was Kashmir"; so they migrated from  
 8 Kashmir at a point of time, they go to Mithila, Bihar, then they settle down in Goa, then they  
 9 suffer persecution in the hands of the Portuguese and thereafter, they go to Bhatkal and they  
 10 have their own language, they have their own deities, they identify as a group. Now what  
 11 happened when, the question was whether you are a denomination in an understanding minus  
 12 the historical background, you fail the test. My later submission will be My Lords, if it is a  
 13 fundamental right which the sovereign has reserved to itself, where is the question of  
 14 qualifying any test? I don't need to qualify in any test which is not part of the constitutional  
 15 document and text itself. Where is the... [NO AUDIO] my right and to assert, to establish a  
 16 jurisdictional fact, is the respectful submission. I'm so sorry.

17 Your Lordship now that I've made this point, I'll move to the next point conscious of the  
 18 *Kaladharmā*. Your Lordships have already spent enough time. Now kindly see what is the  
 19 character of a nation? Swami Vivekananda has this to say, "As far as the French are concerned,  
 20 the political independence..." Your Lordships kindly come to page 5, para 13. The French,  
 21 "...the political independence seems to be the character", quoting Swami Vivekananda the  
 22 excerpts are there in my Volume 1.7, Your Lordships. "For the British, it's equity, equal  
 23 partition of privileges. Now as far as India, what is the character of this nation? The Hindu  
 24 says that the political and social independence are well and good, but the real thing is spiritual  
 25 independence, *Mukti*. This is our national purpose, whether you take the *Vaidika*, the *Jaina*  
 26 or the *Buddha*, the *Advaita*, the *Vishishtadvaita* or the *Dvaita*; they are all of one mind." So  
 27 therefore, My Lords, the diversity of worship is a very organic thing for this nation's character.  
 28 So therefore, as I said, there is no infidel, there is no *kaafir*, there is no blasphemy, there is no  
 29 inquisition at all that we can relate to this land. These challenges came about when there were  
 30 invasions, there were cultural exigencies. Now My Lords, in my list of dates in Annexure A, I  
 31 have referred to the instances expressly, including the Boden Chair in Oxford, which actually  
 32 has a Sanskrit Chair. Monier-Williams English to Sanskrit dictionary, I have two volumes of  
 33 them. The preface is edited. I had to search for the original preface, there they categorically  
 34 state and have enclosed that preface. Your Lordships would kindly mark just page 28 of this  
 35 compilation, since I'm on this point, page 28 of my note, My Lords.

36 **CJI SURYA KANT:** Yes.

1 **SRIDHAR POTARAJU:** Your Lordships would see the para, "In explanation, I must draw  
2 attention..." towards the lower part, it is marked "In explanation, I must draw attention to the  
3 fact that I'm only the second occupant of the Boden Chair and that its Founder, Colonel Boden,  
4 stated most explicitly in his will dated 15th August 1811, the special object of this munificent  
5 bequest was to promote the translation of the scriptures into Sanskrit, so as to enable his  
6 countrymen to proceed in the conversion of the natives of India to the Christian religion." So,  
7 this was the benevolent object, My Lords. In his faith he believes this is benevolent. Your  
8 Lordships would kindly have a page over.

9 **JUSTICE B.V. NAGARATHNA:** Library named after him in Oxford?

10 **SRIDHAR POTARAJU:** Yes, My Lords. Yes, My Lords.

11 **JUSTICE B.V. NAGARATHNA:** A moving history.

12 **SRIDHAR POTARAJU:** Moving history, Your Lordships have recorded in Property Owners  
13 Association is very important for this very purpose otherwise we believe what they say. Your  
14 Lordships, this is page 29, the second line on page 29. "My very first public lecture, delivered  
15 after my election in 1860, was on the study of Sanskrit in relation to missionary work in India."  
16 So therefore, Monier-Williams, when we all rely upon and I've always believed in fact, the  
17 other day I was using a Benjamin Walker's dictionary, my learned senior colleague Mr. Gopal  
18 Subramaniam said that, that may not be accurate now...

19 **JUSTICE B.V. NAGARATHNA:** Gopal?

20 **SRIDHAR POTARAJU:** ... because as, as we may know... Mr. Gopal Subramaniam, My  
21 Lords.

22 **JUSTICE B.V. NAGARATHNA:** Who?

23 **SRIDHAR POTARAJU:** Benjamin Walker's Hindu encyclopaedia, because trying to know  
24 my religion, my device is only an Englishman's dictionary or Englishman's publications. Now  
25 therefore, Your Lordships will, while interpreting 26, now Your Lordships will kindly come to  
26 my next point, these are the constitutional interpretation. Your Lordships kindly see para 15  
27 at page 7, my proposition is this My Lords. Religion broadly as it is understood not from a  
28 *Sanatani* perspective but from a pragmatic perspective which the west always understood,  
29 because we are in a common law system where the Constitution is to be interpreted with  
30 certain limitations of language. The religion, as I see, has three aspects. The first one, is the  
31 spiritual and the philosophical aspect where I don't practice any rituals, I don't do any  
32 discipline, I don't even take bath, but I'm in contemplative mode. That is permissible and that  
33 has very minimal external interference or manifestation. And that's exactly how our *Vedas*  
34 have been preserved, through memory within the families, through the religious persecution

1 and migration stories. The second part is the practice of the rituals. Starting from all the  
 2 *karmas* that is being performed right from the *garbhādhāna* onwards till the passing away  
 3 and *pitr ṛṇa*...all the other obsequies which are to be followed, these are all rituals. The third  
 4 part is the political part. As I have pointed out, the political part comes from an influence of  
 5 the French Revolution, which had an impact in interpreting our Constitution. That's where  
 6 our secularism comes in and then that's where the interference into religious aspects and also,  
 7 State Policy of Religion also was that part, My Lords.

8 Now in this background, Your Lordships would kindly come to page 8. I've made this point,  
 9 jurisdictional fact need not be ascertained... I'm sorry, My Lords. The jurisdictional fact of me  
 10 qualifying to be entitled to a right, with greatest respect, My Lords, is a misnomer. On the  
 11 contrary, if my right has to be curtailed, there should be an authority which is expressly  
 12 provided in the Constitution, is a respectful submission, My Lords.

13 Now, I move to the next point. In this context, para 25 Your Lordships, I have quoted para 38  
 14 of Justice Ramasubramanian's ***Kaushal Kishor*** opening statement, where he said. "Courts  
 15 cannot restrict the fundamental rights" the Legislature and Executive, they do it. I ask myself  
 16 this question, My Lords, if the Legislature passes a law, I come to the court to challenge it; the  
 17 Executive doubts something, curtails my liberty, I come to this court, but if in a 32 petition,  
 18 my rights are curtailed, where do I go as a citizen? That is something Your Lordships will have  
 19 to bear in mind while interpreting, My Lords. It is for Your Lordships' wisdom to take a call  
 20 on that.

21 The next point that I'm making is, My Lords, by interpreting limitations of 25(2)(b) into 26,  
 22 are we actually creating an interpretative *casus omissus* in order to fill a gap which to my  
 23 respectful submission does not exist in the plain reading of the Constitution for the 75 years.  
 24 Nobody found that there was anything lacking in the language of the Constitution to interpret  
 25 it. It is an interpretative process, if something is to be shifted from 25(2)(b) into 26, with  
 26 greatest respect, My Lords, that is not within the domain of an interpretative process of *casus*  
 27 *omissus*, of which this Honourable Court has repeatedly held; for that Your Lordships, para  
 28 ***29 State of Karnataka***, Chief Justice Beg's reference I have given, My Lords, and thereafter  
 29 Justice Ramaswami also, and similar principle of *casus omissus*. Then Your Lordships would  
 30 come to para 33, the heading I'll read, My Lords. "Freedom of every religious denomination,  
 31 or any section thereof, inherently recognizes the choice of persons with whom they associate  
 32 under Article 26." It's a very inherent right, My Lords. Your Lordships don't even now issue a  
 33 decree of conjugal rights under Section 9 of Hindu Marriage Act anymore with the changed  
 34 society. Now to... the right to associate is an inherent right which says the choice of people with  
 35 whom I choose to associate in my chamber, in my house, in my neighbourhood or wherever I  
 36 choose to, in my public life. Similarly, in my spiritual or religious life, we experience energies;

1 some people you get a positive energy, some people you get a negative energy. I may choose to  
 2 be with people with whom my spiritual practices align with. So therefore, Your Lordships may  
 3 have to consider this aspect also while interpreting Article 26 with reference to the right of the  
 4 denomination or any section thereof. Your Lordships, on this point, the expression  
 5 'denomination' or the Hindi version *sampradaya* have their own independent existence. In  
 6 the Constitution, they have been qualified with religious denomination or *dharmic*  
 7 *sampradaya*. So therefore, they have a meaning and contours outside the scope of religion; a  
 8 Lions Club or Rotary Club, some other forms of denominations are there, which they practice  
 9 some rituals; they may technically fit the test of **Devaru** but they may not be religious.

10 **CJI SURYA KANT:** We have understood, Mr. Potaraju.

11 **SRIDHAR POTARAJU:** Your Lordship. Now the last point My Lords, what Dr. Dhavan has  
 12 said I've quoted the judgments Your Lordships on 19(1)(c), **Damyanti**, the Constitution  
 13 Bench judgment. Your Lordships have categorically held that under 19(1)(c), a secular  
 14 association also, the legislation cannot open up the membership to anyone and everyone. Your  
 15 Lordships here in an interpretative process, Your Lordships will have to bear in mind the  
 16 constraints... that has been explained in Zoroastrian society, where this aspect has been dealt  
 17 with extensive. Your Lordship page 15, last paragraph of Zoroastrian. I just want to place that  
 18 My Lords and then the last point that I have. "Although..." Para 15... page 15, the extract of  
 19 page 6... "Although theoretically, it was permissible to evolve a new head of public policy in  
 20 exceptional circumstances, such a course would be inadvisable in the interest of stability of  
 21 society." Your Lordships would bear this in mind.

22 And the last point My Lords, PILs or Directive PILs that Dr. Dhavan has said. Your Lordships,  
 23 here I quoted para 40, the advice of Shri Rama in Valmiki Ramayana to Bharata and adopt it  
 24 as my submission, I'll place it. I hope this is a conversation in the *Kachidi Parva* of *Ayodhya*  
 25 *Kanda, Valmiki Ramayana*. The English version from the Gita press I have extracted. "I hope  
 26 you do not patronize atheistic, oh dear brother, for ignorant and conceited as they are, they  
 27 are skilled only in perverting the mind and thereby, diverting people from the righteous path.  
 28 Banking solely on their logical acumen, these men of perverted intellect preach nonsense even  
 29 in the presence of foremost of books of *Dharma*." For a religious person, the *dharmic* values  
 30 that my rituals or my religious texts prescribe me are paramount. Someone who is an atheist  
 31 or a non-believer, will have to be discarded even by this Honourable court when you are testing  
 32 my faith, my rights, is my respectful submission. I'm so very grateful, My Lords.

33 **CJI SURYA KANT:** Thank you. Thank you, Mr. Potaraju. Madam Madhavi, how many...?

34 **MADHAVI GORADIA DIVAN:** 15 minutes at the very most and if I make a repetitive point,  
 35 please stop me. I won't. I appear in IA No. 101671 of 2026. I'm handing over a set of written

1 submissions. I'm not going to trouble you at this stage, only one aspect, I will refer to them.  
2 Now, we support the rights of worshippers of what are known as sacred groves. I'm going to  
3 only spend two minutes indicating to Your Lordships what this means only for the purpose of  
4 being able to, My Lords, Your Lordships to be able to appreciate the phenomenal diversity and  
5 magnitude of what Your Lordships are actually dealing with, in practical terms. Now, My  
6 Lords, this belief system, and we are concerned with sacred groves from western Rajasthan  
7 essentially. These are known as *Dev-vans* or *Orans*. *Orans*, which stretch over vast stretches  
8 of largely forest land and where the belief system is that, and this is as old as the ages it's from  
9 the *Rigvedic* and we have traced all that in our IA, etc., I'm not troubling you but just to  
10 indicate that the manifestation of the divine Goddess comes from, is in the forest itself. So,  
11 there is a temple, a *Kuldevi*, etc., but the manifestation of divinity is essentially in the forest,  
12 so very close connection with the ecological aspect and there are many forms of nature worship  
13 that Your Lordships know about, but in this particular form of belief, there is absolute non-  
14 violence, *ahimsa* and customary abstinence which is maintained *qua* these forests. And  
15 therefore, My Lords, any... if a worshipper damages or hurts the forest in any manner, there is  
16 a penance, etc., customary. Now, what is important is also that these *Orans* or *Dev-vans* are  
17 unique from one another, so you may have a certain stretch, it's a common belief system  
18 arising from *Rigveda*, but each *Oran* is a separate unique one because it is consecrated to a  
19 different *Kuldevi*; they have their own folklore, their own customs, so one is distinct from the  
20 other. Why this is important? Because this is about village folk; it's not very organised, they  
21 don't have that sophisticated organizational skills, and therefore, My Lords, they fall between  
22 two stools; between the Essential Religious Practices and denomination. So, this is what I want  
23 to therefore, in the tracing the relationship between 25 and 26, I want to emphasise, My Lord,  
24 the... and a better appreciation perhaps, if I may say so, of the expression "denomination"  
25 because in our respectful submission, we are entitled to rights under 25 that nobody can  
26 dispute, but even to enjoy 25, we need 26. And I will establish that.

27 Now, My Lord, there's no dispute 25 and 26 are in many ways distinct rights; one is individual  
28 as we understand it, the other is institutional right, but the relationship between the two is one  
29 of, My Lord, it's symbiotic and reciprocal. In that, that what were the institution be, what were  
30 the institutional right be without the followers? It's an empty hollow right. It exists in order to  
31 sustain, to educate, to further the right to propagate, to believe the freedom of conscience of  
32 the individual believer. So, My Lords, in our respectful submission, because 26 is essentially  
33 there to subserve the rights of individual believers under 25, and therefore, 26, even though it  
34 may have its own status, it has its own identity, but it is, ultimately, it's a means to an end. It's  
35 a means to an end to ensure that the individual under 25 is fully facilitated in being able to  
36 practice, propagate and the freedom of conscience, and I'll just come to that in a moment. But  
37 when we look sorry, sorry.

1 **JUSTICE AHSANUDDIN AMANULLAH:** Interrupting you, what do you mean they have  
2 the...the persons who represent they believe in what? I couldn't understand.

3 **MADHAVI GORADIA DIVAN:** Yes, so these are called sacred groves as in...

4 **JUSTICE AHSANUDDIN AMANULLAH:** What will be the areas and all? What would be  
5 the...

6 **MADHAVI GORADIA DIVAN:** My Lords, these are, for instance, in western Rajasthan in  
7 particular and there are sacred groves across the country.

8 **JUSTICE AHSANUDDIN AMANULLAH:** Forests?

9 **MADHAVI GORADIA DIVAN:** There are forests and...

10 **JUSTICE AHSANUDDIN AMANULLAH:** Madam, then probably we are entering into  
11 some dangerous territory. By that logic the tribal would say entire forest is mine, I have been  
12 worshipping this. There has to be some limitation, you can't be so vague that this entire area I  
13 believe in...

14 **MADHAVI GORADIA DIVAN:** That limitation is 25..

15 **JUSTICE AHSANUDDIN AMANULLAH:** Some certain sections...

16 **MADHAVI GORADIA DIVAN:** So, that limitation will be in 25 and 26. Of course, we are  
17 ecologically also, it's been recognized from a preservation of forest and ecology point of view,  
18 but today we are on 25 and 26. And therefore, I am entitled to the rights whatever may...

19 **JUSTICE AHSANUDDIN AMANULLAH:** Foundational facts is, we can't abstractly...

20 **MADHAVI GORADIA DIVAN:** I'm not asking Your Lordship, and I cannot ask Your  
21 Lordships to determine my rights over here, but I am asking Your Lordships to take this, this  
22 is judicially determined also insofar as the rights of believers in sacred groves are concerned.  
23 We have, for instance, Niyamgiri Hills; I'm not representing them, but we have the Niyam Raja  
24 from Niyamgiri Hills, there are water temples in Uttarakhand. There are all sorts of form of  
25 nature, where nature is revered and this is really important for our current issues also on  
26 ecology and climate change. So, we will have restrictions but only governed under 25.

27 **JUSTICE B.V. NAGARATHNA:** Religious worship, the form of worship, it can be a  
28 religious practice, nobody is denouncing it. Your right, your conscience, nobody is denouncing  
29 it.

30 **MADHAVI GORADIA DIVAN:** Right.

31 **JUSTICE B.V. NAGARATHNA:** There is nothing that, you see, that you can seek as such.

1 **MADHAVI GORADIA DIVAN:** So, let...

2 **JUSTICE B.V. NAGARATHNA:** You are already be protected under 25(1).

3 **MADHAVI GORADIA DIVAN:** My Lords, there are inroads into it, there are inroads  
4 through My Lords there will be vested interest, there will be builders, there will be all sorts of  
5 things which come into the picture, but let me not get into too many details but there are  
6 inroads which is why we are here.

7 Now I wanted to explain on the principle. Once we look at 26, and this is true of anybody My  
8 Lords, 26 is a means to an end ultimately. It cannot exist by itself. There is no institution  
9 without believers or at least potential believers, one. If that is so, and secondly, if all persons  
10 are equally entitled to the freedom of conscience, right to practice, propagate, preach, etc., and  
11 propagate, then, seeing these two provisions together, then what does it mean, all persons are  
12 equally, in this context? It means that if you and I belong to different religious affiliations, we  
13 are all entitled to the support of an institutional right and let me explain this. It may be that I  
14 belong to a group which does not fall into the... what I would describe only as "tick the boxes"  
15 definition of denomination; common faith, common name, common organisation and I'm  
16 emphasizing organisation. What if my group doesn't belong, but my neighbours' group does  
17 belong, then how will it inform our respective right to freely, My Lords, even conscience, right  
18 to practice, propagate, etc.? How will it work out? Now for instance, My Lords, even when we  
19 talk of the most personal and private of rights amongst the... the range of rights that are  
20 afforded under 25, Your Lordships will see, right to... the freedom of conscience is the most  
21 personal and private. Nonetheless, even this right will not be in a vacuum because, as a believer  
22 who wants to practice that freedom of conscience, even in the privacy of my home, I may  
23 require, for instance, religious texts to read, I may require access to libraries, I will require, I  
24 may require, I may choose not to, but I may require the support of an institutional apparatus  
25 of an organisational structure, I may. I may want to go to a monastery and learn from the  
26 experts over there, etc. So, in that regard, even for the freedom of conscience, which is the  
27 most private and personal of the range of rights afforded under 25, I may, I will be nourished,  
28 my right to freedom of religion will be nourished and supported and sustained by the rights  
29 that I get from the institutional... An institution may not be a building with... it can be anything  
30 the collective. I may have, I may require mentorship; even that is an institutional right.  
31 Guidance, whatever it be. So, each of these rights and particularly My Lord, propagate, which  
32 is the most outward manifestation perhaps of the freedom of religion. For that I will most  
33 likely require the assistance and support of the institution. So, if we see these together, please  
34 now see the definition of "denomination", how discriminatory it would be if I don't fit, my  
35 group does not fit into that "tick the boxes" denomination, whereas somebody else's does. So,  
36 that will denude and impoverish my right to religion under 25. So therefore, and I am

1 supported in this and I, when we read ***Shirur Mutt*** and the definition of denomination in  
2 ***Shirur Mutt***, I don't know why it is, but the court chose a very restrictive, a very restrictive  
3 definition which requires all of this. What happens, My Lord, emphasis on organisation; we  
4 for instance, will be village folk, rustic. We don't, for organisation and to fulfil that requirement  
5 as stands today of denomination, you require resources, you require organisational skills, you  
6 require a whole, a whole apparatus you require.

7 **JUSTICE M.M. SUNDRESH:** We understand your argument. Your argument is; there is  
8 nothing different between 25 and 26. 26 is meant to give effect to 25?

9 **MADHAVI GORADIA DIVAN:** Yes.

10 **JUSTICE M.M. SUNDRESH:** What is important is a conscious and common belief, so what  
11 is... there is no... actually there is not much of a difference between persons and the institution.  
12 Institutions are meant to give effect to the... to the right to practice, profess and then  
13 propagate.

14 **MADHAVI GORADIA DIVAN:** It is a meaningless right.

15 **JUSTICE M.M. SUNDRESH:** It's an instrument to achieve the mean, so therefore, it is to  
16 be understood that way...

17 **MADHAVI GORADIA DIVAN:** Yes.

18 **JUSTICE M.M. SUNDRESH:** So therefore, no question of reading it together or you can  
19 similarly, you can say that it's harmonious construction; all those things are not required  
20 because one follows other, because you... if 26 stands alone, you see like, like they're  
21 contending, it's a... it's a standalone article, then right under 25 will go.

22 **MADHAVI GORADIA DIVAN:** Correct. Who does it exist for?

23 **JUSTICE M.M. SUNDRESH:** 26, 26... is nothing...

24 **MADHAVI GORADIA DIVAN:** 26 is not rights then...

25 **JUSTICE M.M. SUNDRESH:** 26 is nothing but a collection of common believers.

26 **MADHAVI GORADIA DIVAN:** Yes.

27 **JUSTICE M.M. SUNDRESH:** Who created the institution only to propagate and profess.

28 **MADHAVI GORADIA DIVAN:** Right.

29 **JUSTICE M.M. SUNDRESH:** That's what you were saying earlier.

30 **MADHAVI GORADIA DIVAN:** So, I'm... My Lord, I maintain, however...

1 **JUSTICE M.M. SUNDRESH:** Therefore, the definition of religious denomination, will have  
2 to be given a wider import.

3 **MADHAVI GORADIA DIVAN:** A much wider, and I'm My Lord made good...

4 **JUSTICE M.M. SUNDRESH:** We understand what you're saying...

5 **JUSTICE B.V. NAGARATHNA:** It's a denomination.

6 **JUSTICE M.M. SUNDRESH:** It should be given wider import, number one, court should  
7 not get into it because it comes under 25, it is protected under 25, so it is actually 20-26. You  
8 have to... it is only for management and administration; otherwise, rights are also there in 25.

9 **MADHAVI GORADIA DIVAN:** My Lords, I would just define it to this extent. I maintain  
10 that 25 and 26 are qualitatively and in content, distinct rights. 25 is the right of the individual.  
11 All persons equally but not an institution. The... 26 right is of the institution. In order for me  
12 to be able to... and institution in the sense, it may be organized religion, it may be not so  
13 organized religion, but it is a collective and institution, etc. Now to enjoy 25, which is the  
14 individual's right, I need 26, and 26 will not exist but for the believers in 25. That is my short  
15 answer on that.

16 **JUSTICE M.M. SUNDRESH:** In *Shirur Mutt*, it says... There's one passage in *Shirur*  
17 *Mutt*, it says, whatever happens in temple, church or mosque, we are not concerned. What is  
18 relevant is a right ensued into 25.

19 **MADHAVI GORADIA DIVAN:** Yes.

20 **JUSTICE M.M. SUNDRESH:** So as long as that is there...

21 **MADHAVI GORADIA DIVAN:** Yes.

22 **JUSTICE M.M. SUNDRESH:** Now, these other things will be, what they mean is religious...  
23 requirement also. The idea is to protect the right in a 25. If you, with that mind, if you read  
24 26...

25 **MADHAVI GORADIA DIVAN:** Absolutely.

26 **JUSTICE M.M. SUNDRESH:** ... there is no need to read it with Part III into it, whether you  
27 have an independent right...

28 **MADHAVI GORADIA DIVAN:** Yes, yes. I'm sorry.

29 **JUSTICE M.M. SUNDRESH:** All those things are not required.

- 1 **MADHAVI GORADIA DIVAN:** I'm also saying that ultimately in order to be able to, you  
2 need organizational skills. It can't be all persons equally means we are people who belong to  
3 different...
- 4 **JUSTICE M.M. SUNDRESH:** Practice and profess.
- 5 **MADHAVI GORADIA DIVAN:** Yes.
- 6 **JUSTICE M.M. SUNDRESH:** And then, and then propagate.
- 7 **MADHAVI GORADIA DIVAN:** And it would impoverish my right under 25, if you are not  
8 going to treat me as a denomination.
- 9 **JUSTICE B.V. NAGARATHNA:** ...could be also read rigidly, cannot be...
- 10 **MADHAVI GORADIA DIVAN:** Denomination, yes.
- 11 **JUSTICE B.V. NAGARATHNA:** Yes.
- 12 **MADHAVI GORADIA DIVAN:** And I have My Lords, in this regard...
- 13 **JUSTICE B.V. NAGARATHNA:** [UNCLEAR] a particular practice they've come to, that it...  
14 a rigid organization is not necessary.
- 15 **MADHAVI GORADIA DIVAN:** Right. What I have...
- 16 **JUSTICE B.V. NAGARATHNA:** [UNCLEAR] practice.
- 17 **MADHAVI GORADIA DIVAN:** I have put in my written submissions, My Lords, I have...
- 18 **JUSTICE M.M. SUNDRESH:** In other words, what, we will put it simply...
- 19 **MADHAVI GORADIA DIVAN:** Meaning...
- 20 **JUSTICE M.M. SUNDRESH:** ... the denomination, rigid denomination, it is nothing but a  
21 creation of the collective rights of a common believers.
- 22 **MADHAVI GORADIA DIVAN:** Absolutely. Which Your Lordships, what Your Lordships  
23 say...
- 24 **JUSTICE M.M. SUNDRESH:** Therefore, it... it derives its existence functions, performance  
25 through the collective...
- 26 **MADHAVI GORADIA DIVAN:** Absolutely, absolutely.
- 27 **JUSTICE M.M. SUNDRESH:** In other words, a denomination cannot go against the  
28 common believers, it will only give effect to the common belief.

1 **MADHAVI GORADIA DIVAN:** Correct. And if Your Lordships require any meanings of  
2 denomination, they are set out from Black's Law Dictionary to Webster's to all of them give a  
3 much, much wider and that's in my written submission.

4 My Lord, the other point that I did want to make here is ultimately what the court, ultimately  
5 Your Lords are assisted by the Bar, but what has happened is that instead of treating the right  
6 as fundamental, it is the restrictions which have been treated as fundamental because when  
7 we talk, if there are two interpretations available, say of denomination, what is a  
8 denomination? If there are two interpretations available, the court must adopt the meaning  
9 which furthers the fundamental right because the right is the one that is fundamental rather  
10 than to constrict it and box it into this "tick the boxes", are you an organization, are you this,  
11 are you that?

12 **JUSTICE B.V. NAGARATHNA:** That you have already argued.

13 **MADHAVI GORADIA DIVAN:** Yes. So, My Lords, therefore, that is one aspect. Now, My  
14 Lord, the other aspect please do consider because what will happen otherwise is, this is a recipe  
15 for competition to gain denominational status. It will lead to polarization. It will lead to a sort  
16 of survival of the fittest. He who has the resources, he who has the organizational skills and  
17 the wherewithal, will be able to get the recognition and therefore, their rights will be in a sense  
18 higher than mine. So, that is... that polarization violates the fraternity principle. So, please do  
19 bear that in mind.

20 **JUSTICE B.V. NAGARATHNA:** If there is polarization, the State will step in under Article  
21 25(2)(b); that is reform.

22 **MADHAVI GORADIA DIVAN:** My Lords, reform, yes, yes.

23 **JUSTICE B.V. NAGARATHNA:** That is why in *Venkataramana Devaru*, they said,  
24 ultimately you see which is the, what is the right here, what is the right there. If... If, as you are  
25 saying, there is polarization, then the State can step in under 25(2)(b) with regard to social  
26 reform.

27 **MADHAVI GORADIA DIVAN:** If social reform is required, if there is a social evil to be  
28 addressed...

29 **JUSTICE B.V. NAGARATHNA:** Necessarily.

30 **MADHAVI GORADIA DIVAN:** My Lord, it can't be just an improvement. That is my...  
31 that's my submission.

32 **JUSTICE B.V. NAGARATHNA:** If social reform is required, you said polarization.

1 **MADHAVI GORADIA DIVAN:** Polarization is in the context of this competition, you and  
2 I'm a denomination. You are not a denomination, let's get the status.

3 **JUSTICE B.V. NAGARATHNA:** It doesn't apply, that is not the subject matter actually.

4 **MADHAVI GORADIA DIVAN:** We are...

5 **JUSTICE B.V. NAGARATHNA:** See, we are saying that some denomination is of superior  
6 or some other denomination is inferior, that is not the...

7 **MADHAVI GORADIA DIVAN:** No, not at all. Question is, am I a denomination or not?  
8 That's the question. Do I get the right under 26 or not? That's the question, and if that is the  
9 question, then it cannot be that because you tick the boxes, you get the status.

10 **JUSTICE B.V. NAGARATHNA:** See what it means is, some religious practice is followed  
11 by a religious denomination. Their autonomy to practice their religious practice...

12 **MADHAVI GORADIA DIVAN:** Yes.

13 **JUSTICE B.V. NAGARATHNA:** ...is protected under 26(b). The State or the court cannot  
14 say, "no, this is not a religious practice, you don't have a protection". That autonomy is  
15 protected. That is what 26(b) says.

16 **MADHAVI GORADIA DIVAN:** That's correct but... yes.

17 **JUSTICE B.V. NAGARATHNA:** In the guise of saying I have this autonomy to protect a  
18 religious practice, I will do something which is affecting society as such then 25(2)(b), State  
19 will step in. That is how you have to harmonize.

20 **MADHAVI GORADIA DIVAN:** My Lords, I would respectfully submit that today we are  
21 only as far as I'm concerned, my submission is only on, who is constituting that denomination  
22 and who is entitled to the autonomy under 26?

23 **CJI SURYA KANT:** We have understood that part.

24 **MADHAVI GORADIA DIVAN:** That is the absolute... I therefore, I just submit... there are  
25 a few more submissions and...

26 **JUSTICE AHSANUDDIN AMANULLAH:** We are probably not here to decide which is a  
27 denomination or not.

28 **CJI SURYA KANT:** We will see what is...

29 **MADHAVI GORADIA DIVAN:** In an interpretation of 26, not the particular but the  
30 principles, Your Lordships.

- 1 **JUSTICE AHSANUDDIN AMANULLAH:** There will never be a final, final, case to case...
- 2 **JUSTICE B.V. NAGARATHNA:** ...controversy in this case...
- 3 **JUSTICE AHSANUDDIN AMANULLAH:** When you have a real grievance, you come case  
4 to case, it will be...
- 5 **MADHAVI GORADIA DIVAN:** That of course, but Your Lordship will interpret as to what  
6 is a denomination, I'm grateful.
- 7 **JUSTICE M.M. SUNDRESH:** The sum of your argument on the 26 you say, if the essence  
8 of 25 is to be seen in 26, do not get into this. Leave it to us, is what you are saying.
- 9 **MADHAVI GORADIA DIVAN:** Yes.
- 10 **V.K. BIJU:** My Lord, I will take ten minutes, My Lords.
- 11 **ROHAN DESAI:** Sir, just two minutes, Your Lordships.
- 12 **CJI SURYA KANT:** Wait, don't yourself start. I will have to decide who will come first.
- 13 **NACHIKETAN JOSHI:** Small argument note, My Lords, already my submissions are there  
14 on record.
- 15 **CJI SURYA KANT:** Don't go to your notes now. Nobody will refer to note. You straight raise  
16 your point, we will note down. Yes, otherwise each one... Yes.
- 17 **NACHIKETAN JOSHI:** Yes, My Lord. I am on the historical part of the temple. Here what  
18 has happened is, there is a *Thrippadidanam*, which has been executed by the king in 1750.  
19 That's on the sovereignty of the kingdom and which then goes on to the sovereignty of the state  
20 and then the sovereignty of the deity. Therefore, there are documents and documents which  
21 have been executed starting from the *Thrippadidanam*, then the proclamation of 1936. By the  
22 proclamation of 1936, various persons under the SC/ST category like the applicant here, she  
23 is from this community, and she has been given the rights to enter the temple. Now from there  
24 on till the objective resolution which has also been brought out in the *Kesavananda*  
25 judgment, all these provide that it is the sovereignty of the deity which has to be respected,  
26 from there to the Preamble and 26(2). Therefore, what we are saying is 26 really protects the  
27 rights of all the religious denominations and the sects. All those rights need to be given their  
28 equal protection and that balance has to be brought out. Just two lines from the judgments  
29 where it has not been relied, not quoted My Lords. *T. M. A. Pai* has brought out this fine  
30 distinction I have quoted that which is at page 2198 of the compilation. In *T. M. A. Pai* ...yes,  
31 I'm so obliged. *T. M. A. Pai*, "Article 25 gives to all persons the freedom of conscience and  
32 the right to freely profess, practice, propagate religion. That right, however, is not absolute.

1 The opening words of 25(1) make the right subject to public order, morality, health, and also  
2 to the other parts of Part III of the Constitution. This would mean that the right given to a  
3 person under 25(1) can be curtailed or regulated if the exercise of that right would violate other  
4 provisions of Part III of the Constitution." Therefore, when 26 and therefore, between 25 and  
5 26, if 25 is trying to violate upon 26, that can be curtailed is what the Honourable eleven judges  
6 of this Honourable Court have held.

7 And thereafter, one more para below that. "The freedom to manage religious affairs is provided  
8 in 26. This Article gives the right to every religious denomination, or any section thereof, to  
9 exercise the rights of that it stipulates. However, this right has to be exercised in a manner that  
10 is in conformity with public order, morality and health. Clause (a) of the 26 gives a religious  
11 denomination that right to establish and maintain institution for religious and charitable  
12 purposes. There is no dispute that the establishment of an educational institution comes  
13 within the purview."

14 Now My Lord, the next line. "Therefore, while 25(1) grants the freedom of conscience and the  
15 right to profess, practice and propagate religion, 26 can be said to be complementary to it and  
16 provides for every religious denomination or any section thereof to exercise the rights  
17 mentioned therein." Therefore, My Lords, it has to be considered, 26 as complementary to 25.  
18 25 cannot supersede on 26, is my argument. And thereafter My Lords, **S. P. Mittal's**  
19 judgment I have quoted out two paras.

20 **CJI SURYA KANT: S. P. Mittal.**

21 **NACHIKETAN JOSHI: S. P. Mittal** has been read out on the religion part and how it has  
22 to be considered. In **Maneka Gandhi** just three lines of **Maneka Gandhi** on the on the  
23 proportionality principle that Your Lordships, Justice Bagchi was referring to, My Lords,  
24 **Maneka Gandhi** says, "We do not think that this would be a correct way of interpreting the  
25 provisions of the Constitution conferring fundamental rights. The attempt of the court should  
26 be to expand the reach and ambit of the fundamental rights, rather than attenuate their  
27 meaning and content by a process of judicial construction."

28 Therefore, My Lord, my submission is that a construction should be made so as to give it an  
29 expansive meaning referring to Article 26, My Lord. It has to be given its expansive meaning  
30 in a way whereby all the religious denominations, all the sections are covered in detail, what  
31 is a religious denomination, what is the section has already been explained, My Lords.  
32 Sovereignty of the place, we are also saying that the temple is a sovereign place itself. The deity  
33 resides over there, and therefore, it has its own unique feature and therefore, the importance  
34 to that place has to be given its due weightage. I know Your Lordships are not going into each

1 fact, but then when the questions of law are being considered, Your Lordships will have to  
2 determine where do we strike a balance between 25 and 26?

3 There are three paras, My Lords, which I have brought out in in my written submission at page  
4 11. Just three paras very short three lines, "between the interplay in this background..."

5 **CJI SURYA KANT:** In which point of the para?

6 **NACHIKETAN JOSHI:** I'm sorry, My Lords?

7 **CJI SURYA KANT:** Para numbers?

8 **NACHIKETAN JOSHI:** Paras 25, 26, 27 of my... this argument note.

9 **CJI SURYA KANT:** All right. All right.

10 **NACHIKETAN JOSHI:** "The significance of Article 26 of the Constitution assumes great  
11 importance as a constitutional provision capable of serving as a beacon of light to the entire  
12 world by guaranteeing to every religious denomination or section thereof the right to manage  
13 his own affairs in matters of religion, the Constitution of India provides a framework for  
14 peaceful co-existence amongst the diverse traditions of worship. The applicant submits the 26  
15 was conceived as a constitutional safeguard for the independent functioning of the religious  
16 traditions and the institution. The pious purpose underlying the provision is therefore to  
17 ensure that diverse modes of worship may coexist within a constitutional order founded upon  
18 fraternity, dignity and unity."

19 **CJI SURYA KANT:** We've understood that.

20 **NACHIKETAN JOSHI:** And therefore, My Lords, I would say this writ petition which has  
21 been filed, therefore, Your Lordships will also have to lay down...

22 **CJI SURYA KANT:** Wait, wait. Don't try to be impatient, otherwise I will close the  
23 proceeding.

24 **NACHIKETAN JOSHI:** I'm sorry, I'm sorry, My Lords. I'm sorry.

25 **CJI SURYA KANT:** Mr. Upadhyay, five minutes.

26 **NACHIKETAN JOSHI:** My Lords, only last point, that under 32 these rights should be  
27 curtailed there is Article 363 also which provides where there are rights flowing before the  
28 Constitution, how do you determine that...

29 **CJI SURYA KANT:** Understood.

30 **NACHIKETAN JOSHI:** ... and therefore wherever those rights of the kingdom are being  
31 taken away...

- 1 **CJI SURYA KANT:** Thank you.
- 2 **NACHIKETAN JOSHI:** My Lords, that will have to be appreciated under 363.
- 3 **CJI SURYA KANT:** Thank you, Mr. Joshi.
- 4 **NACHIKETAN JOSHI:** I'm so obliged, Your Lordship.
- 5 **CJI SURYA KANT:** Thank you. Mr. Upadhyay, no reference?
- 6 **ASHWINI UPADHYAY:** I will not repeat even single sentence, so I humbly request...
- 7 **CJI SURYA KANT:** We will... yes, you start your... you leave our homework to us, you  
8 complete yours.
- 9 **ASHWINI UPADHYAY:** My Lords, my... this submission is in three parts, the first on the  
10 seven questions of law, and the seven frequently asked questions asked by Your Lordships and  
11 my submission on the *Sabarimala*. Second part is the relation between Article 25, 26 and  
12 29, 30. The third part is My Lord, *Dharma* and religion, Your Lordships motto is the "*yato*  
13 *dharmastato jayah*," not "*yato sampradayatato jayah*." High Court motto is the *Satyameva*  
14 *Jayate* and Your Lordship submission is the "*yato dharmastato jayah*", because *Dharma* is  
15 above the *Satya*, so I have dealt in third part. My Lord, just see my brief...
- 16 **CJI SURYA KANT:** Please start. You...
- 17 **ASHWINI UPADHYAY:** Yes.
- 18 **CJI SURYA KANT:** We are concentrating on you.
- 19 **ASHWINI UPADHYAY:** So, as far as the Article 25 and 26 is concerned...
- 20 **JUSTICE M.M. SUNDRESH:** All right. Come to third part that's better *na*. That's a new  
21 point you're raising.
- 22 **ASHWINI UPADHYAY:** *Nahin, nahin*. I will also say, just see the constitutional oath of  
23 Your Lordships and constitutional oath of the Ministers, Union Ministers and the  
24 constitutional oath of the Minister. So, Your Lordships oath...
- 25 **CJI SURYA KANT:** Whatever you want... you have asked for ten minutes, we have granted  
26 you five.
- 27 **ASHWINI UPADHYAY:** My Lord, this is totally new, totally new.
- 28 **CJI SURYA KANT:** Maximum ten minutes you have asked.
- 29 **ASHWINI UPADHYAY:** Yes, yes, definitely.

1 **CJI SURYA KANT:** Please confine to that.

2 **ASHWINI UPADHYAY:** So, Your Lordship's oath is to uphold the Constitution, just see the  
3 Schedule 7, oath of the Legislature and Executive is act according to the Constitution.  
4 Upholding the Constitution had higher value than acting according to the Constitution. Third,  
5 My Lord, *Bharat* have been divided in last 2000 years in 25 pieces, that was not due to  
6 religious conflict between individuals. *Bharat* divided in 25 pieces in last 2000 years due to  
7 denomination conflicts. And in last 200 years *Bharat* divided in 7 countries. Third, I have also  
8 considered that every action has a reaction. Similarly, every judgment has a ramification.  
9 Being an engineer, earlier I was an engineer... So, I did the 5W analysis, the 5 Whys analysis.  
10 What will happen if Your Lordships will accept my seniors' argument? What will happen if not  
11 accept argument? What will the ramification? Whether in the next 25 years, we will become a  
12 united, integrated, scientifically developed country like China, Singapore, Japan? Or in next  
13 25 years, will become countries like Pakistan, Afghanistan and Bangladesh? So, I have all the  
14 reasons. Let me see under Article 25 and 26. Article 25 and 26 is the most restricted provision.  
15 None of the fundamental rights are so restricted, My Lord. Right to propagate religion has not  
16 been given in those ten countries from we adopted some parts. The ten countries, we have  
17 taken something. From the South Africa, from Germany, etc. Even those countries have not  
18 given right to propagate not only the denomination, even to the individuals, even till date. So,  
19 Article 25 subject to public order, health and morality, subject to 27, subject to 28, expressly  
20 subject to Article, other parts of the provision. Article 26 subject to public order, health,  
21 morality, impliedly subject to other provisions and expressly subject to 27 and 28. My  
22 submission is, My Lord, 26 is the species, 25 is the genus. Species cannot have the wider, wider  
23 area than its genus.

24 So, My Lords, just see the brief. Just see now the brief; there is a brief. First page, My Lords,  
25 "The Nine Judges Bench of this Honourable Court will not only decide the seven questions of  
26 law but also decide the future of the country for next seven decades. The interpretation of  
27 Article 25, 26, will decide whether we would achieve the golden goals of the Constitution and  
28 become a united, integrated and scientifically developed nation by 2047, or a radicalized  
29 country full of superstition, black magic, delusion and dogmas. The *Sui generis* case of  
30 **Sabarimala** is not being assailed here, is it a long-standing custom which is in consonance  
31 with public order, health and morality and other provisions of Part III..." I have dealt in para  
32 22... para 32, 3...

33 **CJI SURYA KANT:** Straight come to the point, Mr. Upadhyay.

34 **ASHWINI UPADHYAY:** Yes. Then my main argument, just see the middle... main  
35 argument. I have request...

1 **CJI SURYA KANT:** That's right but we don't have time...

2 **JUSTICE B.V. NAGARATHNA:** You can summarize your...

3 **CJI SURYA KANT:** We have to grant time to the others also.

4 **ASHWINI UPADHYAY:** Now the main argument, "Individual possess the right to  
5 propagate religion while the denominations do not possess such right, the Constitution  
6 framers put the express restriction of the being subject to Part III in Article 25 while not doing  
7 so deliberately Article 26 as Article 25 granted the right to propagate religion on individuals,  
8 while Article 26 did not grant any such right to any denomination or sections thereof. Even  
9 the anti-conversion laws enacted in the different states are based on the premise that only an  
10 individual can propagate, convert, lawfully or unlawfully. The intent of the framers was also,  
11 as the root cause of the 1947 partition was denomination versus denomination conflict, not  
12 the individual versus individual conflict. Had persons propagated their religion peacefully,  
13 such a conflict would not have arisen. Notably, the ten Constitutions from which we adopted  
14 various parts of the Constitution, neither back then nor even today have conferred right to  
15 propagate religion on their citizens. Only after much deliberation was this right included in  
16 the Constitution with an express subjection to the other fundamental rights, keeping in mind  
17 it's dangerous nature. All the other articles are already impliedly subject to the other  
18 fundamental rights." There is some argument, it was tried to connect Article 29, 30 with Article  
19 26, 27, my submission is this. "Though Article 29, 30 have been tried to argued in this case,  
20 but they are not relevant and discussed. Minorities were given certain protection, in regard to  
21 their culture and education. Therefore, Article 29, 30, covered under cultural and education  
22 right, had they been intended to confer religious right upon minorities, the framers would have  
23 not been made their heading to so exhaustive. Thus Article 29, 30, are not to be dealt with in  
24 regard to right to freedom of religion and should be seen as completely distinct from them.  
25 The observation in few cases that Article 30 is an extension of Article 26, is therefore, *per*  
26 *incuriam*." My Lord, the petition is pending and before the... referred to the Seven Judge  
27 Bench.

28 Next, I have considered My Lord, few points. Number one, the dreams of the freedom fighters,  
29 the dreams of the Constitution makers, the language restriction. *Samvidhan* is not the  
30 Constitution. With utmost respect I'm saying. We don't have the proper words for *Samvidhan*.  
31 *Samvidhan: Sama, Dhana, Vidhan, yani sabke liye samaan vidhan, yani samyak vidhan.*  
32 Constitution means *vidhan*, because there is a limitation in English. We have only 26  
33 alphabets, we have total only around 10 lakhs words; in Sanskrit we have 52 alphabets, we  
34 have around 50 lakhs words. And that's why Honourable Dr. Ambedkar introduced the Bill in  
35 the Constituent Assembly, please make Sanskrit as the official language of Bharat.

1 Unfortunately that bill was failed. So when we interpret things in English, it become very  
 2 difficult. Similarly *Dharma* and religion. I have not cited any previous judgment because the  
 3 previous judgments are based on the assumption that *Dharma* is religion and religion is  
 4 *Dharma*. It is totally different. My PIL is pending. Your Lordships have issued notice to the  
 5 Centre also. I have requested to please introduce one chapter in primary, what is the *Dharma*  
 6 and what is religion? I have differentiated 25 differences between *Dharma* and religion. I can  
 7 summarize this, *Dharma* includes everyone, religion excludes everyone, others. *Dharma*  
 8 unites society and religion divides society. That's why I have not cited the previous judgment  
 9 because there are assumption on based on *Dharma* and religion.

10 And then My Lord, I have also considered, why this Lord system came? We generally say My  
 11 Lord, My Lord, Your Lordships. This came from the system of *Panch Parameshwar*. Earlier  
 12 we have the system of Panch Parmeshwar, *paanch log baithte the, woh decide karte the*. And  
 13 what was that *vidhan*? That was the *vidhi ka vidhaan*. And what is the *vidhi ka vidhaan*? That  
 14 is *Samyak Vidhan*, that is *samvidhan*. So, this is *Samvidhan* is different. Unfortunately, we  
 15 don't have the exact word for the *Samvidhan*, we don't have the word for *Brahmacharya*, we  
 16 don't have the word for *dharma*, we don't have from word for yoga, etc. I also consider, there  
 17 is frequently said, all religions are same. Not at all.

18 My third page is the five tenets of religions. I have given the five tenets of all the religions.  
 19 Totally different. This is *Ramayana*. There is not a single sentence, you follow *Ramayana* you  
 20 pray Lord Ram; if you will not follow *Ramayana*, will not pray Lord Ram, you will go to *naraka*.  
 21 No, not at all. This is My Lord, *Vishnu Purana*. *Ek vaakya nahi likha hai ki keval Bhagwan*  
 22 *Vishnu hi puja योग्या हain, Vishnu Purana ko hi mano. Agar nahi manoge to narak mein*  
 23 *jaoge. Nahi likha hai. Yeh Bhagavad Gita. Ek sentence nahi likha hai. Bhagavad Gita ko*  
 24 *mano, Krishna ko mano, nahi karoge to narak mein jaoge.*

25 **JUSTICE R. MAHADEVAN:** You are going beyond the subject and issue being discussed  
 26 by everyone of us. You said 52 alphabets in Sanskrit, one of the finest language in the world.

27 **ASHWINI UPADHYAY:** Yeah, My Lord.

28 **JUSTICE R. MAHADEVAN:** Similarly Tamil has 247.

29 **ASHWINI UPADHYAY:** Yes, yes. Yes, yes, My Lord. Yes, yes.

30 **JUSTICE R. MAHADEVAN:** So, don't go into all those areas.

31 **ASHWINI UPADHYAY:** No, no. What I'm...

32 **JUSTICE R. MAHADEVAN:** Confine yourself to the point in issue.

33 **ASHWINI UPADHYAY:** My point is My Lord...

- 1 **JUSTICE R. MAHADEVAN:** Yes.
- 2 **ASHWINI UPADHYAY:** If you will interpret the Constitution in English, then today we  
3 have the Nine-Judge Bench, tomorrow we have 11, no end. If you interpret considering it as  
4 *Samvidhan* and what is the meaning, then we have difference.
- 5 **JUSTICE B.V. NAGARATHNA:** In Kannada there are 52, so therefore don't go into the...
- 6 **ASHWINI UPADHYAY:** No, no all the Indians were... Oh, sorry, sorry, I am...
- 7 **JUSTICE B.V. NAGARATHNA:** See, all religions are equal.
- 8 **ASHWINI UPADHYAY:** I am, I am, I am sorry. I am sorry all the Indian language have the  
9 52.
- 10 **JUSTICE B.V. NAGARATHNA:** Don't go into superiority...
- 11 **ASHWINI UPADHYAY:** 52 alphabet.
- 12 **JUSTICE B.V. NAGARATHNA:** ...superiority in the court of law, please.
- 13 **ASHWINI UPADHYAY:** No, My Lords, submission is this is the *Durga Saptashati*. "*Ek*  
14 *shabd*, sentence *nahin likha hai - keval Durga ji ki puja karo, Durga Saptashati padho, nahin*  
15 *toh narak mein chale jaoge.*" Arya Samaj also denomination - not a single sentence - please  
16 follow Arya Samaj, please follow us - very important, My Lord.
- 17 **CJI SURYA KANT:** [UNCLEAR].
- 18 **JUSTICE AHSANUDDIN AMANULLAH:** Sorry...
- 19 **JUSTICE B.V. NAGARATHNA:** We can't permit all this.
- 20 **JUSTICE AHSANUDDIN AMANULLAH:** We have to stop you.
- 21 **JUSTICE B.V. NAGARATHNA:** Yes, it's [UNCLEAR].
- 22 **JUSTICE AHSANUDDIN AMANULLAH:** This is not a public platform.
- 23 **JUSTICE B.V. NAGARATHNA:** [UNCLEAR].
- 24 **ASHWINI UPADHYAY:** My submission is this. *Dharma* and religion is not same and all  
25 religions also are, also not same. Entire world is burning due to religious conflict. *Bharat* was  
26 divided in 25 countries due to denomination conflict, religious conflict. So, my submission is  
27 this.
- 28 **CJI SURYA KANT:** Time is over, Mr. Upadhyay.

1 **ASHWINI UPADHYAY:** Yes, yes just... I... now, I will only do conclusion. Just see, My Lord,  
2 conclusions. The conclusion at page number 12. "Article 25 is expressly subject to all other  
3 fundamental rights because it's conferred a novel right to propagate religion and individuals,  
4 unlike any of the nations from which we adopted our Constitution. Article 26 does not confer  
5 right to propagate religion on religious denomination. The intent of the framers was never to  
6 grant right to propagate religion to religious denomination, in light of the damage that was  
7 done by them before and during the 1947 Partition and massive massacre. Article 26 is  
8 impliedly subject to other provisions of Part III of the Constitution like the other."

9 Now my next conclusion on ***Sabarimala*** case, My Lord. There are lakhs, lakhs of mosques  
10 but the Mecca - Medina have a distinct sanctity. There are lakhs of churches but Jerusalem  
11 Church has a distinct sanctity. There are thousands of Shiv temples but *Barah Jyotirlingas*  
12 have distinct sanctity. There are lakhs of goddess temple but 51 *Shakti Peeths* have distinct  
13 sanctity. There are thousands of Jain Mandir's, but the temples made on the birthplace of the  
14 *Choubis Tirthankars* have different sanctity. Similarly, there are 1500 Sabarimala temples,  
15 but this temple has a distinct sanctity because... no, no... My Lord.

16 **JUSTICE M.M. SUNDRESH:** What you're saying?

17 **ASHWINI UPADHYAY:** I am saying, I am saying that, that restriction on 10 to 50 is  
18 reasonable. So, that's why I'm here. Because Your Lordships are deciding the seven questions  
19 of law, and I am supporting the ***Sabarimala*** case that's why, I'm this side.

20 **CJI SURYA KANT:** Thank you.

21 **ASHWINI UPADHYAY:** Just, just one conclusion, My Lord. I'm only reading only  
22 conclusion only. Just see the page of 25, conclusion.

23 **CJI SURYA KANT:** Yes.

24 **ASHWINI UPADHYAY:** "Article 30 was conceived by the framers of the Constitution as a  
25 response to the specific anxiety of minority communities, particularly in the shadow of  
26 partition that the majority through the instrument of State Education Policy might  
27 systematically erode minority languages."

28 **JUSTICE B.V. NAGARATHNA:** ... into Article 30, that is not the subject matter of...

29 **ASHWINI UPADHYAY:** Because some, My Lords, some argument was there, that this is  
30 the... so I'm skipping if Your Lordships with that.

31 **CJI SURYA KANT:** You are not responding to argument. Here you are only saying, you are...

1 **ASHWINI UPADHYAY:** Then, then then My Lord, just see the *Dharma*, last page as page  
2 35, conclusion.

3 **CJI SURYA KANT:** You have beautifully explained to us. We understood that.

4 **ASHWINI UPADHYAY:** My Lord, the conclusion...

5 **JUSTICE M.M. SUNDRESH:** Beyond religion you said...

6 **ASHWINI UPADHYAY:** My Lord, "*Dharma* cannot be translated as a religion,  
7 constitutional provisions touching upon *Dharma* must be interpreted with the conscious  
8 awareness of the distinction. *Dharma* is universal, reason based, inclusive, ecologically  
9 balanced framework of duty conduct available to every human being, regardless of it, it  
10 demands conduct, not belief and trust to the boundary between believers and non-believers.  
11 Religion, as the term is understood in tradition from which its constitutional users derive its  
12 traditional bound text anchored, community specific and structurally exclusive. Its boundary  
13 between the faithful and the faithless has historically been a source of conflict and injustice.  
14 The Constitution is in foundational commitment, a *dharmic* document. Constitutional  
15 protections..." I am only...

16 **JUSTICE M.M. SUNDRESH:** You argued on behalf of the Respondent.

17 **ASHWINI UPADHYAY:** My Lord, just see...

18 **JUSTICE M.M. SUNDRESH:** Thank you.

19 **ASHWINI UPADHYAY:** *Dharma* gives liberty of thought, liberty of belief, liberty of faith,  
20 liberty of worship; religion does not. *Dharma* says *Vasudhaiva Kutumbakam, Nari Tu*  
21 *narayani, Sarvamangala Mangalye Shive Sarvartha Sadhike, Yato Dharmo Stato Jaya.*  
22 Religion does not. Religion says, if you are in my, if you are in my, my area...

23 **JUSTICE B.V. NAGARATHNA:** Every religion has its own *dharma*.

24 **ASHWINI UPADHYAY:** My Lord, with utmost respect to My Lord.

25 **JUSTICE B.V. NAGARATHNA:** Don't think that the...

26 **ASHWINI UPADHYAY:** All the religions don't give *Vasudhaiva Kutumbakam* concept,  
27 don't give one earth, one family concept, don't give *Janani Janmabhoomi* concept, don't give  
28 *Sarvamangala Mangalye* concept.

29 **JUSTICE M.M. SUNDRESH:** We understand you concept. Please don't argue like this.  
30 Leave it at that. Yes, this is absolutely not in good taste.

31 **ASHWINI UPADHYAY:** It may be some bitter truth, it may be some bitter truth.

1 **JUSTICE AHSANUDDIN AMANULLAH:** Absolutely not, Mr. Counsel, you have to  
2 understand the scope of this argument.

3 **JUSTICE M.M. SUNDRESH:** If you are understanding, please don't... leave it at that. We  
4 have heard you...

5 **ASHWINI UPADHYAY:** I am only saying, Article 25 and 26 gives freedom of religion, not  
6 freedom of *dharma*. Article 24, Article 14, 15, 16, 17, 18 is the promote *dharma*. Article 19  
7 *dharma* with some restrictions. Article 21 is *dharma*. Only Article 25 and 26 gives freedom of  
8 religion, other rights, other fundamental rights are in the nature of *dharma*, so please keep in  
9 this mind, My Lords, this is my humble request.

10 **JUSTICE M.M. SUNDRESH:** So, all other things will go, only the religious rights will have  
11 to be approved...

12 **ASHWINI UPADHYAY:** No, no. I am saying this Article 25 and 26 is the most restricted  
13 right, most restricted.

14 **CJI SURYA KANT:** We understood your argument is that rest of the fundamental rights are  
15 emanating from *dharma*.

16 **ASHWINI UPADHYAY:** Yes.

17 **CJI SURYA KANT:** Therefore, they have wider contours, they have wider meaning, and a  
18 more... they are comparatively very stronger rights as compared to very restricted right in 25-  
19 26.

20 **ASHWINI UPADHYAY:** Because it was argued that Article 26 has some different island. It  
21 was said Article 25... 26 higher than even 25.

22 **CJI SURYA KANT:** Thank you.

23 **ASHWINI UPADHYAY:** I'm saying 'no.'

24 **CJI SURYA KANT:** Thank you. Mr. Ashwini.

25 **ASHWINI UPADHYAY:** Obligated, My Lord.

26 **CJI SURYA KANT:** Thank you, thank you, thank you very much. Yes, Mr. Dinesh, yes, two  
27 minutes please.

28 **V. K. BIJU:** My Lords already granted me ten minutes.

29 **CJI SURYA KANT:** Just take the mic and straight start...

- 1 **V. K. BIJU:** I will not repeat any single word which were argued by senior colleagues. It's all  
2 together totally new point. And My Lord, my submission.
- 3 **CJI SURYA KANT:** Take the mic and straight to the point.
- 4 **V. K. BIJU:** Yes, My Lord.
- 5 **CJI SURYA KANT:** No reference to any note, etc.
- 6 **V. K. BIJU:** Yes, My Lord.
- 7 **CJI SURYA KANT:** We will examine note, we have lot of vacations. Partial working days...
- 8 **JUSTICE B.V. NAGARATHNA:** Partial working. Partial vacation, partial working.
- 9 **V. K. BIJU:** My submission, the crux of my submission, My Lords, if...
- 10 **CJI SURYA KANT:** Take the mic first of all, straight start. Keep them here.
- 11 **V. K. BIJU:** Yes, My Lords.
- 12 **CJI SURYA KANT:** Don't give... yes.
- 13 **V. K. BIJU:** My Lords, if this rituals and custom is nothing to do with the religious cruelty as  
14 observed by Justice Indu Malhotra in para 8, then My Lords, the scope of judicial review is  
15 very less. My Lords may kindly come to page 76 of my note, page 76 of my note.
- 16 **CJI SURYA KANT:** Yes, please read that.
- 17 **V. K. BIJU:** My Lord, I will read.
- 18 **CJI SURYA KANT:** Only one line, punch line.
- 19 **JUSTICE M.M. SUNDRESH:** Where is the note, please?
- 20 **V. K. BIJU:** My Lord, page 76 para 3. It says that it is extracted from the judgment. "The  
21 difficulty lies in applying the test under Article 14 to religious practices which are also  
22 protected as fundamental rights under our Constitution. The right to equality claimed by the  
23 British under Article 14 conflicts with the rights of worshipers of this shrine, which is also  
24 fundamental right guaranteed by Articles 25, 26 of the Constitution. It would compel the court  
25 to undertake judicial review under Article 14 to delineate the rationality of the religious beliefs  
26 or practices which would be outside the ken of the courts. It is not for the courts to determine  
27 which of these practices of faith are to be struck down, except if they are pernicious, oppressive  
28 or social evils like *sati*." So therefore, My Lords, this is a dissenting judgment. This was, my  
29 first layer of my argument for Five Judges Bench, My Lords.

1 Now My Lords may kindly come to page 14 quickly, My Lords. What is the religious cruelty  
2 discussed by Commonwealth Assembly in 1858? In 1858, Commonwealth of Australia  
3 Assembly debates, page 14. Sometime extremely... and I want to read the executive order  
4 issued by the...

5 **CJI SURYA KANT:** No. That we will not permit. You give it to us, we will read it.

6 **V. K. BIJU:** Yes My Lord. Now, My Lord page 14 at page 21, Commonwealth Assembly  
7 debates, what is religious cruelty? Sir Edward Braddon for Tasmania. "I have an amendment  
8 to move on behalf of Tasmania, and also an amendment to my own. The clause we have before  
9 us says that a State shall not make any law prohibiting the free exercise of any religion. It is  
10 quite possible that this might make a lawful practices which would otherwise be strictly  
11 prohibited. Take, for instance, the Hindoos.", The Hindus spelling is "Hindoos" that time,  
12 "...the Hindoos. One of their religious rites is the "suttee" and another is the "kachak,"-one  
13 meaning simply murder, and the other barbarous cruelty to the devotees who offer themselves  
14 for the sacrifice." Then again, "Yes, if this is to be the law, these people will be able to practice  
15 the rites of their religion, and the amendment I have to suggest is this insertion of some such  
16 words as these: But shall prevent the performance of any such religious rites, etc."

17 Now My Lords may come to executive order issued by the White House, page 32. It is very  
18 important for my purpose. The executive order is always enforceable issuing by the White  
19 House. If the crux of that executive order at page 32, My Lords. I'm sorry, it's at page 29, I'm  
20 extremely sorry. It is issued by George W. Bush, saying that, "Your religious practice is very  
21 much relative to the society. If it is for social upliftment, if it is for self-purification, like  
22 *Mandala Vratham* in Sabarimala, and if it is for self-renaissance that practice must be  
23 appreciated and part and parcel of the local laws." This is what the executive order issued by  
24 George W Bush, whether it is enforceable, which I gave a note at page 108. What is the  
25 meaning? How it can be issued? Enforceability of an executive order. Now this is what my one  
26 area that, what is the religious cruelty? If it is not religious cruelty and my practice is for the  
27 upliftment of the society and it is a self-purification and it is self-renaissance, the court, the  
28 scope of judicial review is very, very less. That is what Justice Indu Malhotra's judgment.

29 Now My Lords may come to page 78. Now I want to see a statistic. It is connected with the  
30 Sabarimala *Mandala vratham*. Sabarimala *mandala vratham* is having with the... like the  
31 same having with the Muslims. I have gone through the Holy Bible, having with the Muslims  
32 I have gone through the Holy Quran, I extracted those pages here. So, all this, all this *vrathas*  
33 is for the purification of the self-purification, and that self-purification is for the upliftment of  
34 the society, that has to be appreciated under law and otherwise, by the State also. And 25(2)(b),  
35 25(2)(b) says social welfare, 25(b) says reform, that is what I am doing. Whether any cruelty

1 involved in Sabarimala, there is nothing. But of course, unfortunately a section of the people  
2 projected that religious cruelty is there. A section of the people projected that menstruating  
3 lady cannot enter into Sabarimala. No, I am going to prove it. I am competent enough to prove  
4 it. Menstruation or menstruating lady cannot enter into Sabarimala is absolutely wrong. That  
5 interpretation had been given by some kind of activist and therefore, My Lords, this menses  
6 projection is to misguide the court, misguide the society and that is nothing to do with that.  
7 An effective understanding of *Mandala Vratha* will prove that it is nothing to do with this  
8 biological. That is why, My Lord, out of five Honourable Judges, Chief Justice Misra, Justice  
9 Khanwilkar and Justice Indu Malhotra, out of three, in this particular, she decided on my  
10 favour.

11 **JUSTICE M.M. SUNDRESH:** Would you please answer this seven question anything to do  
12 with this. We are not hearing the review, we are not hearing the review, please.

13 **V. K. BIJU:** Then, My Lord, then if there is no religious cruelty, I am not bound to give an  
14 answer.

15 **JUSTICE M.M. SUNDRESH:** [INAUDIBLE].

16 **V. K. BIJU:** That's why I may substantiate this....

17 **JUSTICE M.M. SUNDRESH:** [INAUDIBLE].

18 **V. K. BIJU:** I may, My Lords, I will give that.

19 **JUSTICE M.M. SUNDRESH:** [UNCLEAR]. It is not the dispute.

20 **V. K. BIJU:** I will give the answer because of My Lord...

21 **JUSTICE M.M. SUNDRESH:** In front of the Chief Justice is this...

22 **V. K. BIJU:** My Lord, there is, there is...

23 **JUSTICE M.M. SUNDRESH:** Make your time useful by addressing the legal issue, we will  
24 not go into that now.

25 **V. K. BIJU:** Yes, My Lord. It's legal My Lord.

26 **JUSTICE M.M. SUNDRESH:** The argument in the beginning itself we are not going into  
27 that...

28 **V. K. BIJU:** The three judges finding is absolutely legal and therefore it is bound to be Article  
29 141.

30 **CJI SURYA KANT:** That is with reference to the facts of that case. That we will examine,  
31 there is no issue.

1 **V. K. BIJU:** Then, My Lords...

2 **JUSTICE M.M. SUNDRESH:** [UNCLEAR].

3 **V. K. BIJU:** Then My Lords, page 85. Why this *Mandala vratha* designed accordingly for the  
4 men and why a certain categories. My Lords, kindly note that the only, age relation, nothing  
5 to do with the ladies entry. Page 85 types of prison inmates in Central jails, 31st December, it's  
6 a Crime Records Bureau. 96% of the men are committing the crime; only 4% under trial as  
7 well as convicts. And how this is, at page 86, My Lords, again, that tobacco consumption,  
8 alcohol consumption again with the men. My Lord, I am coming to what is *Mandala vratha*.  
9 It is nothing to do with the menstruation. We are pained by hearing this. We are pained... The  
10 entire writ petition say's so, two Honourable Judges decided the issue on the basis of  
11 menstruation. Justice Nariman and Justice Chandrachud, kindly see. Is it a correct fact? No,  
12 that is why My Lords, crores of devotees crores of devotees are pained.

13 So, tobacco. Now, My Lords, may kindly directly come to page 37. That is why the discussion  
14 between... that's why I showed you that prison details. Tobacco consumption, this is a Family  
15 Health Survey by the Government of India. I am relying all the authoritative records. Krishna  
16 and Arjuna, this is what exactly says, My Lords, page 37; Arjuna said, "Oh descendant of  
17 *Vrishni*, Krishna, now impelled by what does this man commit sin against his wish as though  
18 driven by force?" Man is not committing, not committing the crime as driven by force. That is  
19 why statistics are very important. Now My Lords again the blessed Lord said, "This lust, this  
20 anger born out of *rajoguna* is insatiable and an awful sinner, know this to be the enemy here  
21 world or in the embodied state." Again three pages are extremely important. So therefore, My  
22 Lords, that question of Krishna is extremely important; that is what the statistics we have seen  
23 2023.

24 **CJI SURYA KANT:** We understood that part, Mr. V.K.

25 **V. K. BIJU:** Yes, My Lord. So, now My Lords, page 38.

26 **CJI SURYA KANT:** Anything on 25?

27 **V. K. BIJU:** Page 91, page 91 My Lord, this My Lords, may. I studied a lot My Lord first day  
28 onwards I am, I was here.

29 **CJI SURYA KANT:** We'll review thereafter...

30 **V. K. BIJU:** Yes, My Lord.

31 **CJI SURYA KANT:** We'll discuss. Main case there is...

32 **V. K. BIJU:** If I am disturbing My Lords, I don't want to continue.

1 **CJI SURYA KANT:** No, these are the arguments, when the main case we will state, there you  
2 will have to raise all these arguments. You are unnecessarily pre-empting...

3 **V. K. BIJU:** That's why my first submission My Lords, my first submission is, if there is no  
4 religious cruelty, if there is no religious cruelty and if it is an Essential Religious Practice, then  
5 My Lords, whether I will come under the purview of seven questions or not, at least if you  
6 understand this...

7 **CJI SURYA KANT:** All right. Exactly we have understood, that we understood.

8 **V. K. BIJU:** Now, My Lord, page 90, page 90, I'm extremely important, My Lords. Two more,  
9 two three minutes more. This is Asian Journal of Medical Sciences. This journal of five doctors  
10 from different universities of the country gone through this 41-days *vratha*, *Ayyappa deeksha*,  
11 then they held it's good for the power, good for sleep, good for the health etc. So therefore, a  
12 social upliftment and self-purification *Mandala vratha* is misinterpreted and mis-projected  
13 before the society and says that because of menstruation...

14 **JUSTICE M.M. SUNDRESH:** No. You are Ayyappa devotee?

15 **V. K. BIJU:** My Lords, Ayyappa is much, much, more than... for me.

16 **JUSTICE M.M. SUNDRESH:** Then leave it to Ayyappa and leave it to us... We heard you.

17 **V. K. BIJU:** Now My Lord, one more, one more point, one more point.

18 **JUSTICE M.M. SUNDRESH:** Yes.

19 **V. K. BIJU:** And that point is this My Lords, legally I have two submissions, I have legally  
20 two submissions. I said something on facts, to counter this biological issue. Now My Lords,  
21 25(2)(b), I already indicated to Your Lordship that social welfare... social welfare and reform.  
22 I already submitted before My Lords my respectful submission, which is social reform  
23 Ramadan, that *Saghat*, that 50 days, now Jesus Christ observed Bible like *mandala vratha*.  
24 So, that is what? Its importance. Now My Lords, that 25(2)(b), is clarified me.

25 Now, My Lord, 26. 26(a), establish and maintain, establish and maintain in view of 25(1), in  
26 view of 25(1), I established something. Now in 26, there are three important words "maintain,  
27 administer, manage". Why it is separately given? (a), Establish and manage, there are two  
28 parts. One is establish and manage. Maintain, I'm sorry. My Lords, according to me, my  
29 respectful submission, My Lord, Justice Sundresh always wanted to legal issue. Maintain,  
30 Justice Wanchoo interpreted five-judges Bench matter in connection with the Muslim  
31 University, Aligarh Muslim University, page 71 which is the judgment. "Maintain" means  
32 continue. Dictionary meaning also, continue. Interpretation of the highest court of the country

1 also, continue. So, in accordance with 25, I establish something, I can continue it if otherwise  
2 proved that it is a religious cruelty.

3 Now My Lord, just that, I will just read what we have said with Justice Wanchoo's reading, My  
4 Lord. I'm sorry I understood that my problem that all are here, my juniors are here but I am,  
5 sir, but we, I'm sorry, I'm so not saying about you. You are much senior to me. "But we have  
6 said with respect to Article 31 which gives right to minorities to establish and administer  
7 educational institutions of their choice applies equally to Clause (a) of 26 and therefore, we  
8 are of opinion that the words "establish and maintain" must be read conjunctively and it is  
9 only institution which are relatable." So, it must be read conjunctively, "establish and  
10 continue."

11 **CJI SURYA KANT:** That is on 29 and 30, Mr. Biju.

12 **V. K. BIJU:** No, no My Lord, what court interpretation I'm saying that, My Lords. My Lords  
13 are absolutely right, with one more sentence My Lords. Kindly see page, my last submission,  
14 My Lords. It is not just... Sabarimala, My Lord, though I am just indicating Sabarimala. My  
15 general principle is what I am saying is...

16 **CJI SURYA KANT:** You are absolutely right, it is not Sabarimala only.

17 **V. K. BIJU:** Yes. Religious cruelty, religious cruel... My Lord, this, in the premises of  
18 Sabarimala, there is a small mosque, *Vavar Hundi*. This is the only temple in the country  
19 according to my limited knowledge, *Vavar Hundi* and the all the crores of devotees going to  
20 this *Vavar Nada*, *Vavar* step, that small mosque is there in the premises of Sabarimala it is,  
21 itself. So, My Lord, whoever coming, swamis, they are donating to this *Vavar Hundi* also. And  
22 Juma Masjid, *Vavar* Juma, *Vavar* was the friend of Ayyappa. That is for the last...

23 **CJI SURYA KANT:** Thank you, thank you.

24 **V. K. BIJU:** And therefore, My Lords, I'm grateful.

25 **ROHAN THAWANI:** Two minutes, My Lords, just two broad propositions only.

26 **CJI SURYA KANT:** Yes, please straight start your...

27 **ROHAN THAWANI:** Yes, My Lord. First is when 25 and 26 are pitted against... I appear for  
28 one of the review petitioners. I'm supporting the *Sabarimala* review. Now the question is  
29 when 25 and 26 either individually or together... when 25 and 26 individually or together are  
30 pitted against other fundamental rights, what is the approach to be taken? *Electoral Bonds*  
31 case Your Lordship evolved the double proportionality test. The very first question which is  
32 posed in that test is when there is a balance to be done, is one right higher or the other right  
33 lower? But my submission is, 25 and 26 together individually separate are not lower in

1 hierarchy to any other fundamental right. If there has to be an interference, it has to be in a  
2 pernicious case, not only *sati* or human sacrifice. Some time back reference was made to  
3 Colonel Boden for conversion. There was a judgment of **Reverend Stainislaus** which was  
4 read out earlier. That was like exactly a case where interference is called for. Also, My Lord in  
5 **Asha Ranjan vs. State of Bihar**, Your Lordships again considered, when two rights are to  
6 be brought into conflict or even within the same right, it does not mean that in the exercise of  
7 balancing, one fundamental right gets extinguished. Now that is what has actually happened  
8 in many of these cases. So, the submission is when the balancing has to take place, wide  
9 interpretation has to be given so that all the fundamental rights are given their full scope and  
10 play. One example of hierarchy could be right to property. It was removed from 19(1)(f) and  
11 put into 300A. So, in that sense it was demoted from a constitutional fundamental right to a  
12 mere constitutional right. So, if 19(1)(f) or 300A comes into conflict with any other right, then  
13 yes, one can say that there's a hierarchy but not in this.

14 Second point, very quickly just taking off on denomination, what was argued by Ms. Divan and  
15 Mr. Joshi and others and some observations which fell from the bench. **Shirur Mutt's**  
16 judgment, My Lord, is taken... the definition of denomination is taken from the Oxford  
17 Dictionary. Oxford Dictionary is essentially an English concept where the question is common  
18 faith, name, organization, this is follower specific. A lot of reference has been made to specific  
19 temples in this country where specific worship is followed, but I would just like to take it a step  
20 further. Temples are consecrated, particularly our ancient temples at particular places for  
21 particular reason. For example, the *Shakti peeths*. Worship over there is very specific to what  
22 has happened at that place. One example is the Jwala Devi temple in Himachal. Worship is of  
23 the fire. I am a Hindu, I can go there but I will worship according to the rituals that are  
24 established at that place, I can't do anything else. I can also go to, let us say, the Jagannath  
25 Temple in Puri. There the worship is of the idol. Again, I will have to follow the worship of that  
26 place. So, being a Hindu or a section of a Hindu denomination, should not be concentrated on  
27 me as a follower; it should be concentrated on the place where I am going to offer worship. In  
28 that sense, denomination has to have a much wider concept than what Your Lordships have  
29 held in **Shirur Mutt** and followed thereafter.

30 Just to crystallize the point, if a particular place of worship is established for a particular  
31 purpose, the priestly lineage has a particular qualification, the rituals follow a particular  
32 pattern, then that particular place itself is capable of being defined as a denomination, not the  
33 person who goes there. That's the submission, My Lord, that's all. Just with that note on this  
34 point, there is a religious scholar who has written a note on that; I've just handed it up, I'm not  
35 going to read anything from that, but I just wanted to place it.

36 **CJI SURYA KANT:** Thank you, yes.

- 1 **ANIRUDH SHARMA:** Couple of ...
- 2 **CJI SURYA KANT:** Announce your name also next.
- 3 **ANIRUDH SHARMA:** Anirudh Sharma. My Lords, a Nine Judges Bench has already  
4 commented on ERP. Hence, I must on essential religious practices, in two minutes I'll just  
5 place that, because that becomes very important. If My Lords don't notice it, then it opens for  
6 eleven judges.
- 7 **CJI SURYA KANT:** You have given in the name in the list, then I will stop you otherwise.
- 8 **ANIRUDH SHARMA:** It's already there.
- 9 **CJI SURYA KANT:** Now two minutes please.
- 10 **ANIRUDH SHARMA:** Yes, nine judges...
- 11 **JUSTICE M.M. SUNDRESH:** The names are not there in the list.
- 12 **ANIRUDH SHARMA:** Speaking to Justice Ramaswami in para 186... My Lords, Anirudh  
13 Sharma, nine judges in ***Bommai***. Justice Ramaswami comments about Essential Religious  
14 Practices, I have quoted it, highlighted it. I'll just read the highlighted portion, My Lords, at  
15 page 1 itself, "In order to secure constitutional protection, the religious practices should not  
16 only be an essential practice but should also be an integral part of proponent's religion but  
17 subject to State's control. Otherwise, even purely secular practices which are not an essential  
18 or an integral part of religion, are apt to be quoted as religious forums and make a claim for  
19 being treated as religious practices." Then he again repeats in para 184. My Lords, and then  
20 he says that, "No religious place can be stopped for any caste or any religion." As far as religion  
21 is concerned, there can be religious autonomy, not on basis of caste. One particular religious  
22 place may have religious autonomy. So, that My Lords may have to reconsider. Because this is  
23 nine judges, it will bind.
- 24 Second point, My Lords, with respect to ***Bommai***, next page, again it says, "Entry only on  
25 grounds of caste or religion is outlawed." Next, not on gender. Though it in my favour, this was  
26 also not the issue raised. So, what was the issue raised which will give the exact ratio and the  
27 exact *obiter*, therefore becomes crucial. Because Justice Reddy, Justice Jeevan Reddy's  
28 judgment becomes the lead judgment as every other Lordships then agrees or disagrees with  
29 that judgment. What was the issue framed is 304 para number. What do these articles read  
30 together with the Preamble signify? So, he refers to 14, 15, 16, 25; he takes a holistic view and  
31 says what is it that it signifies? Then he holds.
- 32 Then I have at page 3 stated that no other Honourable Judge goes into the issue of ERP. I give  
33 the para numbers of every Honourable Judge who deals with the issue. No one says even a

1 single sentence about Essential Religious Practice. So, the question before **Bommai** was not  
 2 Essential Religious Practice. However, it creates an interface for future, My Lords, where  
 3 religious morality may conflict with constitutional morality. **Bommai** is a classic case of that.

4 Next point the area of binding effect of **Bommai** judgment, what is it that **Bommai** says,  
 5 which I respectfully submit is will also be binding on this Honourable Bench of Nine Judges.  
 6 **Bommai** says first thing that Article 25, 26, 28 constitutes one scheme, and 26, 27, 28 are  
 7 just facets of 25. So, if you don't have anything in 25, nothing works. But then 27 and 28 being  
 8 part of it, the words in 27, 28 actually help in interpretation of Article 25. And in that, the first  
 9 point is that there is an Equality Clause well within 25 itself. 25 uses the word "equally", both  
 10 horizontally and vertically. Equally religion... individuals of one particular religion there will  
 11 be equality, and then when there is interface with the State, all denominations, all religions  
 12 will be treated equally. Here also, My Lords, there might be a problem because if there is  
 13 nothing in your religion and if you are claiming, can you claim that equality? Your equality  
 14 amongst religion, will have to be first established that you have some part of it in your religion;  
 15 then only you can claim from State. If a particular thing is absent from your religion, there  
 16 cannot be a formal and a very stale equality, My Lords. It is a dynamic concept, equality  
 17 between religions. First, religions will be have will have to be investigated and then equality  
 18 will have to be substantiated.

19 Next point is at page number 3. I have completed that. At page 4, a short point, that at para  
 20 183 of **Bommai** again, it says that the Constitution has made demarcation between the  
 21 personal and the religious. This is Justice Ramaswami's part which is binding, because religion  
 22 will come into the sphere of personal and secular will come in the sphere of public. Then  
 23 Justice Ahmadi also notices it, he also...

24 **JUSTICE B.V. NAGARATHNA:** Counsel? How did all this arise in **Bommai**?

25 **ANIRUDH SHARMA:** My Lords, because the issue...

26 **JUSTICE B.V. NAGARATHNA:** It's not to exercise of power. Article 356 for dismissal of a  
 27 State Government.

28 **ANIRUDH SHARMA:** Because secularism was held to be a basic feature question framed,  
 29 so they analysed all the Articles dealing with religious right and says what is secular and what  
 30 is religion.

31 **JUSTICE B.V. NAGARATHNA:** Secularism also arose under that... exercise of power by  
 32 the Governor under Article...

33 **ANIRUDH SHARMA:** My Lord, but I would respectfully submit that all Honourable Judges  
 34 in all the opinions of **Bommai** have dealt with secularism and the effect of Article 25, 28, 29,

1 30, 14, 15, 16, with respect to religious equality. And the core of that judgment is that everyone  
2 is equal within the religion, and everyone is outside equal also outside the religion. And if that  
3 is violated, then then the court steps in.

4 The next point on this issue is what Justice Ahmadi says. He cites, I will, I will not read, Hind  
5 Swaraj and Pandit Nehru's opinion. He approves Gandhiji's opinion, it says, "religion is my  
6 personal affair, the State has nothing to do with it; the State will look after secular welfare,  
7 health, communication, foreign relations, currency and so on." So, for interpretation of the  
8 secular powers of the State, My Lord, this comes into operation. What is secular? So, this is  
9 the area where the States can interfere on the grounds on which the State can legislate under  
10 25(2), on grounds of secularism and therefore can enter to that extent, My Lords.

11 At page 5 the next point is Article 28(2), it has two important words, 'endowments' and 'trusts'.  
12 It says that though the State may control, take control of a religious institution, but if it is  
13 established by an endowment or a trust for a particular religion, the religious instructions will  
14 continue even if the State takes over. And this question was put directly to Dr. Ambedkar, that  
15 will it not be, you know, will it not be a violation of secularism? So, his views are on page 6, My  
16 Lords. He says, "permitting community which has established an institution for the  
17 advancement of its religion or its cultural life to give instructions in the school is allowed." The  
18 sum and summation of that is that. You establish an endowment, you have a trust, so two  
19 things: first, under religious right you must be having the right to establish endowment. Now,  
20 under 25(1). Number two, trust. That is why the word "persons" is used in 25(1) and Dr.  
21 Ambedkar supports it by saying that the endowments and trust will have constitutional  
22 recognition by putting it specifically in the Constitution. So, all those organisations which can  
23 come under 19(1)(c), under the definition of person and this question was highlighted by  
24 Justice, My Lord, Justice Sundresh, that a question was framed in *Shirur Mutt* but not  
25 answered. Hence My Lords, 28(2) gives the answer by giving substantial and direct  
26 recognition to endowment and trust, so 19(1)(c) comes. So, there are three categories now,  
27 individual, groups, and denominations. Those groups which may not qualify as denomination  
28 may still be having rights and that is where the third element comes into operation. My Lord  
29 are sitting in the nine judges, no judgment till now has gone into the third aspect in a 145(3)  
30 reference. However, in those judgments which are not 145(3) reference, they have gone. And,  
31 My Lords, I have just quoted Parsi Zoroastrian, those paragraphs which are relevant for this  
32 purpose in my Written Submissions. I won't read it, My Lords. To come...

33 **CJI SURYA KANT:** All right. Thank you.

34 **ANIRUDH SHARMA:** Just last point, My Lords. As far as this, I have quoted Dr.  
35 Ambedkar...

1 **JUSTICE AHSANUDDIN AMANULLAH:** But what is the third aspect? You still haven't  
2 gone into...

3 **ANIRUDH SHARMA:** My Lord, first is individual, second is denomination, third is groups.  
4 My Lords, a trust, endowment and endowment is a pious purposes... In 30 seconds, I'll give  
5 an example. Someone creates a well of his own money, it becomes *res extra commercium*  
6 because it's dedicated to the society. Someone makes a temple out of his own earnings for the  
7 society welfare. Someone has a drinking system, My Lords, these become *res extra*  
8 *commercium* beyond the commercial view and even the State cannot encroach upon it because  
9 the State is *parens patriae* it always has to work in public interest. So, someone has made out  
10 of his own money, a pond, a well, a temple, all these are pious purposes. In Christianity,  
11 someone opens a church, in Islam, *Waqf*, these are all pious purposes where you totally  
12 dissociate yourself from it and leave it for the general good. That's the last point, My Lords.

13 And as far as constitutional morality is concerned, I have just given some additional reasons  
14 in my Written Submissions which have not been otherwise captured. So, My Lords, to sum up,  
15 we have in Maharashtra, Ganesh Chaturthi; in West Bengal, we have Durga Puja; in Bihar and  
16 certain other places, other things. These are all arranged by the societies, they are pandals. So,  
17 even in COVID, my rights... My Lords recognised those rights and allowed them to carry on  
18 limited sphere. Those are not denominations, those are neither individual, but they have  
19 rights.

20 So, the third factor will be that even if I fail as denomination or I'm a set of individuals, even  
21 if I fail as denomination, I would still have some rights, if I succeed in the test of evidence, My  
22 Lords.

23 **CJI SURYA KANT:** Thank you.

24 **ANIRUDH SHARMA:** Much obliged.

25 **CJI SURYA KANT:** Thank you, thank you. Faujiya you have five minutes. You asked for five,  
26 granted five.

27 **FAUJIYA SHAKEEL:** Very grateful. I'll briefly state my three propositions. These are my  
28 submissions, My Lords may read it later. I'm not relying on them for now. My first submission  
29 is that the test of hollowing out a religion or eviscerating a religion...

30 **CJI SURYA KANT:** Take the other mic also towards you.

31 **FAUJIYA SHAKEEL:** My Lords, the first submission is that the test of hollowing out a  
32 religion or eviscerating a religion as the permissible limit to a 25(2)(b) legislation is both vague  
33 and confers the State with massive powers. Now, tomorrow if a challenge is made to a 25(2)(b)

1 legislation, My Lords will have to decide what is hollowing out as per the tenets of that religion,  
2 then My Lords will have to make an analysis of what are the essential aspects of the religion  
3 and non-essential aspects of the religion. Then, My Lords will also have to decide whether the  
4 practice that the State interferes in, results in hollowing out or not, then the extent of  
5 interference results in hollowing out or not. This My Lords, with respect, my submission is  
6 that this is nothing but ERP test in a new cloak of hollowing out of religion test. In fact, this is  
7 much wider, with much higher threshold conferring the State with massive powers. In this  
8 background my submission is, My Lords, should define the broad contours of State's power  
9 under 25(2)(b), lay down basic principles and some guardrails which the States can do and  
10 cannot do in exercise of its power under 25(2)(b), under the guise of social welfare and reform.  
11 I have suggested six guardrails they are part of my submissions on the interpretation of  
12 25(2)(b), I'll briefly state them.

13 The first is, that the expression social welfare and reform takes its colour from and is guided  
14 by public order, morality and health to which the principal Article 25(1) is made subject to.  
15 Second is, power under 25(2)(b) may be exercised to restrict, regulate, prohibit practices that  
16 are against public order, morality and health. Third is, power cannot be used to obliterate  
17 rights. Fourth is, the literal meaning of social welfare is welfare of the society which is relatable  
18 to public order, morality and health. Reform presupposes an existence of a pernicious practice  
19 that does not include religious reform. On interpretation of *non obstante* clause of 25(2)(b), I  
20 have mentioned that this is contextual. This would mean that the individual right under 25(1),  
21 would have to be bypassed for social welfare and reform. However, the extent of interference  
22 for the substance of the legislation will still be guided by social welfare and reform. Social  
23 public order, morality and health. Sixthly, My Lords, the power cannot be exercised to give  
24 effect to or in pursuance of a DPSP, because that would destroy the fundamental right under  
25 25(1). The legislation will also not be saved by Article 31C. My second submission is, what is  
26 protected under 25 and 26, are rights which are *bona fide* and conscientiously held by the  
27 members of the community. Here again, if the community does not speak in one voice and  
28 there is difference of opinion among the members of the community who are particular  
29 practice, there again, My Lords will have to bear a theological hat and decide whether the belief  
30 indeed is held *bona fide* and conscientiously by the members of the community.

31 The third point is on locus, My Lords. The locus, I have stated very carefully that it has to be  
32 of persons who are actually aggrieved by the right. My Lords should make it mandatory for the  
33 Parties to plead in their writ petition that personal right to worship has been violated. I made  
34 a table of 23 cases that have been decided in the last 75 years, with the exception of  
35 ***Sabarimala*** and the ***Triple talaq*** case, whereby My Lords, *suo moto* entertained a PIL,

1 registered a PIL. There is no other case in which a PIL was entertained and decided by this  
2 Honourable Court in the interpretation of 25 and 26 right. Very grateful, My Lords.

3 **CJI SURYA KANT:** Thank you.

4 **KUMUD LATA DAS:** Sir, I've been waiting for a long time. Yes, Your Lordship, I will take...  
5 Your Lordship, my written submission is there. It's just a ten-page submission and it is...

6 **CJI SURYA KANT:** You just start Madam Kumud Lata. You just start your point.

7 **KUMUD LATA DAS:** Yes, Your Lordship. This application pertains to Maa Kamakhya Devi  
8 Temple, which is in Assam, Guwahati. So, I am about the religious... Essential Religious  
9 Practices and the practices which are there, right, for a long time of custom. So, I may just read  
10 the brief history which is on page 5. Brief history of the temple, Your Lordship. "According to  
11 *Kalika Purana*, when Shiva was going to Kailash with Sati, her father...

12 **CJI SURYA KANT:** We are not deciding on individual temples...

13 **KUMUD LATA DAS:** Yes, Your Lordships. What I'm, what I'm submitting is that, here, there  
14 is no denomination.

15 **CJI SURYA KANT:** ...your religious practices, you can propound your point with reference  
16 to 25 or 26.

17 **KUMUD LATA DAS:** Your Lordship, what I'm submitting is, let me just start Your Lordship,  
18 build up my argument, Your Lordship. This is a temple which is without a denomination, it is  
19 just a rock which is a cleft rock and the shape is of the vagina, main vagina. Now opposed to  
20 Lord Ayyappan temple, this is a temple where menstruation is celebrated. There's a fair.  
21 There's *Ambubachi mela* and people as... almost 25 lakh people, this is what I gather the  
22 information, visit the *Ambubachi mela*. Now, what happens during those three days which are  
23 usually 22nd to 25th of June, the temple is closed, there are only women priests who are inside  
24 the temple. So, what happens at large scale is *tantrism*. So, I'm on one of the practices which  
25 is widely practiced there and it has all its vices. Tantrism have done for a good purpose has its  
26 effect but *tantrism* if done for a purpose which is only to indoctrinate one's mind, then it is  
27 certainly a practice which is to be stopped, at least at the public place. So, if I may just read  
28 what is *tantrism*, just a basic, at the outline. It is, "It has got a *pancha karm*." And *panch karm*  
29 involves what is known as five M. Now these five M, they are *madya* that is alcohol, *mamsa*  
30 that is meat, *matsya* that is fish, *mudra* that is gesture and *maithuna* that is sexual  
31 intercourse. Now *tantrik* is not only male, there are also female. This is the latest. What  
32 happens is that when there is *Tantra vidya*, like I will not relate it with any ism, but tantrism  
33 is occultism which has got a lot of practices which are opposed to human life. It violates Article  
34 21, because in Maa Kamakhya temple, there has been a practice of human sacrifices. When

1 human sacrifice and when the temple door opens, it opens with the sacrifice of an animal. So,  
2 this is a practice which is conducted and Your Lordships, have in a judgment of this  
3 Honourable Court, there has been a judicial deliberation on who will manage the affairs of the  
4 temple. So, one is *Tantrism*.

5 Second is, that again the free access. So, for three days when it is closed, it is fine that you  
6 know, three days may be for whatever purpose, but what happens is that who are  
7 discriminated are the male. If there is a women priest inside and there are also *sadhus* who  
8 are allowed inside, then why at least, why not a women pilgrim? So, this is one of my point  
9 which I am saying.

10 **CJI SURYA KANT:** Are you this side or this side, madam, first of all we should discuss.

11 **KUMUD LATA DAS:** No, not Your Lordship, what I'm saying is that like Lord Ayyappa  
12 temple, there's one particular practice which was not there that was opposed to the temple of  
13 entry to, entry of women. Here there are there are three things. One is the animal sacrifice, I  
14 said. This is in direct violation of Cruelty to Animal Act. This Honourable Court has also heard  
15 matters relating to wildlife. And there's one particular temple in Kerala, where elephants open  
16 the temple with... they, they worship; it is elephant who worship first. So, there was a particular  
17 time when elephant cannot be transported, and if elephants are...

18 **CJI SURYA KANT:** That temple is run by whom? Kamakhya temple is run by whom?

19 **KUMUD LATA DAS:** It is a trust, it is a trust, *Bordolois, Bordolois*.

20 **CJI SURYA KANT:** You are not representing the trust?

21 **KUMUD LATA DAS:** Your Lordship, the trust...

22 **CJI SURYA KANT:** I understood your argument.

23 **KUMUD LATA DAS:** No, Your Lordship, may I just point out... Your Lordship...

24 **RAJEEV DHAVAN:** Your Lordships, this doesn't make sense. It is not a trust, it is run by  
25 tradition, there was a conflict that took place...

26 **KUMUD LATA DAS:** In 2015.

27 **RAJEEV DHAVAN:** [UNCLEAR] the traditional managers of the temple...

28 **CJI SURYA KANT:** There is a litigation?

29 **KUMUD LATA DAS:** Your Lordship, *Dolois* took over, yes. Dr. Dhavan is correct, he argued,  
30 this is 2019... 2015 Volume [UNCLEAR].

- 1 **CJI SURYA KANT:** We are not going into this dispute matter, that is a separate matter, this  
2 is on essential rights.
- 3 **KUMUD LATA DAS:** Your Lordship, I'm not... I'm on some practices which are continuing...
- 4 **CJI SURYA KANT:** We are not on practices please, we are on 25, 26. If you want to add  
5 anything, you can speak otherwise tomorrow, thank you.
- 6 **KUMUD LATA DAS:** Yes, Your Lordship. Your Lordship Article 25(2)(b) is the controlling  
7 or is the guiding article to Article 26. Article 26 is about the management, Article 25(2)(b) is  
8 about the individual right. I as an individual devotee or I as a pilgrim when I go to *Maa*  
9 Kamakhya temple, those three days, people who are permitted are those which is... there's a  
10 big *mela*, so the population which actually goes to that place is much more than what is the  
11 size of that hill. So, what practices are done there and the animal sacrifice, because I've  
12 personally gone there and I've seen every ten minutes there's some animal which just cries,  
13 but what is... what is shown on the YouTube if we go by the media...
- 14 **CJI SURYA KANT:** We have understood you. This side in all fairness.
- 15 **KUMUD LATA DAS:** Yes.
- 16 **PRADEEP KUMAR SINGH BAGHEL:** We are at...
- 17 **KUMUD LATA DAS:** Your Lordship...
- 18 **CJI SURYA KANT:** Shift on this side then.
- 19 **KUMUD LATA DAS:** Your Lordship...
- 20 **PRADEEP KUMAR SINGH BAGHEL:** We are at serial...
- 21 **CJI SURYA KANT:** We understand your siding them.
- 22 **KUMUD LATA DAS:** Your Lordship... last...
- 23 **PRADEEP KUMAR SINGH BAGHEL:** We are at Serial No. 9.
- 24 **KUMUD LATA DAS:** Last, last limb of argument, Your Lordship, just one second.
- 25 **CJI SURYA KANT:** Again in the name of 26, you are again coming to some practices there.
- 26 **PRADEEP KUMAR SINGH BAGHEL:** We are at Serial No. 9.
- 27 **KUMUD LATA DAS:** I just...
- 28 **CJI SURYA KANT:** I understand very well.

1 **KUMUD LATA DAS:** Your Lordship, may I just argue... may I just argue my last point and  
2 this animal sacrifice which, Your Lordship...

3 **CJI SURYA KANT:** Now stop this animal sacrifice.

4 **JUSTICE M.M. SUNDRESH:** Please, we are not into it.

5 **CJI SURYA KANT:** Yeah, we are not into it.

6 **PRADEEP KUMAR SINGH BAGHEL:** My Lord, we are at Serial No. 9.

7 **CJI SURYA KANT:** We are giving you just five minutes time.

8 **KUMUD LATA DAS:** Your Lordship...

9 **CJI SURYA KANT:** Your argument is over.

10 **KUMUD LATA DAS:** Obligated, Your Lordship.

11 **CJI SURYA KANT:** Thank you.

12

13 **PRADEEP KUMAR SINGH BAGHEL:** My Lord, my written submission is at Volume 1.3.  
14 I will not take more than 10 minutes, My Lord. 1.3. Kindly have My Lord, and I have  
15 summarized it only in two pages. Now My Lord, we are concerned with the Reference No. 6,  
16 which says that "sect of the Hindus". The word "Hindu" has not been defined in the  
17 Constitution or any act relating to the Hindus. First time a Constitution Bench in 1966  
18 **Yogiraj** case, kindly have my written submission or the notes which I have just passed on My  
19 Lord. Only one paragraph I will read, My Lord. The Constitution Bench, 1966. It is followed  
20 by the later Benches, and in **Sabarimala** case Justice Chandrachud has also relied on this  
21 judgement. Now kindly see what the court says, just My Lord I'm reading the relevant  
22 paragraph. "It does not claim any one prophet, it does not worship any one God, it does not  
23 subscribe to any one dogma, it does not believe in any one philosophical concern, it does not  
24 follow any one set of the religious rites or performances. In fact, now it is relevant. In fact, it  
25 does not appear to satisfy the narrow traditional features of any religion or creed, it may  
26 broadly be described as way of life and nothing more." Now kindly see, My Lord, the first time,  
27 the definition of the Hindu has been attempted to be made by the Constitution bench. With  
28 great respect I submit, this definition is not correct and it is being followed by the later benches  
29 and Justice Chandrachud has also followed it. Now kindly have one relevant paragraph of the  
30 **Kesavananda Bharati** case, I have extracted it, paragraph 651 of the **Kesavananda**  
31 **Bharati** case, where a very beautiful example has been given of the religion and the  
32 Constitution in regard to the basic feature of the religion and basic feature of the Constitution.

1 Only one paragraph, I will hurriedly read it. "Our Constitution is not merely a political  
2 document. It is essentially a social document. Like every religion it has two main features:  
3 Basic and circumstantial. The former remains constant while the latter is subject to the change.  
4 The core of the religion always remains constant, but the practices associated with it may  
5 change." Now, My Lord, I pause. Now, My Lord, this case says that the religion has also two  
6 compartment; one, basic features and another circumstantial which goes on changing. So, the  
7 earlier division of our Constitution Bench which says that it is way of life; with great respect I  
8 say it is not correct.

9 Now the question arises, what is the core or the basic feature of the Hindu religion? This  
10 attempt has been made several times, but no one has successfully propounded that what is the  
11 Hinduism, because Your Lordship is hearing... Your Lordship has heard enough on this  
12 subject.

13 My respectful submission is slightly different. This nine-judge Bench can attempt to make a  
14 definition of the Hindu by taking the advantage of the *Bhagavad Gita*. *Bhagavad Gita* came  
15 much before these essential practices, which has been described before Your Lordship. Now  
16 the *Gita* is safe for two reasons. Number one, a large number of the commentaries have been  
17 made on this subject and there is no conflicting view on the *Bhagavad Gita*. Otherwise, in the  
18 *Upanishads*, *Vedas* and all these *smritis* if we go, there is a lot of conflict, reason why there  
19 are different practices in the country and so one core Hindu religion cannot be defined except  
20 the aid of the *Gita*.

21 Now kindly see, I will cite only two verses of the *Gita* which shows that our Constitution, the  
22 fundamental rights and some other philosophy has been taken from the *Gita*. Now, My Lord,  
23 kindly have my notes Chapter 5, Verse 18 says, I'm reading only English translation. "The wise  
24 see, with equal vision, a learned and humble Brahmin, a cow, an elephant, a dog and even an  
25 outcast." So Article 17 of the Constitution is very much there in the *Gita* itself in Chapter 5,  
26 Verse 18. Now similarly, My Lord, the equity we can found the Chapter 9, Verse 32, which the  
27 English translation says, "Oh Partha, even those who are women, *vaishyas*, *shudras*, or sinful  
28 birth attain the supreme goal by taking refuge in me." So, these... there are several other but  
29 due to lack of time I'm not citing those. I have mentioned all these in my Written Submission  
30 which is at 1.3... Volume 1.3.

31 Now kindly see, My Lord, the Hindu word, which we have been told that it has come from the  
32 foreigners because the people who are living across the Sindhu, they are called Hindu. Now  
33 kindly have my Written Submission, just last paragraph, I will not read further. The Chinese  
34 traveller, Hiuen Tsang, who came much before 3 B.C., he says that these people are the Indus.  
35 He found this word Indus from the moon because the synonym of the moon is Indu. Now,

1 since Lord Krishna in Chapter 15, Verse 15 has says that, "I live in the every living beings heart,"  
2 so the Chinese traveller says that these people who are living beyond... who are living in this  
3 country, they are governed by their heart and this word he has taken from heart. So, he says  
4 Hindus and later on these foreigners have taken this word and has redefined is that the people  
5 who are living beyond the Indus are Hindus. This definition has come much before the  
6 foreigners has given this definition of the Hindu to us. That's all, My Lord.

7 **CJI SURYA KANT:** Thank you, Mr. Baghel, thank you, thank you.

8 **PRADEEP KUMAR SINGH BAGHEL:** Para F, My Lord, kindly have the para F of my  
9 Written Submission, I'm not reading it.

10 **CJI SURYA KANT:** Thank you.

11 **SHOBA RAMAMOORTHY:** May I with My Lord's leave, make my submissions, My Lords?  
12 I'm in 901.54 representing the Akhila Bharatiya Ayyappa Seva Sangam, My Lords.

13 **CJI SURYA KANT:** Come to mic side, Madam.

14 **SHOBA RAMAMOORTHY:** I will make two submissions and one pertinent clarification,  
15 My Lords. My first submission is this, My Lords. Across religions, in the path of devotion,  
16 every religion prescribes this adherence to austerities or *vratha* as an effective tool for God  
17 realization or liberation, My Lords. Now every *vratha* has its own set of *yama* and *niyama*,  
18 that is dos and don'ts, My Lord. Insofar as the Sabarimala *vratha* is concerned, every devotee  
19 who desires to have the *darshan* of the Lord must adhere to austerities for one *mandala* which  
20 is 41 days and thereafter he becomes eligible to carry the *irumudi*, which is the holy offering  
21 to the Lord, and then only ascend the Holy 18 steps, My Lords. It often happens, My Lords,  
22 that even men who have undertaken the penance, My Lords, during this...

23 **JUSTICE AHSANUDDIN AMANULLAH:** Pass on what you are saying.

24 **SHOBA RAMAMOORTHY:** Oh, I'm so very sorry. I'm so very sorry, My Lords. Even  
25 during... even during observing the *vratha*, My Lords, what happens is, if a man loses his,  
26 unfortunately, parents or wife, My Lords, he has to necessarily stop the *vratha*. The holy *Tulsi*  
27 *Mala* that he takes on the initiation of the *vratha* at the inception, he has to give it up My Lords  
28 and his *vratha* comes to an end. Therefore, My Lords, my humble submission is this that the  
29 *niyama* of the Sabarimala *vratha* mandates that any devotee who is desirous of the *darshan*  
30 of the Lord, must undergo this 41-day period *vratha*, My Lord. So, any person who is not able  
31 to fulfil this *vratha*, regardless of a man, as he will, when in situations when he loses his  
32 parents or wife My Lord, they cannot be permitted to enter the shrine. Therefore, My Lords,  
33 my respectful submission is, if the Petitioners, the women are allowed entry, that would

1 amount to modifying or in fact destroying the *yamas* and *niyamas* of the *vratha* itself which  
2 cannot be done under 25(2)(b) or any other State action, My Lords.

3 My second clarification, My Lords, is much has been said about Sati. I have with my  
4 compilation annexed the Bengal Regulation of 1829, My Lords. I would only read the opening  
5 paragraph of the regulation itself, My Lords, which is at page 23, if My Lords may kindly have.  
6 Page 23 is Section 1 of the Bengal Sati Regulation 1829. My Lord, this categorically declares,  
7 "The practice of sati or of burning or burying alive of the widows of Hindus is revolting to the  
8 feelings of human nature. It is nowhere enjoined by the religion of Hindus as an imperative  
9 duty." So, it was never a religious practice, My Lords, and then four lines thereafter, "These  
10 acts of atrocity have been perpetrated which have been shocking to the Hindus themselves,  
11 and in their eyes, unlawful and wicked." So even to the Hindus, it was unlawful and wicked.

12 My last submission, My Lord, is I would respectfully draw My Lord's attention to the revered  
13 author H. M. Seervai's critical analysis of the Constitution of India, at page 5, paragraph 12.41  
14 where while dealing with the rights under 25, 26, the learned author says, "Again, the violation  
15 of a right to enter a denominational temple has to be judged in the context of the law under  
16 which the right was claimed." My Lords, over the page the learned author refers to ***State vs.***  
17 ***Puranchand***. Over the page is a case which arose in the year 1950s, My Lords, when  
18 Puranchand is the *pujari* of a Jain temple. He did not permit a Dalit... Hindu Dalit to enter the  
19 Jain temple, My Lord. Therefore, he was sought to be prosecuted under the Untouchability  
20 Offences Act 1955. Having regard to the language of Section 3 and the explanation which says  
21 that every Jain is deemed to be a Hindu, the question arose as to whether he has committed  
22 any offence. The trial court convicted him, but the appellate court, over the page at page 7 is  
23 very relevant. Para 2, last three lines. "The learned Sessions judge interpreted the explanation  
24 differently, holding that according to the explanation, although Jains would be treated as  
25 Hindus, Hindus could not be treated as Jains." My Lords, in the last paragraph, "The  
26 Complainant in this case is a Hindu and therefore it was necessary for the prosecution to  
27 establish that the particular temple was open to non-Jain Hindus in general. The argument  
28 advanced by the learned government advocate that a temple exclusively open to Jains, should,  
29 in the light of explanation, be deemed to be open to Hindus in general, and Harijans should  
30 be admitted in such temples, does not appear to me to be correct. The object of the provision  
31 is not to create any new rights in favour of untouchables, but it is intended only to put them at  
32 par with other caste Hindus." Drawing analogy from this My Lords, my respectful submission  
33 is, if the writ Petitioners are believers, such as the devotees who are the review Petitioners  
34 before My Lords, if they are standing on the same footing, My Lords, number one, they would  
35 not and should not question the *yamas* and *niyamas* of the Sabarimala *vratha*, if they are

1 believers. And if they are non-believers, they don't, as a matter of right claim entry into the  
2 temple, My Lords. That is all my submissions.

3 **CJI SURYA KANT:** Thank you, Madam Shoba. Thank you, thank you.

4 **ABHILASH M.R.:** May I please, Your Lordships? I'm appearing for All Kerala Brahmin  
5 Federation, which is the review petitioner, My Lords. Your Lordships may kindly... I'll not take  
6 much of your time, Your Lordships. Kindly have a look at the structured submissions, My  
7 Lords. Yes, please. May I first, I'm Abhilash, I'm appearing for... just two minutes.

8 **CJI SURYA KANT:** Just follow like Madam Shoba has been very, very brief and to the point.

9 **ABHILASH M.R.:** Yes, yes, My Lords.

10 **CJI SURYA KANT:** Thank you.

11 **ABHILASH M.R.:** My Ladyship had raised a question, My Lords, as to what precisely is the  
12 *sui generis* nature of Sabarimala temple. Though the Learned Solicitor had responded at that  
13 time by virtue of me hailing from the same *Taluk* where the temple is situated. Let me make a  
14 short submission, My Lords, that Sabarimala temple happens to be the final hermitage of Lord  
15 Ayyappa. In other words, My Lords, Ayyappa is theologically believed to be residing in  
16 Sabarimala temple, unlike all other Ayyappa temples. His physical manifestation is a religious  
17 presumption. My Lords, apart from that, there is a specific place named Manimantapam which  
18 I kept as Appendix, a photograph, My Lords. Manimantapam which happens to be the *jeeva*  
19 *samadhi* of Lord Ayyappa. On account of all these reasons, Sabarimala temple happens to be  
20 *sui generis* on account of the theological faith that Lord Ayyappa resides there. Your  
21 Lordships, kindly have a look at the first question which I have discussed My Lords, on page  
22 number 1, what is the meaning and scope of the expression, "all persons are equally entitled  
23 under Article 25(1) of the Constitution of India"? In my humble submission this is an aspect  
24 which has not yet been dealt even under ***Shirur Mutt***, My Lords. I'll take Your Lordships  
25 through the submission. "It is respectfully submitted that the Constitution draws a clear and  
26 substantive distinction between the expression "all persons" in Article 25(1) and every  
27 religious denomination or any section thereof in Article 26. The use of the expression "all  
28 persons are equally entitled to freedom of conscience and the right freely to profess, practise  
29 and propagate religion", implies in clear terms the right conferred as an entitlement to all  
30 persons to practice religion. In other words, rights available to a person shall be exercised in  
31 such a manner that the equal entitlement conferred on others shall not be affected. A single  
32 person cannot constitute a religion and it is essentially meant for a group of people, in case of  
33 a place of worship. Hence, any claim of entry to a place of worship following a distinct set of  
34 rituals and practices like Sabarimala can be recognized only in consonance with the customary

1 practices associated with the deity because entitlement is equal to practice religion. It is  
2 submitted that Part III of the Constitution confers rights on four categories of people for the  
3 purpose of classification; person, all person, citizens, all citizens. A chart of classification of  
4 rights conferred under Part III is presented herewith." Kindly have a look at page number 2,  
5 My Lords. I have classified. "Rights conferred on person, all persons, citizen and all citizens."  
6 And Article 25 happens to be the only right, My Lords, which is conferred on all persons,  
7 thereby meaning when a person is seeking to exercise his right under Article 25, it shall have  
8 to be necessarily exercised in consonance with the rights of other members of the community.  
9 Article 26 talks about every denomination, whereas Article 25(1) is categoric and clear that all  
10 persons are equally entitled. In my humble submission, it's essentially a collective right while  
11 protecting the right of every single person, it shall have to ensure the right ensures that right  
12 to practice religion is protected. Your Lordships, kindly have a look at question number 2 My  
13 Lords, "Whether the enabling power under Article 25(2) of the Constitution can be invoked to  
14 justify actions by State authorities that result in violation, dilution and destruction of long-  
15 standing customs and usages integral to the religious practices of a temple?"

16 Your Lordships, I understand that this happens to be the greatest deliberation on Article 25  
17 since Constituent Assembly debates got concluded. The scope of Article 25, when Your  
18 Lordships are deliberating upon, may necessarily have a glance... may necessarily touch upon  
19 this aspect, My Lords. Quickly I'll read. "It is respectfully submitted that Article 25(2) of the  
20 Constitution, which enables the State to regulate secular activities associated with the religion  
21 and to enact laws for social welfare and reform cannot be construed as conferring any authority  
22 upon the State or its instrumentalities to violate, disregard or destroy the established customs  
23 and usages of the temple. The provision is enabling in character and operates within the  
24 constitutionally defined limits. It does not authorise administrative authorities to act in  
25 derogation of the rights of the believers under Article 25(1) of the Constitution of India. For  
26 instance, a political party having atheistic ideological foundation may ascend to power in a  
27 State and may appoint a non-believer as Devaswom Minister or official. The State Minister  
28 may, despite strong atheistic belief, step into the temple premises or in front of the *sanctum*  
29 of the temple where religious activities are performed and can act in a manner irreverential to  
30 the customs and practices. The person holding authority under the State may stand in front of  
31 *sanctum* and stare at the *sanctum* without any customary salutation, or may receive holy water  
32 from the *sanctum* offered as *prasada* and may pour it down on the floor, or may dispose the  
33 holy water with irreverence. The question that arises here, My Lords, is whether the right  
34 under Article 25(1) extends also to the extent of protecting the sacred practices and customs  
35 from State intrusion under the guise of authority under Article 25(2)(a)? This may be  
36 answered by issuing appropriate guidelines or observations."

1 Your Lordships, kindly have a look at page number 5 My Lords, whether the exclusionary  
2 practice in question based on the concept of youthfulness is based on the concept of  
3 youthfulness of women rather than the notions of fertility? It was advanced by senior Counsels  
4 who argued previously that the notions of fertility is significant here. Because of me hailing  
5 from the same place My Lords, after having been associated with this practice for quite long,  
6 it's not fertility, but youthfulness, My Lords, that is fundamental. Your Lordship may kindly  
7 have a look at page number 6, My Lords. "Whether for the purpose of Article 26 of the  
8 Constitution of India, the existence of a formal structure such as organisation, endowment,  
9 etc. is necessary precondition for recognition as religious denomination?" The issue is very  
10 much answered, My Lords. I am not further touching upon that. Nevertheless, My Lords, there  
11 are two examples. One is that of Naga Sanyasis, which form a very loose conglomerate; there  
12 are different *akhadas* or monasteries which are associated, which are organized under the  
13 general name of Naga Sanyasis like *Niranjani*, *Juna*, *Nirmohi*, *Udasin*. These are all  
14 monasteries, but there are such practitioners who are not formally classified, nevertheless they  
15 claim their distinctive legacy and they also deserve protection without being formally  
16 organised, My Lords. Likewise there is a *sampradaya* named *Nath Sampradaya* which  
17 happens to be a very broad theological set of practices and beliefs. And under *Nath*  
18 *Sampradaya* there would be certain organisations like self-realization fellowship like that of  
19 Paramahansa Yogananda, but there are large number of... I myself am an initiated disciple of  
20 that particular sect, but there are large number of practitioners of *Nath Sampradaya* who are  
21 not formally organised on account of the peculiar practices, they also deserve protection, My  
22 Lords.

23 Then Your Lordships may come to page number 8, My Lords. "Is Sabarimala, a Hindu temple  
24 in the light of the people belonging to other religious communities offer worship here?" This  
25 was advanced by Learned Senior Counsel Gopal Sankaranarayanan, he stated that Sabarimala  
26 is not a Hindu temple, but just let me take through that provision, My Lord. "Sabarimala is  
27 statutorily recognised as a Hindu temple under Travancore-Cochin Religious Institutions Act  
28 of 1950. Sabarimala temple is included under Schedule 1 of the Act as ordained under Section  
29 2(c) that provides for incorporated Devaswoms. That means Devaswom mentioned under  
30 Schedule 1. Hence, the eclectic nature of worshipers in Sabarimala does not denude its  
31 essential character of being a Hindu temple. It is also submitted that over 95% of the pilgrims  
32 in Sabarimala belong to Hindu religion." Your Lordships, my detailed Written Submissions  
33 are there. I'm highly grateful that Your Lordship heard me.

34 **CJI SURYA KANT:** Thank you, Mr. Abhilash.

35 **DR. SHINE P. SASIDHAR:** I will not take...

1 **CJI SURYA KANT:** Give your name also so that...

2 **DR. SHINE P. SASIDHAR:** Your Lordship? Dr. Shine P. Sashidar, I am for Akhil Bharatiya  
3 Malayalee Sangh.

4 **CJI SURYA KANT:** Yes, please proceed.

5 **DR. SHINE P. SASIDHAR:** Your Lordship, I restrict to only indigenous people and it's  
6 related to 25 and 26 which so far nobody has addressed that part. Your Lordship, there is more  
7 than 700 indigenous people or ethnic groups are there in India and this entire ethnic groups  
8 got their own belief system and they are addressed as *Adivasis, Girijan, Vanvasi, Giriwargh*  
9 in multiple names, but our Constitution identifies them as only Scheduled Tribe. And the  
10 Scheduled Tribe definition is there in 366(25) read along with Article 342 and also it should  
11 be read along with C.O.22 which is called Scheduled Tribe Order of 1950. But Your Lordship,  
12 if we keep all these things together and read, then also the Scheduled Tribe definition is  
13 ambiguous. And this Honourable Court, in multiple instance, multiple judgement, it has been  
14 directed to the government that make a unambiguous definition for Scheduled Tribe. Your  
15 Lordship, this ambiguity which is coming because of the term "tribe". Our Constitution, it's  
16 more than 40 times it's repeated in "tribe" the term, but it is not anywhere it's clarified what  
17 is a tribe. And this "tribe" word in multiple instances, multiple judgements, this Honourable  
18 Court bring it into a definition form, which is started with ***State of Kerala vs.***  
19 ***Chandramohan***, which was the initial, that was on 2003 judgement. It was a three  
20 judges' Bench. In that one, common Dalit and cohabitants etc., were the main characteristics  
21 of this tribe which is. And Niyamgiri judgment, one of the important judgment, it is a three  
22 judges Bench again; it is also called that ***Orissa Mining Corporation Limited vs.***  
23 ***Ministry of Environment and Forest and Others***. This judgment was on 2013, and  
24 Your Lordship, the recent judgment, which is of one month back, Justice P.K. Mishra and  
25 Justice Manmohan Bench which is... there was one judgment which is called ***Chinthada***  
26 ***Anand vs. State of Andhra Pradesh***.

27 **CJI SURYA KANT:** What is the [UNCLEAR]?

28 **DR. SHINE P. SASIDHAR:** This is even cemented, cemented the tribe, what is tribe... to  
29 bring a definition for the tribe. Your Lordship, what I would like to say is, tribe is a tribe  
30 because of their practices. Your Lordships, the practices which are of three type of practices.  
31 One is cultural practices, customary practices and ritual practices, or we could say that cult.  
32 Cult in the sense, it is of traditional practices as well as ritual practices. These all three together,  
33 these three practices comes together, then only a tribe become a tribe. That's what this court  
34 itself is saying and that is... I agree with that point.

1 Your Lordship, about the tribe, it is not only a constitutional obligation. There is an  
2 international obligation also for India. See, there is various convention and summits which I  
3 mentioned in this one. That's one Earth Summit 1992 and Biodiversity Convention which is in  
4 again 1992 and...

5 **JUSTICE M.M. SUNDRESH:** What do you want to say, summit?

6 **CJI SURYA KANT:** What is your ultimate argument with reference to?

7 **DR. SHINE P. SASIDHAR:** Practice, practice which deals or which identifies a tribe.

8 **JUSTICE M.M. SUNDRESH:** Practice identifies, say, it defines a tribe, therefore, that  
9 should not be disturbed.

10 **DR. SHINE P. SASIDHAR:** These practices are, My Lord, these practices are connected to  
11 the faith; these practices are connected to the religious system.

12 **JUSTICE M.M. SUNDRESH:** I understand.

13 **CJI SURYA KANT:** We understand.

14 **DR. SHINE P. SASIDHAR:** Okay, so my this one is, essential practices theory which cannot  
15 be applied to this tribal perspective.

16 **CJI SURYA KANT:** Understand, we understand that your argument is.

17 **DR. SHINE P. SASIDHAR:** And one more, just one point, and comes to Article 371A which  
18 is a special provision which is given to Nagaland, Nagaland, State of Nagaland. It clearly states  
19 that, "Notwithstanding anything in this Constitution, no act of Parliament in respect of  
20 religious or social practices of Nagas, Naga customary law and procedures, Naga  
21 administration of civil and criminal justice involving decisions according to Naga customary  
22 law." Your Lordship, what is my doubt, I ask myself is, when one organ is restricted from  
23 interfering into the customary law or customary practices, whether another organ, whether  
24 could involve into or interfere into that particular practices? This is what my...

25 **CJI SURYA KANT:** Very well. Thank you, we understand, we appreciate your argument.

26 **RAHUL TANWANI:** My Lords, I'm arguing from the lens of self-determination, and I'm  
27 arguing from the lens of self-determination and Article 25 and 26. There's a two-page note on  
28 self-determination that I'm transferring. This is for... would you just, and this is for this side.  
29 There's a two-page note on that new proposition of self-determination. I would just request  
30 My Lords to take note of that. I'll start my submissions, My Lords. The Constitution of India  
31 is a single most extensive statement of self-determination made by a Sovereign State in known  
32 history. Through our founding mothers and fathers, we the people in Article 25 and 26 also

1 encoded covenants in Article 25 and 26 describing and determining our religious identity. If  
 2 My Lords were to look at the Hindi constitution of Article 26, religious denominations is called  
 3 *pratyek dharmic sampradaya ya uske kisi anubhav*. This definition is wide enough that on  
 4 one hand it protects formal worship as seen in the **Ramakrishna Mission** case and on the  
 5 other hand it protects those indigenous practices and unique practices of practices of worship  
 6 of Prakriti and nature as seen in the **Niyamgiri Hill** case, unlike the present understanding  
 7 of denominations which you see in a formalistic sense. The determination of religious  
 8 practices, My Lords has evolved in six phases. What started from **Shirur Mutt** and **Ratilal**  
 9 **Panachand** on essential religious practices has now reached constitutional morality in this  
 10 case. Point number four of my submission is that evolution of the law and the cases mentioned.  
 11 This expansive reading My Lords I submit, has reduced the right and denuded the right of the  
 12 community to determine its own practices which has been recognised in **Shirur Mutt** and  
 13 **Ratilal Panachand**, thus requiring reconsideration to bring it back to the hands of the  
 14 community. This reconsideration, however, does not preclude judicial intervention, judicial  
 15 review and also does not restrict or make Article 26 absolute as we've seen in the Constituent  
 16 Assembly debates also. And it's subject to regulation. This extensive reading into the silences  
 17 defeats the text when we see it from a lens of self-determination and this needs preservation.  
 18 However, I do emphatically submit that the intent and conclusions of **Venkataramana**  
 19 **Devaru** ought to be upheld and preserved and protected. Now My Lords, to this extent the  
 20 conjoint reading in **S. P. Mittal**, unlike **Shirur Mutt** which was disjunctive in nature,  
 21 upholds the narrow straitjacket view of denominations, this precludes the protection that  
 22 would otherwise be granted to indigenous communities and people. Similarly, My Lords, in  
 23 Article 25, when we look at the term section of Hindus, it reads as *Hinduon ke sabhi vargon*  
 24 *aur anubhavon ke liye*. This has to be seen in light of its historical context and cannot be seen  
 25 in light of gender because if seen in light of gender, it would also affect, effect and denude  
 26 practices of those spaces that belong exclusively to the feminine and the third gender, which  
 27 is governed by their respective rituals.

28 Now, My Lords, before I progress, just if Your Lordships could look at my note in Footnote  
 29 No. 2, there is, there is an explanation to other secular activities that comes from the **Dakor**  
 30 **Temple** case which had shown what secular really means over here. So, if an argument is  
 31 made that secularism should be seen in Article 25, that would not cover within the ambit of  
 32 Article 25(2) and other secular activity.

33 This last to say, My Lords, this Honourable court is providing a judicial nuance to this encoded  
 34 self-determination. This will reflect the constitutional promises made to communities and for  
 35 generations to come. I'm grateful for the patient hearing, My Lords.

36 **CJI SURYA KANT:** Thank you, Mr. Rahul. Thank you. Yes please, yes please.

1 **RAHUL TANWANI:** Grateful.

2 **CJI SURYA KANT:** Yes, yes.

3 **KRISHNA RAJ:** I'm Advocate Krishna Raj. Item No. 901.62. My Lord, I'm Advocate Krishna  
4 Raj. I'm representing 901.62 and an intervention application.

5 **CJI SURYA KANT:** Yes, yes, please.

6 **KRISHNA RAJ:** I passed on the notes, two, two copies are there. Only one and two. Only  
7 one and two. My Lord, the...

8 **CJI SURYA KANT:** Yes, please start.

9 **KRISHNA RAJ:** Yes. The first point is about the civil right of the deity. What I'm... civil right  
10 of the deity. My Lord, it's an admitted fact that the property wherein the temple is situated,  
11 Sabarimala temple, belongs to the deity, because in all the revenue records, admittedly it is  
12 recorded as the property of Sabarimala Devaswom. Devaswom means 'property of the deity',  
13 so property belongs to the deity. So, My Lords, as a juristic person, in the five judges bench  
14 there is a discussion to the effect that even though the deity is a perpetual minor considered  
15 as a juristic person, since it's a fictional character there cannot be any fundamental rights. I,  
16 that's why yesterday or day before yesterday Your Lordship has asked about the application of  
17 Article 21. So, my humble submission, My Lord, as far as the deities are concerned, it's a *prana*  
18 *pratishtha*. In my compilation, I have clearly in paragraph 5 onwards...

19 **CJI SURYA KANT:** Yes.

20 **KRISHNA RAJ:** Volume I, 5 onwards I have clearly mentioned all the prescriptions of a  
21 construction of a temple and installation of a deity, including the... it starts from the selection  
22 of a property. Each and every property emanates energy whether it is positive or negative. It  
23 starts from there and ultimately, it covers paragraph 7 and 8 and it reaches when it reaches  
24 paragraph 9 and paragraph 10 explains the *Prana pratishtha* how a deity is installed. My Lord  
25 may just read paragraph 10, two-three lines. Your Lordship has got it? "After the material for  
26 the deity is selected and the idol is made, the procedure for consecration starts. At the time of  
27 the installation of the deity the *thantri* of the temple will give life to the deity from his own  
28 body through the *mantra* which is selected according to the power of the deity."

29 **JUSTICE B.V. NAGARATHNA:** Proposition. What is the proposition?

30 **KRISHNA RAJ:** Proposition is My Lord, deity is a living person because we are giving food  
31 to the deity three times a day, so deity is a living person and therefore, deity has got a  
32 constitutional right as well as a civil right. So, as far as civil right is concerned, deity has got a  
33 right to decide whom to enter the property, he can select the persons. So the wish of the deity

1 and will of the deity is determined by the *Devaprashna*, it's a ritual called *Devaprashna*. There  
2 are three *Devaprashnas* wherein the wishes of the deity is clearly stated, it's clearly stated.  
3 That is given. Then as far as the ritual is concerned of restricting the age group, I have stated  
4 in paragraph, which My Lord kindly have a look at paragraph 13, it starts from paragraph 13  
5 because each and every... there are 18 steps each that's called holy steps.

6 **JUSTICE M.M. SUNDRESH:** [UNCLEAR] make sense, what is it?

7 **KRISHNA RAJ:** No, what I'm saying the ritual, ritual is nothing to do with this  
8 menstruation; that is what I'm saying. What I'm submitting is, the 18 steps is the, each and  
9 every ritual of human being. When you enter the steps, the virtues are dissolved and when we  
10 reach the temple it is called *Tat Tvam Asi*, because we are laying with the deity.

11 So then Your Lordships may have a glance at Volume II, the intention of this entire process.  
12 Your Lordship may have a glance at paragraph 7.

13 **JUSTICE M.M. SUNDRESH:** We are not going to merits.

14 **KRISHNA RAJ:** No, no, not merit, not merit, regarding the locus, locus, regarding the locus.

15 **JUSTICE B.V. NAGARATHNA:** [UNCLEAR] on that.

16 **KRISHNA RAJ:** Locus, the entire issue started from Sabarimala, that's why there is a  
17 specialty of the temple that's submitted. Now Your Lordship may have a glance at the Volume  
18 II, where...

19 **CJI SURYA KANT:** Mention it in your submission when we take up the main case.

20 **KRISHNA RAJ:** I understand. Just one, just one submission. My Lord, after the judgment  
21 of the five judges Bench there is permission for the ladies to enter the temple, and there was  
22 even after the... on the reference made to this Bench, there was no stay. Only two ladies entered  
23 the temple with the help of the police and there were attempt to enter the temple by another  
24 three. I have given entire list, all are declared atheist. So the intention is very clear, the  
25 intention is very clear there are not... declared atheist. I have given the description of the entire  
26 people.

27 **CJI SURYA KANT:** All right. Thank you Mr. Krishna Raj, thank you, thank you very much,  
28 thank you.

29 **JAVED R. SHAIKH:** Please, Your Lordships. I'm appearing in 966, this is the matter where  
30 entry of Muslim women in the mosque is being regulated. Two facts, firstly, the mosque in  
31 question is merely a public trust, it's a public charity, so it won't be amenable to a writ  
32 jurisdiction under Article 12, that's the first proposition. Second proposition we as a regulator

1 of Waqf board cannot interfere into their domain, cannot interfere into their religious affairs,  
2 so that's the second proposition. Now, the petition actually is canvassed as if to say that it's the  
3 obligation or the right of a woman to go and offer *namaz* in a mosque. Now, what that would  
4 happen is Your Lordships I have carved out in my submissions page number 4 I have  
5 juxtaposed Muslim males obligation to perform *namaz* with the privilege of a Muslim woman  
6 to perform *namaz*. Could Your Lordships come to that? Page 4.

7 **CJI SURYA KANT:** Yes, yes, please you continue.

8 **JAVED R. SHAIKH:** I've said that Muslim male, My Lord, I'm just trying to...

9 **JUSTICE M.M. SUNDRESH:** [UNCLEAR] issue now. Contain yourself to only seven  
10 questions raised, that's all.

11 **JAVED R. SHEIKH:** Based on this I'll come to... what I'm saying is that a compulsion on a  
12 husband or a man cannot be made as an obligation on the woman. If we were to say that she  
13 has to go, we will actually be saddling her an onerous task, which her religion does not... Now,  
14 with that, Your Lordships...

15 **JUSTICE B.V. NAGARATHNA:** What is the prayer in this writ petition?

16 **JAVED R. SHAIKH:** The prayer in the petition is that Muslim women should be permitted  
17 to enter the mosque; that's the first prayer. Second, the prayer is that they should be allowed  
18 to perform *namaz* there. Now that they themselves admitted that it's not prohibited, but if we  
19 were to allow something like, who would regulate it? Either Union of India, State or Waqf  
20 Board would regulate it. Now, we cannot be directed by a writ of mandamus to do something  
21 which Constitution prohibits.

22 **CJI SURYA KANT:** Mr. Javed, we understand well.

23 **JAVED R. SHAIKH:** My second proposition that I'm giving Your Lordships is that in every  
24 matter where a writ is sought, or in every religious matter where an intervention is sought  
25 against a non-state entity, every such PIL should be relegated to 92 read with Section 9, 15 and  
26 Section 26 of the CPC. 15 says, "Present the plaint before the lowest competent court"; 26 says,  
27 "File a suit by presenting a plaint". And in that plaint, Expert evidence along with all issues  
28 can be done. The Expert can be *voir dire*. Whether he's an Expert or not, that can also be  
29 tested. So that second proposition that I'm giving that the suit is the way that should go.

30 The last proposition that I'm making, it's a bit bold, if Your Lordships would turn to page 12,  
31 I'm saying, as a policy of judicial restraint, this court may take a call, may take a call.

32 **CJI SURYA KANT:** That's well argued.

1 **JAVED R. SHEIKH:** But what I'm telling is that we are to draw a presumption whether an  
2 act is constitutional or not. Now 25 uses the word "entitlement"; the opposite of entitlement is  
3 deprivation. So, if something was available to me and I was entitled to it until yesterday, and  
4 if it has been denied to me or deprived today, then the Legislature should come and explain  
5 how the entitlement has been taken. So, the proposition that I am making is that one who  
6 interferes and disentitles, should prove that his legislation is within the constraint of 25 and  
7 26.

8 Lastly, there can't be any privity or parity with Sabarimala. Last, I am saying is that all this  
9 institution, this Waqf institution, temples, all are left to fend for themselves. They are not  
10 sponsored or granted, because we are a secular nation. We can't fund our institution directly  
11 except somewhere laws have been passed or they have been enacted that way. All that I'm  
12 saying is that it will be a travesty that whilst we can't give them any, that's money, we can't give  
13 them any, we won't let them have any, that's freedom. If you can't give them money, at least  
14 let them have their freedom. I'm grateful.

15 **CJI SURYA KANT:** Thank you, thank you Mr. Javed Sheikh.

16 **JAVED R. SHEIKH:** Obligated.

17 **C. RAJENDRAN:** I am C. Rajendran.

18 **CJI SURYA KANT:** Only two minutes, please.

19 **C. RAJENDRAN:** Yes, My Lord, my definite case is that this temple, this was not a Hindu  
20 temple. It was a Buddhist *pagoda*. My Lord, the name *Shibir* is training. Sabarimala is a  
21 training centre for the Buddhists on the top of the hill. Thus, it became known as Sabarimala.  
22 That is there. The Dalai Lama's palace is also named as Sabarimala. Your Lordships may kindly  
23 see, there are 60 to 70% of the Keralites were Buddhists. Thereafter, the advent of that the  
24 *Vaishnavism* and *Shaivism* and also *Bhakthi prasthanam* by the Shankaracharya, all the  
25 Buddhists were wiped away from the Kerala. My Lord, that is a... but this was being on the top  
26 of the hill, My Lord, it remained there. Your Lordships can see page 3; it was a Buddhist  
27 *pagoda*.

28 **CJI SURYA KANT:** Yes.

29 **C. RAJENDRAN:** My Lord, later on it was converted into a temple, second page, and the  
30 third picture shows it was converted into a *pucca* temple by Flag post etc. There are two types  
31 of temples in Kerala, My Lord- *samadhi peethams* and *Prana Prathishtas*. *Prana Prathishtas*,  
32 the *prana* of the person who is giving it is transmitted to the idol, and the idol becomes a living  
33 person, but the most powerful is the *samadhi peethams*, that is a contemporary of Lord  
34 Ayyappa entered into *samadhi*, a picture. Your Lordship may kindly see page 6, My Lord this,

1 his name is Sangha Tenzin, who entered *samadhi*. His body was mummified there and in the  
2 2004 earthquake, it came out. Now, that is why we can... we will get the body. Your Lordship  
3 may kindly see the picture of Ayyappa, this sitting posture of Ayyappa as well as this Buddhist,  
4 this is same My Lord. This sitting of Ayyappa is known as *baddhakonasanam*. But My Lord,  
5 the practitioner is generating heat in his body and for not losing it they are sitting either on  
6 the skin of lion, deer, etc. Here, Ayyappa is sitting without touching his buttocks or anus in the  
7 ground so that the practice generates heat for the awakening of the *Kundalini*, and push it up  
8 to the *Sahasradala padma*, then only the man comes to the stage that *Aham Brahmasmi*.  
9 That is another aspect. So my humble submission is this is a distinct Buddhist temple and  
10 there was big rivalry between *Vaishnavites* and *Shaivites*, and in order to coordinate them a  
11 story had been built up that Ayyappa is the son of Shiva as well as Vishnu and he has been  
12 given a name Harihara Buddha. This is the manipulation, sir.

13 **CJI SURYA KANT:** We are not going to this issue Mr. Rajendran right now.

14 **C. RAJENDRAN:** That's on a separate distinct denomination and menstruation is not at all  
15 there, it is a stigmatic and it is a divine process. In Kerala it is stated that menstruating women  
16 are moving Gods, walking Gods. So, Your Lordships may kindly see, my humble submission  
17 is that the real nature of the temple has not been brought up and the Mahendran...

18 **CJI SURYA KANT:** All right, thank you.

19 **C. RAJENDRAN:** So my submission is that the right of the devotees of Ayyappa may be kept  
20 open for agitation before the Honourable High Court and [UNCLEAR] cases.

21 **CJI SURYA KANT:** Thank you. Thank you, Mr. Rajendran. Yes, madam.

22 **USHA NANDINI:** I'm Advocate Usha Nandini and I had assisted Mr. Gopal  
23 Sankaranarayanan as well as Mr. Jayant Muthuraj in other two matters and being a devotee,  
24 I had separately filed an intervention application in the main petition and separate review  
25 petitions. This is in 901.31 wherein Mr. Chitambaresh has filed a separate written submission  
26 and these submissions are in addition to that. Kindly see Your Lordship, my... the present  
27 submissions are confined to only question number 3 and 7 in the reference. I'm not looking to  
28 the other questions.

29 The first one is whether the rights of a religious denomination under Article 26 of the  
30 Constitution of India are subject to the other provisions of Part III of the Constitution for India  
31 apart from the public order, morality and faith and the answer is no. Kindly see Your Lordship,  
32 the framers of the Constitution consciously omitted the word "subject to the other provisions  
33 of Part III" in Article 26 and the rights of the individual under Article 25(1) are subject to public  
34 order, morality and public health as well as to the other provisions of Part III of the

1 Constitution and this necessarily includes Article 26. And at the same time, the rights of a  
2 religious denomination or a sect thereof, which may include a group or community under  
3 Article 26 are subject only to public order, morality and public health and not to the other  
4 provisions of Part III. Kindly see Your Lordship then the diversity of Religious Practice vis-a-  
5 vis religious denomination and...

6 **CJI SURYA KANT:** I can make out your point. That we will read, madam.

7 **USHA NANDINI:** Only, only one paragraph.

8 **CJI SURYA KANT:** The page is not there. Now these are all extra burden on us.

9 **USHA NANDINI:** Kindly see Your Lordship the seventh question. There is a question that  
10 whether a person not belonging to religious denomination or religious group can question a  
11 practice of that religion and the answer is also no, Your Lordship and a person who neither  
12 professes or the relevant faith nor participate in the associated practices has no right, whether  
13 constitutional or otherwise, to challenge such practices on the ground that they conflict with  
14 their own values and beliefs. And Your Lordship, another point is regarding the PIL filed in  
15 Sabarimala, my submission is Your Lordship it's like forum shopping, because kindly see the  
16 statement by...

17 **CJI SURYA KANT:** We know that very well. That has been argued in detail.

18 **USHA NANDINI:** No Your Lordship, the thing is that all the petitioners they belong, they  
19 are from the NCR region only and that is the only reason they had prepared the writ petition  
20 under Article 32 instead of approaching the Kerala High Court under Article 226. And I can  
21 say that it's not a Public Interest Litigation, it is a publicity interest litigation only, that point  
22 may also be considered and Your Lordship may... Now Your Lordships are supposed to deliver  
23 an authoritative judgment in Articles 25 and 26 and at the same time I request Your Lordship  
24 to frame some guidelines for considering this kind of Public Interest Litigation. That's all, Your  
25 Lordship.

26 **CJI SURYA KANT:** Thank you, thank you madam.

27 **PRACHI BAJPAI:** Please, Your Lordship. I'm Prachi Bajpai. I'm appearing for two  
28 petitioners, My Lord, there are two petitions are there. The first one is for the temple which is  
29 Ayyappa temple, which is 5000 years old and is owned by a family and following the same  
30 rituals as it is in the main temple is there. Another petition which I have filed is for Samastha  
31 Nair Vanitha Samajam, that is a women wing. As far as Your Lordship has framed the  
32 questions and we are here for discussing those questions. The first one...

33 **CJI SURYA KANT:** Into the other mic also you're facing.

1 **PRACHI BAJPAI:** My Lord?

2 **CJI SURYA KANT:** Yes, yes, yes.

3 **JUSTICE M.M. SUNDRESH:** Keep both the mics with you.

4 **CJI SURYA KANT:** Keep both mics. Use your full voice.

5 **PRACHI BAJPAI:** The first question Your Lordship has framed that is regarding the scope  
6 of the Article 25, My Lord. My Lord, we know that every freedom and every Article of freedom  
7 is subject to some conditions and Article 25 is not an exception to that. The another question  
8 Your Lordship has framed regarding the interplay of the Article 25 and 26. My Lord, there is  
9 a saying that, "My right and freedom to swing my hand ends from where the others rights and  
10 freedom starts." So it should not hurt the others freedom and right, should not infringe. As far  
11 as the Article 26, whether it is a part of... subject to part of other Articles in Part III or not...

12 **CJI SURYA KANT:** Yes, yes, correct.

13 **PRACHI BAJPAI:** So we have to, as Your Lordship has held in many judgments that we have  
14 to adopt a harmonious construction of interpretation and every Article and intent of the  
15 Constitution framers has to be given a meaning, because if we give importance to the one  
16 Article and the other is subserved then we will not be... rather, we will be denying the intention  
17 of the Constitution framers. As far as the question regarding the morality is concerned, My  
18 Lord, the constitutional morality is nowhere mentioned in the plain reading of my  
19 understanding, nowhere it is mentioned in the Constitution and... framers could very well use  
20 that word Constitutional Morality, but they have not intentionally. So in that Article the word  
21 "morality" is used and we should take it as a morality simpliciter in the context of that Article  
22 which is focusing on the religion, My Lord. So we have to see the morality from the perspective  
23 of the religion and even the judicial interference is also only... should be unless until it is so  
24 much required by Your Lordship and then unless it is so much against the humanity which  
25 cannot be... which cannot be... a person cannot... which cannot be avoided, My Lord, I'm sorry.

26 And as far as the word "section" is mentioned in the Article 25(b) My Lord, it is... we have to  
27 see from the perspective of the Article 17, which is clearly it is regarding the excluded class  
28 which were not allowed to enter the temple, after the independence the temple the entry was  
29 given to the excluded class. My Lord, the persons who are not belonging to the denomination,  
30 they should not challenge the rules as we know that our rights only limits to that others...  
31 others rights should not get infringed, so individual right is my specific right which ends to  
32 what practice I follow. The moment I join the institution, it should be subject to the rules  
33 framed by the denomination or the institution.

34 **CJI SURYA KANT:** Thank you, thank you.

1 **JUSTICE AHSANUDDIN AMANULLAH:** Madam, we didn't get your name. Madam, can  
2 you tell... we didn't get your name, Madam.

3 **ATULESH KUMAR:** I'm Atulesh Kumar, My Lord.

4 **PRACHI BAJPAI:** I'm Prachi Bajpai, My Lord, my name is in the list.

5 **CJI SURYA KANT:** Okay, thank you.

6 **ATULESH KUMAR:** I am appearing for Akhil Bhartiya Sant Samiti, My Lord, IA number  
7 98855 of 2026. I am Atulesh Kumar, My Lord. My short submission I will not take much, two-  
8 three, more than two-three minutes. My Lord submission on, "The issue of scope and extent  
9 of the judicial review with regard to the religious practice as referred to in Article 25 of the  
10 Constitution of India," that is reference number 5. To substantiate my point, My Lord, I would  
11 like to give one or two examples. So for religious practices as concerned where I have given the  
12 example of 12 Jyotirlinga, in which specifically one Mahakala temple where *bhasmaarti* is  
13 performed. All 12 temples of... all Jyotirlinga is the manifestation of Lord Shiva, but so far as  
14 Mahakaleshwar temple is that My Lord, there *bhasmaarti* is performed. That *bhasmaarti* is  
15 not performed with other Shiva temple, that is the religious practice followed. So for other  
16 example are concerned, My Lord 51 *Shaktipeethas* are there, but Kali temple in Kolkata and  
17 one more temple in... Kamakhya temple, the religious practices are totally different. My Lord,  
18 there are three types of temple I have mentioned in my four pages note, private temple that is  
19 *griha* or home temple, social temple and other temple...

20 **CJI SURYA KANT:** [UNCLEAR].

21 **ATULESH KUMAR:** I will skip My Lord, I will skip. And so far as my submission on the  
22 Sabarimala temple is concerned, this restriction between 10 to 50 is not violative of Article 14  
23 of the Constitution. My submission is, because there is no absolute restriction to 10 and then  
24 post 50 it is allowed, so there is no restriction, absolute restriction therefore, we cannot say  
25 this is violation of Article 14 of the Constitution. And I can give the example of Article 19 about  
26 freedom of speech and expression subject to Article 92. My Lord, the essential religious  
27 practice doctrine has developed by the court in *Shirur Mutt* case, My Lord. In *Sabarimala*  
28 My Lord in five judges Bench the gender equality has taken precedence over the traditional  
29 religious practice. My submission is this, My Lord, Article 25 and 26, both are fundamental  
30 rights; we cannot give precedence to one Article over another Article. 25 is subject to public  
31 order, health, morality and other parts of Part III fundamental rights, whilst 26 is subject to  
32 public order, health and morality. My submission is this, My Lord. One Article... both are  
33 fundamental rights, but our Constitution, forefather has given in this; we cannot take one  
34 Article, we cannot take precedence of other, My Lord. That is my submission, My Lord.

1 And one more point. There can be resolving of this, when conflict arises, sometime overlapping  
2 individual rights are overlap with the denominational right, in that case, balancing efforts  
3 should be taken and harmonious construction should be taken to balance that. My Lord, my  
4 submission is, the courts are not expert in theology; therefore, the courts should not determine  
5 the religious pact. That is one submission, My Lord. Belief and faith have existed in India since  
6 time immemorial. It's not that after Constitution it is there, My Lord, but only the Constitution  
7 has legally enforced there, and it was first in the preamble, and then in Article 25 and then in  
8 26, My Lord. In *Venkataramana Devaru* My Lord, this Article has read together to make  
9 a balance, My Lord, and in *Shirur Mutt* case, My Lord, it is held that a State can regulate the  
10 secular, economic and administrative activities of the religious institution, while it cannot  
11 interfere with the essential core of the religious practices as an internal management, My Lord.  
12 Rest of the submission made by the learned Solicitor, I accept, My Lord.

13 **CJI SURYA KANT:** You want to argue? Yes. What's your good name?

14 **GAURI SUBRAMANIAN:** Gauri Subramanian.

15 **CJI SURYA KANT:** All right. Are you there in the list? All right, start, start, start.

16 **GAURI SUBRAMANIAN:** Your Lordships, I'm appearing for an Intervener; this is the  
17 Bombay Parsi Panchayat and Your Lordships, you know, all our senior Counsels have argued  
18 these matters of law and historical context with great erudition, so I'm not repeating any of it.  
19 I have prepared a very short note; at the end of that note, I'm not going through the note at all,  
20 but at the end of the note I've also prepared a flowchart which I'm hoping would be of some  
21 assistance to Your Lordships. It traces how a State action can be... how you can actually analyse  
22 a State action with regard to denominational rights and religious freedom. I only wish to make  
23 three very short points. The first is, Your Lordships, specifically in the context of the Parsi  
24 matters before you. Empathy is very important; there is an emotional cost being paid in this  
25 particular set of circumstances. But it cannot blur the constitutional boundary between  
26 religion and... regulation and religious autonomy. Secondly, what may appear as a narrow  
27 accommodation today, risks becoming a template for incremental constitutional erosion in the  
28 future, and thirdly, if individual or a group of individuals as in this case and in many others, if  
29 an individual's hardship becomes the governing metric, then every denominational boundary  
30 becomes negotiable and then Article 26 risks being reduced to just a case-by-case exception.  
31 Your Lordships, my flowchart is right at the back. Obligated.

32 **CJI SURYA KANT:** Thank you.

33 **JUSTICE M.M. SUNDRESH:** You were very precise; we appreciate it.

34 **CJI SURYA KANT:** Yes, directly on the point. Yes, please. Yes, yes.

1 **RANJIT KUMAR:** Honourable Chief Justice and the companion...

2 **CJI SURYA KANT:** There is no need to address us. We all know who you are.

3 **RANJIT KUMAR:** My humble submission is regarding the three aspects. One is this  
4 constitutes the morality, constitutional morality and societal morality. Societal morality...  
5 societal morality can be there, but there cannot be constitutional morality, like that that when  
6 we interpret the constitutional morality, it will lead to many multiplicity of litigations like that  
7 on the basis of principle of morality. Second thing, that any sort of judge of the thing, which is  
8 called the denomination, the denomination is particular aspect of one religion which is specific  
9 to one State. It is not comprising of the entire State. So converting religious denomination for  
10 a particular State is not an entirety to maintain that the Hindu religion is having overall aspect  
11 of that. Third thing My Lordship that is related to subject to public order and morality. Now I,  
12 just suggestive in nature that there has to be a non-discrimination, is there subject to non-  
13 discrimination and antithetical to the rules which is mentioned... Articles mentioned in 14, 15,  
14 19 and 21, that should be there the interpretation of the review and that is my humble  
15 submission, thanks for patient listening, My Lordships. Thank you.

16 **CJI SURYA KANT:** Thank you. Please.

17 **EKALAVYA DWIVEDI:** My Lords, my apologies I understand Your Lordships have reached  
18 saturation point and looking forward for them to start. I will confine my submissions to just  
19 one limited aspect which is the...

20 **CJI SURYA KANT:** There is the pro bouncer or with the bouncer, that's all.

21 **EKALAVYA DWIVEDI:** Very well. I'm appearing in IA number 99340. I'm confining my  
22 submissions on just one aspect which is the subjection of Article 26 to Article 25(2). In my  
23 submission, Article 25(2) is inapplicable to 26 and I say so for the following reasons My Lords.  
24 My Lords at the outset, if one were to compare the language of the two Articles as also the  
25 constitutional debates that have happened, it is evident that the framers wanted to vest  
26 superior rights in religious denominations, they wanted to treat them separately and this is so  
27 because religious denominations historically have been a closed set, private exclusive in nature  
28 and nobody could claim as a matter of right that membership should be extended to them.  
29 Now more importantly, the language in which 26 and 25 are couched if one was to juxtapose  
30 the two, it is evident they contain express and implicit indicators that 26 was supposed to be  
31 immune from 25(2).

32 And I say so for the following reasons My Lords: Firstly, Your Lordships have noted that there  
33 is a "subject to" clause in 25(1) which subjects it to other parts of Part III.

1 Now 26... 25(1) will obviously be subject to 26 as well. Similarly, My Lords, the "subject to"  
2 clause is absent, is conspicuous by its absence in 26 and Your Lordships have noted that, Your  
3 Lordships have also seen the sub-committee report on fundamental rights, the original  
4 formulation contained that clause, that they were to be, the rights of religious denominations  
5 were to be read consistently with the provisions of the chapter. But in the subsequent iterations  
6 that phrase was dropped and for good reason because the framers had the foresight to not  
7 frame 26 in a manner which would lead to a contradiction in terms. It can't be that 25(1) is  
8 subject to 26, but 26 is also subject to 25; that could not have been the scenario. Thirdly, 25(2)  
9 begins with the phrase "nothing in this Article", so it is evident that it is confined, the  
10 operation, the regulatory powers of the State are confined to 25(1) itself. Fourthly, and now I  
11 draw Your Lordships attention to the latter part of 25(2)(b). It says, "throwing open of Hindu  
12 religious institutions of public character". Now, as I had alluded to earlier, there is no public  
13 character historically there have been a close, the religious denominations have been a close  
14 set. And most importantly, a reference to Hindu religious institutions by virtue of explanation  
15 two, covers Sikh, Jain and Buddhist religious institutions as well. Now please see the  
16 consequence of applying 25(2)(b) to 26. Hindu, Sikh, Jain, Buddhist religious denominations  
17 get covered but Islamic, Zoroastrian, Christian etc. religious denominations are excluded, so  
18 that it is... it has a discriminatory impact on other religious denominations.

19 **JUSTICE B.V. NAGARATHNA:** There, there is no exclusion as such.

20 **EKALAVYA DWIVEDI:** That's right.

21 **JUSTICE B.V. NAGARATHNA:** In other religions, there is no exclusion.

22 **EKALAVYA DWIVEDI:** No, but the...

23 **JUSTICE B.V. NAGARATHNA:** It is specific to Hindu religion that is why the Constitution  
24 framers were conscious of the fact that Hindu temples could not exclude particularly the  
25 depressed classes as they were called earlier.

26 **EKALAVYA DWIVEDI:** So I'm not suggesting for a moment that 17, 23, 24 will also not  
27 apply. Those are the only caveats...

28 **JUSTICE B.V. NAGARATHNA:** See, this is something depressed classes you can say  
29 depressed castes. Such a thing, caste system is not there in other religions. So why should they  
30 write about other religions in the Article?

31 **EKALAVYA DWIVEDI:** Your Ladyship, that may not be true.

32 **JUSTICE B.V. NAGARATHNA:** They are conscious of the reality of the Hindu society.

1 **EKALAVYA DWIVEDI:** That may not be true. Even Islam there have been divisions within  
2 a different sects of Islam, but without that I'm confining my submissions to first principles.

3 **JUSTICE B.V. NAGARATHNA:** It's only applicable to...

4 **EKALAVYA DWIVEDI:** I'm confining my submissions to first principles. If Your Lordships  
5 were to read Explanation II in the text, in the language in which it is couched, couched, "it is  
6 confined to Sikh, Buddhist and Jain religious institutions". So, if it were to apply to 26 it would  
7 lead to a discriminatory application of that provision and in my respectful submission no such  
8 interpretation should be given to 25(2)(b).

9 **CJI SURYA KANT:** Thank you.

10 **EKLAVYA DWIVEDI:** Just two more points, My Lords.

11 **CJI SURYA KANT:** Quickly please.

12 **EKLAVYA DWIVEDI:** Yes, yes, My Lords. In fact I'll skip the second one. Just the last point  
13 and I'm taking suggestions from what Justice Bagchi had said the other day that 26 is a special  
14 provision which is carved out from 25(2). I'm pressing it to service the doctrine of *generalia*  
15 *specialibus non derogant*, special excludes the general and in my respectful submission it will  
16 not apply to 26. I'm very grateful for the opportunity.

17 **CJI SURYA KANT:** Thank you.

18 **SREEGESH M.K.:** With Your Lordships... With Your Lordships permission...

19 **CJI SURYA KANT:** Because we are not sure whether you want to argue this side or this side,  
20 you are definitely arguing this side, that's the reason we have kept... wait, wait, wait for five  
21 minutes. Yes, yes.

22 **SREEGESH M.K.:** The prism through which My Lords one looks at My Lord 25 and 26 if  
23 that first expression in Article 25 would hold the key is the first submission and that is the  
24 right to conscience because if we understand, My Lord the right to conscience, My Lords,  
25 within its operational sphere, then probably 25, 26 represents the layered form of that right to  
26 conscience, including even the sect. So My Lords, it is in that context, My Lords, that I open it.  
27 "The freedom of conscience denotes...", My Lords, I'm coming straight to 1(a) My Lords,  
28 having explained, My Lords, the first segment of it. "The freedom of conscience denotes the  
29 right to lead a life as guided by the thought process of the inner self" and My Lords it need not  
30 be always be rational the canons of rationality may not be applicable and that is why it takes a  
31 form of beliefs and the external manifestations of those conscience are the rituals,  
32 performances, etc. When two or more individuals share that common conscience then that  
33 evolves as the conscience of either a sect, cult, group or a religious community. So the free...

1 so that takes me to 1(d). 1(c), I'm sorry. "The freedom of conscience of an individual, this  
2 encompasses the freedom to follow the personal conscience in his personal space," now that  
3 personal space is very important. "2. The freedom to be distinct and to dissent even in a  
4 collective forum," that is the freedom to distinct and dissent even in a collective forum,  
5 including My Lords, probably a religion. "The third, is the freedom to lead a life governed by  
6 the uniform or the shared conscience of the collective forum as its member." So that takes us,  
7 My Lords, to the concept that as far as religion is concerned, then the worship, beliefs,  
8 observances I'm coming straight to 2, My Lords, I need not trouble Your Lordships with 1(d),  
9 includes now the rituals, worships etc. which are all My Lords, the external manifestations of  
10 that conscience, would necessarily come as a package including the forbearance, the restraints,  
11 the injunctions associated with it. Then Article 25 by itself determines the contours of  
12 application of the right of equality, because the general notions of equality is there My Lords  
13 Articles 14, 15, etc. It gets a specific form in Article 16 and similarly it gets a specific form in  
14 Article 25. So, you look at Article 14 through the prism of Article 25, rather than the *vice versa*.

15 **CJI SURYA KANT:** Very well.

16 **SREEGESH M.K.:** Then My Lords, if so, "In the context of Article 25, the right of equality  
17 does not take within its fold the right to profess, practice and propagate religion in variance  
18 from the manner in which it is prefaced by either the religion or the sect," and that is the key  
19 to understanding that sect or denomination even in the context of 25, My Lords. Article 15(2),  
20 15(4) and 16(5) are pointers to this because 15(2), it actually avoids, it does not provide an  
21 unbridled access to the temple while the framers were very sure of what other public place  
22 should that access, unbridled access be provided to; there was no such restriction in 15(2).  
23 Similarly, My Lords Article 16(5) as a pointer that My Lords, as far as the appointment of any  
24 office is concerned, for example, *Archaka*, etc. that is recognised by 16(5) itself. And as far as  
25 a belief which is the outcome of conscience need not appeal to rationality.

26 Then My Lords, I come to, even a single temple could constitute a class by itself, My Lords.  
27 That depends on the form of the deity and the variable form of the deity. Chidambaram, we  
28 have an example, where the idol has no shape. I just leave it at that, not quoting My Lord,  
29 further examples.

30 Then My Lords, as far as the seventh proposition is concerned at page 3. Article 25, when an  
31 individual... Article 25 as well as 26 is linked through this umbilical cord of conscience, because  
32 unless the right to profess, propagate and practice that religion is confirmed. Probably at some  
33 point of time the sect of the denomination may lose its distinctive identity and it may be  
34 rendered to oblivion. So, that is that link, because what you practice in the 26 is nothing else  
35 but the conscience of that sect and its external manifestations.

- 1 **JUSTICE M.M. SUNDRESH:** Then Article 25 will apply to Article 26.
- 2 **SREEGESH M.K.:** Yes, My Lords. Yes. Article 25 My Lords and Article 25 would be...
- 3 **JUSTICE M.M. SUNDRESH:** It'll come along with the restriction imposed under 25(1) and  
4 25(2).
- 5 **SREEGESH M.K.:** There it will be a balanced approach.
- 6 **JUSTICE M.M. SUNDRESH:** Whether you go this way or that way, you can't say you take  
7 a bite here and bite there.
- 8 **SREEGESH M.K.:** No, no, I'm not saying that My Lords. I'm not stretching it to that.
- 9 **JUSTICE M.M. SUNDRESH:** You say that rights under, flows under Article 25 to Article  
10 26.
- 11 **SREEGESH M.K.:** Right.
- 12 **JUSTICE M.M. SUNDRESH:** Then the liability also will come.
- 13 **SREEGESH M.K.:** Naturally, but liability under 25(2)(b), My Lords, to the extent 25(2)(b)  
14 is there, there my answer would be only, it would serve as a balancing act, My Lords. It would  
15 be a balancing act, not one above the other. I'm not placing 26(b) above 25 because it  
16 compliments each other is my submission.
- 17 **CJI SURYA KANT:** Anything else? Yes. Anything?
- 18 **SREEGESH M.K.:** My Lords, I've given My Lords at para 10...
- 19 **CJI SURYA KANT:** Yes, yes.
- 20 **SREEGESH M.K.:** The judicial review, the counters of judicial review. My Lords, I leave it  
21 at that. The last point, Your Lordships may just note, para 13 because *Mahendran's*  
22 judgment, My Lords, the evidence was taken and My Lords, a subsequent writ petition without  
23 the factual basis, unsettled a judgment which has become final, is something which Your  
24 Lordships should consider. Obligated, My Lords.
- 25 **CJI SURYA KANT:** Thank you, thank you. First that lady should argue.
- 26 **BHARTI TYAGI:** Please, Your Lordships. Your Lordship, may I seek indulgence to circulate  
27 my four-five-pages submissions?
- 28 **CJI SURYA KANT:** Take two mics with full voice. Yes, please, go ahead.
- 29 **BHARTI TYAGI:** Your Lordship, this case is not about gender equality in the abstract, but  
30 about the limits of judicial oversight over religious autonomy under Article 25 and 26. In our

1 submissions, that majority judgment in **Sabarimala** erroneously replaced the essential  
2 religious practice with a modern rationality test which exceeds the correct jurisdiction, Your  
3 Lordship. With this backdrop, Your Lordship kindly come to page 2 of my submission that  
4 "courts cannot judge rationality of religious faith. The scope of judicial review does not extend  
5 to evaluating the reasonableness, rationality of a religious belief or practice. This court inquiry  
6 must cease once it is satisfied that belief is genuine and not a pretence." This Honourable court  
7 in five judges' judgment **M Siddiq Ram Janmabhoomi** this paragraph is quoted. Now,  
8 Your Lordships, kindly come to page 5 straight away, para 5; this is harmony of rights. Your  
9 Lordship, no right is superior to another. So this is majority judgment; treats Article 14 as an  
10 overriding constitutional norm capable of defeating the protection afforded by Article 25 and  
11 26. Whenever the religious practice involves a distinction, this reading is irreconcilable with  
12 the nine judges Constitution Bench in **Ahmedabad St. Xavier College Society** so-and-so  
13 para 75 is quoted herein below, Your Lordship. So, now my submission would be, this nine  
14 judge Bench must accordingly restore the original Constitution, this equilibrium, this is my  
15 submission, My Lord.

16 **CJI SURYA KANT:** Thank you Bharti, thank you, thank you, thank you very much.

17 **BHARTI TYAGI:** Grateful, Your Lordship.

18 **CJI SURYA KANT:** Any other young lady is interested to argue? Please come, please come  
19 forward, anyone. Otherwise, yes, you start.

20 **VENKATA RAGHUVAMSY D.:** Yes, My Lord. I'm appearing for one of the Intervenor. My  
21 application number...

22 **CJI SURYA KANT:** If any woman lawyer, any young lady lawyer wants to argue, please come  
23 forward, we will accommodate. You start meanwhile.

24 **VENKATA RAGHUVAMSY D.:** Yes, sir. My Application number is 88066 of 2026. I am  
25 proposing six propositions, My Lord. The first one, proposition one is reconceptualization of  
26 the religious denomination, My Lord. So it is the devotee, if he wants to pray to deity, he will  
27 have some devotional makeup so that he will think about the deity and he will pray for him.  
28 So the moment when he does that, a group of that makeup where we can say that they consider  
29 them as independent spiritual fraternity, where I have dealt with that in my written  
30 submissions as well.

31 And next aspect is, if in case, if this Honourable Court feels that Essential Religious Practice is  
32 necessary and required, they should follow a certain aspects which I call it as a spiritual physics  
33 which are called as the *Agamic* tenants or any *tantrik* way of worship. So, these thing has to  
34 be tested, My Lord. And the another aspect is the bar against institutional syncretism, this is

1 one which I want to highlight, My Lord. So, thing is, under Article 25 an individual is having a  
2 right to practice their religion and they can practice multiple religions and even they can mix  
3 up and they can do that, but that mix up should not be brought into this denomination. So the  
4 moment you enter into the temple, you have to adhere to those principles and practices with  
5 respect to the temple. So, and another aspect relating to denominational I'll come back again,  
6 My Lord, when we consider this *Shaivism, Vaishnavism*, all these temples as a denominations,  
7 so the moment each... in each temple Krishna is considered as a Radhakrishna as well as  
8 Rukminikrishna; so all these temples they fall under the category of section thereof. So simply  
9 where we cannot say that see Hinduism is a denomination and where we need to, we should  
10 not give a static test. Even My Lord in my written submissions which that I have handed it  
11 over where I have given a definition, My Lord.

12 **CJI SURYA KANT:** That we will see soon, because you have not asked for any time, we have  
13 adjusted you.

14 **VENKATA RAGHUVAMSY D.:** Yes, My Lord. And next thing is proposition number 4 I'm  
15 coming quickly, I'm wrapping up. So what is the State's power under 25(2)? Under 25(2),  
16 according to me, it is only with respect to financial administration and as well as other secular  
17 aspects. It means, earlier there are certain temples which were not managed by anybody. So,  
18 in those circumstances the State has stepped in and it has taken over as a custodian; it doesn't  
19 mean that the State owns the temple. So, what State can do? State can legislate it and State  
20 can take care of the temple.

21 **CJI SURYA KANT:** All right, next.

22 **VENKATA RAGHUVAMSY D.:** So next point is, I have proposed one test with respect to  
23 the morality. Morality no one has dealt with this.

24 **CJI SURYA KANT:** This should be enough. Next. Next.

25 **VENKATA RAGHUVAMSHY D.:** No, the thing is what is morality? This is what I just  
26 wanted to highlight, My Lord. So if you see from the lens of 25 there are two aspects are there.  
27 One is the morality with respect to the individual towards the religion and as well as towards  
28 the public. So with respect to, from his activities, he cannot create any kind of distrust towards  
29 the society. And another one is, 25, with respect to the impersonification, there are certain  
30 godheads are there, there are a few more clerics are there which they say that I am the  
31 incarnation of God, so they should not bring disgrace to that specific denomination. And to  
32 that extent, where the *Maharaj Libel* case is there where I have given it my written  
33 submissions, where they have dealt a specific line, is there, "what is not correct in theology, it  
34 is not right in morality".

1 **CJI SURYA KANT:** All right, thank you.

2 **VENKATA RAGHUVAMSHY D.:** So one more aspect and with respect to 26, there is one  
3 judgment called *Sesha Iyengar* what they have held is a denomination they can practice,  
4 they can conduct the practice at a private area, but it should not disturb the neighbours. This  
5 is again 1880 judgment.

6 And next aspect is as Your Lordships has pointed out, if there is any threat or harm, so do we  
7 have a jurisdiction? As My Lord as a parent's party the State can step in. This is one way of  
8 looking at it, parent's party jurisdiction where they can step in and they can curb those  
9 practices.

10 **CJI SURYA KANT:** Thank you.

11 **VENKATA RAGHUVAMSHY D.:** And my written submissions where I have given it, I'll  
12 just give the page number, My Lord. It is Volume 1.2, 714 to 746.

13 **CJI SURYA KANT:** Thank you. Yes.

14 **ARVIND SRIVATSA:** Yes, My Lord. Just three points, I will conclude with that My Lord. I  
15 appear in IA 91810.

16 **CJI SURYA KANT:** You please tell us, have you given your name in the list? Have you given  
17 your name earlier?

18 **ARVIND SRIVATSA:** Yes, My Lord, I have given My Lord. My name is Arvind Srivatsa. My  
19 name is there in the original list also as serial number 45. My Lord, I appear in IA 91810 of 26.  
20 My written submissions are in Volume 1.1, page number 848. My Lord, I will not repeat what  
21 has already been argued, just three propositions I'll place, My Lord. First submission My Lord  
22 is on the scope of Article 25(1). There are three parts to 25(1) which Your Lordships have  
23 already heard. One is on My Lord's, conscience, the other is profess these two are internal  
24 absolute rights. My Lord on propagate and practice My Lord that will be subject to the  
25 restrictions of the language in 25 itself. 26, on the other hand, contains no restriction on  
26 subject to Part III rights. Therefore, if My Lord, there is an apparent conflict between 25(1)  
27 and 26, 25(1) must yield and 26 will play over 25 and 26 is subject only to the restrictions of  
28 My Lords morality, public order and health that are available in the language of the statute  
29 itself. Therefore, My Lords, insofar as 25(1) and 26, my humble submission is they are different  
30 constitutional spheres and My Lord that they are different constitutional functions. One is on,  
31 right of individual, the other is on the management by the institution itself. My Lord and the  
32 submissions on My Lords *Ratilal's* case and *Shirur Mutt*, I will not repeat. The only last  
33 point that I'll make is on *Devaru*. My Lord, submissions were made on *Devaru*, in fact,  
34 questions were put by this Honourable Bench also. My Lord, my endeavour is to say that

1 **Devaru** should be read in the context of Article 17 alone. My Lord, the concluding paragraph  
2 at page 248 of Volume V, "This Honourable Court was pleased to already note it, which is  
3 Article 26(b) must be read subject to 25(2)(b)." This, my endeavour is to say kindly read this  
4 in the context of 17 alone because what the court was dealing with on the facts of that case was  
5 cast by its exclusion of entry into the temple, not anything else. My Lord, therefore, the finding  
6 that it is subject, it is beyond 26 itself. I would request Your Lordship to kindly reconsider and  
7 only restrict to 17. Only one other fact on statutes that are there, two statutes which is the  
8 Tamil Nadu, HRE Act, the Hindu Religious Endowments Act and the Karnataka Act in  
9 Sections 107 and 69, both of these provisions My Lord specifically refer to that nothing in the  
10 act will, "Nothing in this Act shall save as otherwise provided for in 25(2) be deemed to confer  
11 any power or impose any duty in contravention of rights conferred to religious denominations  
12 under 26." So, this 26 being on a higher pedestal is recognised in other two statutes I just  
13 wanted to place it before you. I'm grateful, grateful.

14 **CJI SURYA KANT:** Thank you.

15 **AKSHAY NAGARAJAN:** May I please, My Lords, I'll just take two minutes. My  
16 submissions, I appear in IA 84798, my submissions are on record.

17 **CJI SURYA KANT:** What is your name?

18 **AKSHAY NAGARAJAN:** Akshay Nagarajan, My Lord, my name is not there in this list, but  
19 I have given my submissions, they are on record.

20 **CJI SURYA KANT:** First, let them finish those who are earlier... What is your good name?

21 **SANAND RAMAKRISHNAN:** Sanand Ramakrishnan.

22 **CJI SURYA KANT:** Sanand, you are there, please argue.

23 **SANAND RAMAKRISHNAN:** I appear in item 901.29. I appear in review petition diary  
24 number 9135 for the Kerala Brahma Sabha.

25 **CJI SURYA KANT:** That we will find out whom you are representing, don't worry.

26 **SANAND RAMAKRISHNAN:** No My Lord, I will be only briefly touching upon Issues  
27 number 2 and 7. Issue number 2 of course relates to interplay between 25 and 26 and 7 relates  
28 to whether a person not belonging to the denomination can question, that's... Coming to  
29 interplay both Articles 25 and 26 are subject to public order, health and morality. However,  
30 25 is further subject to other rights in Part III as also including 26, Article 26, on the other  
31 hand, does not have such a limitation, typically these rights are conferred on non-State actors.  
32 In case of infringement of this right by legislation or State action a constitutional court can be  
33 enforced directly and there is no difficulty, it can be... the grievance can be redressed.

1 "Difficulty arises in cases where there is no State action or legislation and the individual asserts  
2 Article 25 rights and alleges violation by denomination and the denomination in turn asserts  
3 its own Fundamental Rights under 26 denying the allegation. So there is a dispute between  
4 two non-State actors, each asserting Fundamental Rights. In this situation, Article 25 can be  
5 said to be subordinate to Article 26, as Article 25 is subject to other Article 3 rights including  
6 26. This scenario with non-State actors asserting competing fundamental rights comes within  
7 the classic scenario of horizontal enforcement of Fundamental Rights." In **Puttaswamy** this  
8 court has held that privacy is both a civil right and a constitutional right. If there is a peeping  
9 Tom neighbour, I can approach the civil court, get an injunction and if the peeping Tom is the  
10 State itself, then I can approach the Constitutional Court and get my right protected.  
11 Therefore, the manner in which I enforce my right, whether it is civil or constitutional, is well  
12 settled. "In **Kaushal Kishor**, the court considered whether Fundamental Right under 19 and  
13 21 can be horizontally enforced. Earlier position was that it cannot be. However, the majority  
14 having regard to the evolution of constitutional law in various other jurisdictions, held that  
15 some Fundamental Rights are horizontally enforceable. The majority judgment also contains  
16 a chart at para 73. Article 25 does not figure in that chart, it is conspicuous by its absence. So  
17 in a dispute between two non-State actors, there is no scope for an individual to use his or her  
18 right under 25 against religious determination or section thereof. The dissent in **Kaushal**  
19 **Kishor** holds that only 21 and *habeas corpus* rights and no other fundamental rights are  
20 capable of." The reasoning is that necessarily disputed questions of fact arises in such  
21 determination. "So, this dissent that disputed questions of fact cannot be adjudicated in 32  
22 and 226, assumes great significance, when a 25 right is pitted against a denominational right.  
23 The individual would argue that the practice... against the practice, and the denomination  
24 would assert long practice. Hence without getting into the correctness of **Kaushal Kishor** or  
25 the dissent in that case, it can be safely concluded that an individual cannot horizontally  
26 enforce a fundamental right under Article 25 against the community or the religious  
27 denomination thereof, through a constitutional court. If this is the case, the body's  
28 organizations of the nature referred to in question 7, cannot have any enforceable Article 25  
29 claim before a Constitutional Court." My written submissions have been placed settled by P.B.  
30 Krishnan, Senior Advocate.

31 **CJI SURYA KANT:** Thank you, Mr. Ramakrishnan, thank you.

32 **SANAND RAMAKRISHNAN:** My Lords.

33 **CJI SURYA KANT:** We'll hear you, don't worry, don't worry, don't worry. What's your good  
34 name?

35 **RAJNISH KUMAR JHA:** Rajnish Kumar Jha.

1 **CJI SURYA KANT:** Rajnish Kumar Jha. Yes, Mr. Jha, two minutes, please.

2 **RAJNISH KUMAR JHA:** My Lord, I have framed...

3 **CJI SURYA KANT:** Straight to the point.

4 **RAJNISH KUMAR JHA:** Question of law on 16th February 2026. My Lord, the first  
5 question, what is the scope and ambit of a right of freedom of religion under Article 25 of the  
6 Constitution of India? My Lords, as regards Article 25 of the Constitution which guarantees to  
7 every person, freedom of conscience and right to freely profess, practice and propagate any  
8 religion, this right is not confined to citizens alone but covers all persons residing in India, but  
9 the right to freedom of religion guaranteed by this Article is subject to restrictions which may  
10 be imposed by the State on the grounds of public order, morality and health. My Lord, as  
11 regards the second question, what My Lords have framed, what is the interplay between the  
12 rights of persons under Article 25 of the Constitution of India, and rights of the religious  
13 denomination under Article 26 of the Constitution of India? My Lord, while the Article 25(1)  
14 of the Constitution protects the religious freedom of an individual, Article 26(b) deals with the  
15 collective rights of the religious denomination; while an individual can practice only such  
16 rights as are well-established and recognized by the community as integral part of his religion,  
17 a religious denomination enjoys the independence of determining the rites and ceremonies  
18 which shall be essential according to the tenets of that denomination. That while Article 25(1)  
19 grants freedom of conscience and the right to profess, practice and propagate religion, Article  
20 26 can be said to be complementary to it and provides for every religious denomination or any  
21 section thereof, to exercise the right mentioned therein. This is because Article 26 does not  
22 deal with the right of an individual but is confined to religious denomination. Article 26 refers  
23 to a denomination to any religion, whether they belong to majority or minority religion. Just  
24 because Article 25 refers to all persons whether they belong to a majority or minority religion,  
25 Article 26 gives the right to majority religious denomination as well as to minority religious  
26 denomination to exercise the rights contained therein. My Lord may permit me to read the  
27 judgment *Shirur Mutt*, My Lord.

28 **CJI SURYA KANT:** No, no. There is no need to... you point out the paragraph.

29 **RAJNISH KUMAR JHA:** The third question, My Lord, whether the rights of religious  
30 denomination under Article 26 of the Constitution of India are... India are subject to other  
31 provisions of Part III of the Constitution of India...

32 **CJI SURYA KANT:** You read the paragraph please.

33 **RAJNISH KUMAR JHA:** ...apart from the public order, morality and health? My Lord, that  
34 while Article 25 extends to all persons, Article 26 is confined to religious denominations.

1 Hence, there is no anomaly in the fact that while the rights under both the Articles 25 and 26  
2 are subject to public order, morality and health, Article 25 is also subject to other provisions  
3 of Part III, My Lord, while Article 26 is not. My Lord, I question first of all, what is the scope  
4 and extent of the word 'morality' under Article 25 and 26 of the Constitution of India and  
5 whether it is meant to include constitutional morality? My Lord, that the concept of  
6 constitutional morality refers to moral values as enshrined under the Constitution, necessary  
7 to answer the correct meaning of the Constitution and the object behind it. Constitutional  
8 morality, in secular country like ours, gives freedom to practice one's own faith based on the  
9 tenets, custom or usage of the concerned religion. My Lord, as regards fifth question what is  
10 the scope...

11 **JUSTICE M.M. SUNDRESH:** Don't read. Just sum up your argument; you have prepared  
12 it. Just tell us what is it about.

13 **RAJNISH KUMAR JHA:** What question My Lord has framed, I'm answering all those  
14 questions, My Lord.

15 **JUSTICE M.M. SUNDRESH:** You just answer it but don't read it, read it and tell us now.

16 **RAJNISH KUMAR JHA:** My Lord, My Lord, I will...

17 **JUSTICE M.M. SUNDRESH:** If You want us to read, we'll read it.

18 **RAJNISH KUMAR JHA:** What is the scope and extent of judicial review, My Lord? I have  
19 already answered My Lord. What is the meaning of expression of section of Hindu occurring  
20 in Article 25(2)(b) of the Constitution of India, My Lord? In Article 25(2)(b) of the Constitution  
21 of India the Explanation II expands the connotation of the word "Hindu" to include Sikhs,  
22 Jains or Buddhists, but this explanation will not apply to any other provision of the  
23 Constitution. Hindu is a comprehensive expression as the religion itself is, giving the widest  
24 freedom to people of all hues, opinions, philosophies and beliefs to come within its fold. This  
25 means that even though the religions of Sikhs, Jains, Buddhists arose out of descent from  
26 Hindu religion, for the generality of purposes, those religions should be considered to be  
27 different from the Hindu religion, but for the purposes of Article 25(2)(b) they should be  
28 considered as part of Hindu religion and consequently their religious institutions of a public  
29 character should be thrown open to all sections of the Hindus instead of being confined to  
30 members of their own sects or denominations.

31 My Lord, last questions what My Lords had framed, whether a person not belonging to a  
32 religious denomination or religious group...

33 **JUSTICE ARAVIND KUMAR:** [UNCLEAR] before us. Why are you reading it?

1 **RAJNISH KUMAR JHA:** No, My Lord, I have prepared it, My Lord. I'm sorry.

2 **JUSTICE M.M. SUNDRESH:** We will read it.

3 **JUSTICE B.V. NAGARATHNA:** Read the questions, only give your answers.

4 **RAJNISH KUMAR JHA:** My Lord, the religious... as regards the religious denominations,  
5 My Lord last question was whether a person not belonging to a religious denomination or  
6 religious group can question a practice of that religious denomination or religious group by  
7 filing a PIL? My Lord, the answer is no to My Lord.

8 **CJI SURYA KANT:** All right. Thank you very much, Mr. Jha. Yes, young man.

9 **AKSHAY NAGARAJAN:** Sorry My Lords, I didn't mean to jump the queue. I couldn't give  
10 my name in the original list, but my written submissions are on record. They're at Volume I.

11 **CJI SURYA KANT:** What's your good name?

12 **AKSHAY NAGARAJAN:** Akshay Nagarajan. My written submissions are on record at  
13 Volume 1.2 at page 379. My Lords have it, My Lords may read it. I supplement Mr.  
14 Vaidyanathan who had appeared in my intervention application. It is the Hindu Dharma  
15 Acharya Sabha. They are a conglomeration of 133 *Sampradayas* they represent *Adinams*, they  
16 represent the *Kabir Panthis*, the *Nagas* and just the diverse conglomerations, My Lords. I just  
17 have two points.

18 On the definition of a religious denomination lot of Learned Senior Advocates have made  
19 submissions and interpretation was given by Learned Senior Advocate Mr. Vaidyanathan that  
20 it should be a *sampradaya*. My Learned Senior Dr. Dhawan had said that it should be  
21 considered institution specific, which means that any institution which is a religious  
22 foundation should be entitled to 26 rights. Learned Senior Advocate Mr. Deepak had said that,  
23 you know, it should be a religious association as traceable to Article 19. My Lords, my only  
24 point that I would like to canvass is how a religious denomination should not be defined. Over  
25 the course of time, a certain exclusivity and rigidity has been applied in the definition of  
26 religious denomination. I will illustrate this point to just one judgment that is the ***Adi***  
27 ***Visheshwara of Kashi Vishwanath Temple vs. State of U.P.*** I'm not... it has not been  
28 read, I don't intend to read it, I'll just make a small point on it. A claim was made by the  
29 followers of the *Shaivite* order saying that the law taking over the Kashi Vishwanath temple is  
30 violative of Article 26. A question was put whether the followers of Lord Shiva or a *Shaivite* or  
31 a religious denomination. My Lords have been told the threefold test; common organizations,  
32 spiritual faith and designated by a distinctive name. Here, peculiarly the followers of Lord  
33 Shiva had lost... this denominational temple had lost on Article 26 on the reasoning that every  
34 Hindu believes in Lord Shiva; therefore, what is so exclusive to you? That way, My Lords, in

1 my respectful submission, no Hindu religious group will be entitled to denominational rights.  
2 Every Hindu anyway follows every other God in the pantheon of Gods. There is no exclusivity  
3 to Lord Ganesha, there's no exclusivity to Lord Vishnu. Similarly My Lord, this had happened  
4 in the *Guruvayoor Temple* judgment also.

5 **JUSTICE M.M. SUNDRESH:** The same faith, same practice, there can be multiple  
6 denominations.

7 **AKSHAY NAGARAJAN:** Multiple denominations My Lord. In my respectful submission to  
8 ask a religious denomination to show us how exclusive you are may not be consistent with the  
9 manner in which fundamental rights have been interpreted in our Constitution. Now My  
10 Lords, in my humble submission, I think that kind of exclusivity has been imparted in the  
11 *Sabarimala* judgment also only because they lost denominational status because everyone  
12 is allowed in the temple; Hindus, Christians, Muslims, everyone. My Lords, that in my  
13 respectful submission would be unique to that temple. That everyone is allowed is something  
14 to be preserved. Therefore, My Lords, a submission was also made that the judgment in *S. P.*  
15 *Mittal* denying the followers of Aurobindo denomination status should be overruled. My  
16 Lords, I would respectfully adopt that view. I would also respectfully request My Lords to  
17 revisit *Adi Visheshwara Kashi Vishwanath Temple [1997] 6 SCC 406* that...

18 **JUSTICE B.V. NAGARATHNA:** What is the citation?

19 **AKSHAY NAGARAJAN:** My Lords, it is [1997] 6 SCC 406. Similarly, the followers of Lord  
20 Krishna in the *Guruvayoor Temple* case, they were also denied denominational status  
21 because, anyway, every Hindu believes in Lord Krishna. What is so unique about this? That  
22 may not be the correct test My Lords and I will just make one final point and I'll leave it at  
23 that. My Lords, a lot has been said on the interplay of Article 26(2)(b) second part and Article  
24 25. I just want to make a submission on the interplay between Article 25(2)(a) and Article 26.  
25 In my respectful submission, My Lords allow throwing open a Hindu temple of a public  
26 character may also govern a religious denomination. It may... *Venkataramana Devaru*  
27 holds the field, My Lords will have to take a view. Insofar as Article 25(2)(a) is concerned,  
28 there is no textual justification to regulate a secular financial economic aspect of a religious  
29 denomination by a law. In other words, a law made under Article 25(2)(a) can never govern  
30 Article 26 institutions, that is because Article 26(c) and (d) already deal with secular aspects.

31 **JUSTICE B.V. NAGARATHNA:** Where do you say that?

32 **JUSTICE M.M. SUNDRESH:** It doesn't say anything about... the problem here is you all...  
33 everybody trying to think about denomination only in 25. It only speaks about 25(1) persons.  
34 Incidentally, institution will come, denomination will come, we will come, others will come,

1 that's not the objective of the Constitution. Our mind is fixated on this and we are trying to  
2 ignore...

3 **AKSHAY NAGARAJAN:** No, My Lords. The only thing that there are some State laws that  
4 pass...

5 **JUSTICE M.M. SUNDRESH:** All right, I understand.

6 **AKSHAY NAGARAJAN:** I only admit the submission is a 25(2)(a) cannot be made  
7 applicable to a 26 institution.

8 **JUSTICE B.V. NAGARATHNA:** Small example, suppose there is a temple they want to  
9 have an annual festival like they have the annual car festival.

10 **AKSHAY NAGARAJAN:** The car festival, *Thiru*.

11 **JUSTICE B.V. NAGARATHNA:** The chariot, whatever. You can't block all the roads  
12 around the temple. If you start... that is you see...

13 **AKSHAY NAGARAJAN:** Public order.

14 **JUSTICE B.V. NAGARATHNA:** That is one is public order that has nothing to do with the  
15 religious activity. You do your religious activity, but not by blocking all the roads.

16 **AKSHAY NAGARAJAN:** Yes.

17 **JUSTICE B.V. NAGARATHNA:** The State can always step in.

18 **AKSHAY NAGARAJAN:** The State can, State can step in to regulate...

19 **JUSTICE B.V. NAGARATHNA:** Exclusive or you know...

20 **AKSHAY NAGARAJAN:** I'm only... I'm sorry.

21 **JUSTICE B.V. NAGARATHNA:** Any activity which is not religious in nature that is the  
22 autonomy which is given under Article 26(b), they can decide what is that religious affair or  
23 religious practice.

24 **AKSHAY NAGARAJAN:** I'm so grateful.

25 **JUSTICE B.V. NAGARATHNA:** The court cannot sit in judgment over it. That is the right  
26 which is created under Article 26(b). Suppose they say we have a particular way of worship in  
27 this temple, *suprabhatha*, etc. etc. etc. that is the autonomy which is given in the manner of  
28 worship.

29 **AKSHAY NAGARAJAN:** Yes.

1 **JUSTICE B.V. NAGARATHNA:** The court cannot sit in judgment and say no, this cannot  
2 be done, that is the idea of Article 26(b).

3 **AKSHAY NAGARAJAN:** Yes, My Ladyship.

4 **JUSTICE B.V. NAGARATHNA:** While exercising that if you are going to public order  
5 already is there, apart from that, if a secular activity is also being affected, then the State can  
6 step in; there has to be a balance.

7 **AKSHAY NAGARAJAN:** My limited submission is only this, that secular activity can be  
8 taken care of under Article 26(d) because it is only property rights of a denomination.

9 **CJI SURYA KANT:** We understood.

10 **AKSHAY NAGARAJAN:** I am grateful, My Lord.

11 **CJI SURYA KANT:** Dr. Vivek, five minutes, only five minutes. No, no paper, don't open, you  
12 just argue straight.

13 **DR. VIVEK SHARMA:** Your Lordships, Indian Constitution is not an inner document, it is  
14 a living organism and it takes its effect and the meaning how the Honourable Constitutional  
15 Court of this land interprets it. Religious freedom affects every common man and this common  
16 man does not know the complex principles of the law. This is what our Constitution makers  
17 drafted the Article 25 and 26. In Article 25 the term "religion" and in Article 26 the term  
18 "religious denomination or any section thereof", these are totally three terms, have the  
19 different meanings. First, I will say that, what will be the religion. There are four types of  
20 religion. First, the religions which are originated in India and have also the denominations in  
21 the foreign or any section thereof in the foreign also, like the Hinduism, Sikhism, Jainism or  
22 Buddhism. Second, the religions which originated in the foreign land and have also their  
23 denominations or any section thereof in India also, like as the Christianity or Islam. Third, the  
24 religions which disappeared, that is the religion without followers; ancient Egyptian religion,  
25 Mithran, there are some religions which in the *Isa* 1 to 4 century, disappeared. Today they are  
26 not existed. But even tomorrow if any individual started to practice them, then he will get the  
27 freedom under Article 25(1), and if a group of followers started to profess that, then he will get  
28 the freedom under Article 26. Now, the fourth type is, in future, there may be new religion  
29 also, and the same case in that also, for the individual also and for the followers also. Now Your  
30 Lordship, I will say in the short, what is the religious denomination? Religious denomination  
31 means a subgroup within a broader religion. We know, even in Hinduism like the *Shaktis*,  
32 *Vaishnavites*, etc. In Christianity, the Catholics, the Baptist, etc., and in the Jainism, the  
33 Digambar and Shwetambar, and in Islam, Shia, Sunni, etc. Now our Constitution makers did  
34 not provide any definition or test of religion or religious denomination. Why? It has three

1 reasons. First reason, religion is not limited to borders. It has international feature and  
2 international presence. We cannot say if the followers of a particular faith are not constituting  
3 the religious denomination, and the followers of a particular faith constituting a religious  
4 denomination. For example, Islam and Christianity originated in foreign; how can we apply  
5 any test to a foreign originated thing, for its existence? It is also. Second, Constitution makers  
6 knew that the Hindu religion is the compilation of various religious, various religious  
7 denominations or any sections thereof; there are various Gods, various Goddess, various  
8 customs, various traditions, various temples, but all are part of Hindu religion. Third, our  
9 Constitution makers also knew that in future, some atheists may try to destroy and spoil the  
10 custom and traditions of any religion. Now, I will say one thing more. Like the Hindu go to the  
11 Kailash Mansarovar *yatra*, because the religion cannot be confined to the borders. It has  
12 international feature and international presence. It is the important thing to explain the Article  
13 25 and 26. Now, Your Lordship, the religious denomination test is not according to the  
14 intention of the Constitution makers. It is my first proposition. Even a section of any religion,  
15 any religious denomination would get freedom under Article 26. Article 26 did not describe...  
16 do not describe that how much followers are necessary to constitute the religious  
17 denomination and how many followers are necessary for their section. For example, the Dalai  
18 Lama is a political asylum in India, and he represents the Tibetan Buddhist denomination. A  
19 part, a section of that. And he also get the full religious freedom in the Dharamshala by the  
20 Indian government. It is also the reality. And also, like Your Lordship there is a Yazidi religion;  
21 they are a minority in the somewhere in the northern Iraq and they follow the peacock God. If  
22 tomorrow, Indian government gave to 10 or 20 families of the Yazidis, the political asylum,  
23 they are the section of their religion... that religious denomination; they will also get the  
24 freedom of Article 25(1) and 26 both.

25 Now Your Lordship, under Article 26, there is no discrimination in different religious  
26 denominations and also our Constitution do not make any category of Gods in Hindu religion.  
27 In Article 26(b), I will find one thing more, to manage its own affairs in the matter of religion.  
28 Right to manage includes right to decide their modes of worship; right to manage also includes  
29 who will enter and right to manage also includes right to express their belief and faith  
30 collectively.

31 Now Your Lordship, one thing the Essential Practice, so far as the Essential Practice doctrine  
32 is concerned, it should not be, because in Article 25(2)(a) non-essential practices are already  
33 given. But now Your Lordship one thing I will give the answer one by one in two minutes.

34 **CJI SURYA KANT:** You almost summed up one minute.

1 **DR. VIVEK SHARMA:** Your Lordship, one thing, one thing, please, please, please. Your  
2 Lordship, we are waiting since four weeks; so please. In Article, Article 26 is not subject to  
3 other Articles of the Part III including Article 25. The rights of any individual under Article  
4 25(1) cannot supersede the rights of any religious denomination or any section thereof  
5 protected under Article 26 it is right. Now the scope of Article 25(1), all persons are equally  
6 entitled for freedom, all persons include citizens and non-citizens, both, foreigners visiting  
7 India, diplomats living in India, refugees in India, all the categories. Dalai Lama is also  
8 political refugee which I mentioned. That means Article 25(1)(a) also clears that the religion  
9 always have the international feature, we cannot restrict it only in India, the scope of Article  
10 26.

11 **JUSTICE B.V. NAGARATHNA:** That is why it is part of religious tolerance.

12 **DR. VIVEK SHARMA:** Yeah, absolutely Ladyship.

13 **JUSTICE B.V. NAGARATHNA:** Article 25 is part of religious tolerance.

14 **DR. VIVEK SHARMA:** Tolerance. And now the scope of Article 26. It is available to the  
15 followers of that religion also which originated in foreign, but its religious denomination or  
16 any section thereof within India, like the Islam or the Christianity. If Islam and Christianity  
17 have two, four or five religious denomination. If 50, 30 or the 60 families of that religious  
18 denomination are residing in our country, then they will also get the protection of these  
19 Articles because we have to emphasize on everybody, any section of thereof is specifically  
20 mentioned in that.

21 Now Your Lordship, question no. 4. It is clear under Article 25 and 20...

22 **CJI SURYA KANT:** Yes, yes, yes.

23 **DR. VIVEK SHARMA:** Under Article 25 and 26, morality does not include Constitutional  
24 morality, it is correct because it is discussed, but even then it is not mentioned. Religion,  
25 customs and traditions are also the source of morality. What is morality? Morality includes  
26 the high values of life, character and conduct. Service of mankind is also morality. For  
27 example, the Florence Nightingale services to the wounded soldiers in the relief camps during  
28 war is also the example of the morality. Like as the William Shakespeare's famous lady  
29 character Portia, appeal of mercy in the trial scene of courtroom is also the example of the  
30 morality. And also, in Hinduism like as we can say the *Sarve Bhavantu Sukhinah, Sarve Santu*  
31 *Nir-Aamayaah, Sarve Bhadrani Pashyant, Maa Kashchid-Duhkha-Bhaag-Bhavet*. That is,  
32 the prayer to welfare of all, is also the example of morality and now in Islam, in Arabic, *Salaam*  
33 means Your Lordship can understand *Salaam* means peace. Yeah, yeah, yeah.

1 Your Lordship, *Salaam* means peace and Islam means the way to that peace. How to get that  
2 peace? There are the five pillars of Islam; Kalma, namaz, roza, zakat, Hajj. I will point out only  
3 on zakat. Zakat means charity. That means donation to needy, that is also the morality. Live  
4 and let live. *Jio aur jeene do*. It is also the morality apart from speaking truth, benevolence  
5 etc. Now Your Lordship in judicial review the constitutional explanation of Article 25 can be  
6 done, besides any State law concerned with Article 25 is also subject to judicial review. This  
7 honourable constitutional court is the custodian of the Constitution; so, there can be no  
8 limitation on the power of judicial review. It is the inherent power because it is also the basic  
9 structure.

10 Now, what is the extent of judicial review? It should be in such a way that the spirit of religious  
11 freedom would be maintained. Now the section of Hindus in Article 25(2)(b) is based on caste.  
12 Everyone says. Because caste is the integral part of the Hindu religion. It is not gender-based  
13 because gender is in every religion, every religion but the casteism is only in Hindu religion,  
14 because we have to give the reason why it is so. So, that's why.

15 Now, Your Lordship, Question no. 7. The belief, faith and worship. Three things, belief, faith  
16 and worship are protected in Preamble. And also in Article 25(1) when we say the concise, the  
17 belief and faith and worship in the practice and profess and in Article 26(b), I also explained  
18 of the Constitution of India. It is not the subject matter of logic and science. So, a person not  
19 belonging to a religious denomination or religious group cannot question the practice of that  
20 religious denomination by filing PIL. For example, it may be the question, "That who has seen  
21 the God?" That means no God, no religion, but the fact is... but the fact is that the existence of  
22 God remains in the belief and faith of the followers.

23 Now, Article 26 is not subject to other provisions of the Part III, including Article 25. We  
24 should not make the complex synonyms or the complex analogies to create the problem. We  
25 should give the simple reading of the Article, what the Constitution maker says all things are  
26 written in the 25 and 26 clearly. So far as Article 394A is concerned, authoritative text in Hindi  
27 meaning is concerned. It was injected by the 50th Constitutional Amendment Act in 1987.  
28 Constitution was written before 1950. Religion is the international feature. It cannot be... Your  
29 Lordship, within one minute, I'll stop.

30 **CJI SURYA KANT:** One minute more.

31 **DR. VIVEK SHARMA:** Religion is international feature cannot be confined to one nation or  
32 one language. Even English has distinction of international language to understand the  
33 original and real meaning we have to give the effect of English version. So that's why. Nothing  
34 more.

1 Now, one thing. How the rights of deity or idol are protected in the Constitution? Many have  
2 said that the *prana pratishtha* ceremony, juristic person, deity eats every day in the form of  
3 *bhog* or he sleeps every day in the form of *shayan*, he is the living entity and also the juristic  
4 person established by the court, but the rights of deity is protected by the customs, tradition,  
5 priests and the followers. And the right of these followers are protected by Constitution under  
6 Article 25(1) and Article 26. Does the rights of deity are indirectly protected by the  
7 Constitution, not directly protected, they are indirectly protected because deity will not say  
8 anything, the followers will say that how our deity will do something or what the tradition  
9 wants, what the custom wants.

10 Now, Your Lordships, at last one thing, in **Sabarimala** temple case there is no violation of  
11 Article 14, 15, 17 and 25. There is no ground of age in Article 15 and it is... it is... it is in...

12 **CJI SURYA KANT:** [UNCLEAR].

13 **DR. VIVEK SHARMA:** Last, last, last one thing. In Hindu religion temple is a place of  
14 worship, it is not a picnic spot or the tourist place where everyone can go without following  
15 the custom or the tradition. For example, a person comes to this Honourable Court with a  
16 prayer or with a request that I want to go the worship place wearing the suit or for the midnight  
17 visit in the temple while the custom and tradition are not allowing this, whether the court will  
18 allow? Not at all, My Lords.

19 **CJI SURYA KANT:** Thank you, Dr. Vivek, thank you very much, thank you. Anyone, is there  
20 anyone Mr. Gaurav Kumar? Anyway, Mr. Shahi Sashank? Madam Prachi Bajpai, you early...  
21 you're done, done, yes, done and Ashima also done. Yes, now Mr. Nedumpara, you are on this  
22 side. You are arguing the...

23 **MATHEW J NEDUMPARA:** No, no, for the petitioners. Mine was the first review petition,  
24 mine was the first review petition seeking review of the **Sabarimala** judgement. Now, I need  
25 some time.

26 **CJI SURYA KANT:** Ten minutes. Everything in Latin terms?

27 **MATHEW J NEDUMPARA:** No, no, My Lord, I will not... I will not say a word which others  
28 have dealt with. Now, My Lord, I am raising certain theoretical issues, fundamental legal  
29 issues. Now, My Lord, the other day I had come across with a judgement, **Eminent**  
30 **Colonizers Private Limited**. At paragraph 24, it is said, "A judgment *in rem* act as a  
31 precedent." And there are other judgments, it is based on a *catena* of judgments. The judgment  
32 *in rem* constitutes a precedent. What is a judgment *in rem*? What is a judgment *in personam*?  
33 This terms have been very widely misunderstood. The Chief Justice, Honourable Chief Justice  
34 knows the case of **K. S. Varghese**. In **K. S. Varghese** the dispute was about three churches-

1 Kolenchery, Varikoli, Manathoor. The suit was a representative proceedings, and the  
 2 judgment, being a representative suit will bind the Parishioners, the Trustees and the three  
 3 churches, Manathoor, Kolenchery and Varikoli. And Justice Arun Mishra in his judgment, in  
 4 **K. S. Varghese** said, since the suit is a representative proceedings, the judgment is rendered  
 5 *in rem* and that will affect... that will be applicable to all churches, and what followed was  
 6 literal revolution in Kerala, literal fight between the two Orthodox factions and the Jacobite  
 7 faction. And the judgment *in rem* is not a judgment; it does not constitute a precedent. What  
 8 is the distinction between a judgment *in rem* and *in personam*? A simple example is, in a suit  
 9 for divorce, whereas judgement is, divorce is granted, the judgment is *in rem*, whereas divorce  
 10 is declined, the judgment *in personam*. So, the fundamental principle of law, that *res judicata*,  
 11 you are bound by a judgment, right or wrong, *res judicata pro veritata accipitur*, it is founded  
 12 on two principles. *Interest reipublicae ut sit finis litium*. In the interest of Republic, there shall  
 13 be finality of litigation. And second principle, My Lord, in public interest, *nemo debet bis*  
 14 *vexari pro una et eadem causa*, no man shall be vexed on the same question more than once.  
 15 So erroneous judicial decision, Ulpian has said very... in the words of Ulpian, *res judicata facit*  
 16 *ex albo nigrum, ex nigro album, ex curvo rectum, ex recto curvum*. So, a judicial decision can  
 17 make black... black the white, black the white, white the black, straight the crooked, crooked  
 18 the straight. So, a judgment *in rem* is... the judgment *in rem* is not binding on the whole world.  
 19 Now I am asking the... coming to the jurisdiction of this court. Your Lordship, the nine judge  
 20 Constitution Bench of this court passed a judgment, and as somebody who believe in basic  
 21 jurisprudence, I would say that My Lord, Your Lordship does not bind me. I am not a Party to  
 22 the proceedings. The doctrine of *res inter alios acta nocere non debet*. So I am not bound by  
 23 Your Lordships' judgment; I will not obey Your Lordship's judgement.

24 **JUSTICE M.M. SUNDRESH:** Just a minute. Either you argue in English before us, or you  
 25 argue in Latin, I will follow you.

26 **MATHEW J NEDUMPARA:** I will argue only in English; I will translate. I will translate. So  
 27 therefore, my question is, Your Lordships, with the greatest of respect, Your Lordships have  
 28 no jurisdiction to render a judgment in a proceeding which I am not a Party at all. Why I say  
 29 this is because, My Lord, if the issue, assume there are believers and there are believers who  
 30 believes that the restriction is a mere superstition, and there are believers who believe that's  
 31 the core of the faith. Assuming that's the conflict, there is no conflict, assume that there are  
 32 two groups of people and that there was in which case there is a *lis* and whether the belief is  
 33 right or wrong, no God can decide. That's a technical theoretical reason for that; I'll come to  
 34 that. Now if such a dispute is there, whether there is a belief is or not, and if there is a belief  
 35 and there are two factions, we have different point of view like in the church case, then such a  
 36 dispute can be decided only in a representative proceedings. In a suit duly constituted under

1 Section 18, 19 of the CPC under Order 1 Rule 2 Rule 8 of the CPC, the suit is conducted as a  
2 representative proceedings, and the judgment act as a *res judicata*, it binds all. So therefore,  
3 in the... there are two judgments here. The judgment in... of the five judge Constitutional  
4 Bench. The other is a judgment of a Kerala High Court in **C. Mahendran's** case, in my  
5 humble submission is, both the judgments are one rendered *void ab initio* because those  
6 judgments were rendered without notice to the devotees at large. So therefore, the now  
7 otherwise I would have said Article 32 petition could not have been maintained when there is  
8 a judgment which is otherwise binding on all. So the **Mahendran** judgment is not binding  
9 on anybody because it was a, it was in a writ received, it was a, it was on a PIL.

10 Now the question is, we talk about judicial review. I am, I certainly My Lord, I adore the  
11 concept of judicial review, but the foundational judicial review is the principle, in many other  
12 countries, the American, all the Commonwealth countries, the concept of judicial review is  
13 very much there. But the validity of the judgment is solely founded on the fact that the  
14 judgments of the court receive so much of respect and adoration and it is accepted out of  
15 reverence, not because it is *res judicata*. I take a drop of water. Now it is therefore judicial  
16 when I challenge a statute before Your Lordships and Your Lordship declare this statutory  
17 provision or statutory instrument unconstitutional, the people of this country accept it out of  
18 reverence. It is not because... it is not because it is binding on those who are not Parties before  
19 the court as *res judicata*. The fundamental principle is I am not bound by a judgment of which  
20 I am not a Party at all. The reason is, it is against the first principles of natural justice in a  
21 proceedings where I had no opportunity to address the court, adduce evidence...

22 **JUSTICE B.V. NAGARATHNA:** Please go to the next point we have understood you. Don't  
23 repeat yourself.

24 **MATHEW J NEDUMPARA:** Yes. Now the second is, yes, so therefore my contention, my  
25 submission is the judgment in **Sabarimala** case, five judge Constitution bench judgment is  
26 one rendered *void ab initio* and it is liable to be recalled, reviewed *ex debito justitiae* and that  
27 concept is My Lord when I learned first thing about *certiorari* My Lord where *certiorari* is,  
28 where, where an order of a Tribunal is without jurisdiction, then a *writ of certiorari* is granted,  
29 that is what I learnt in 1979, *Ex debito justitiae*. So therefore, the review petition is liable to be  
30 allowed, I am only speaking about **Sabarimala** for which alone I am authorized as one which  
31 is an issue *void ab initio*.

32 The second proposition I will be very brief, the second proposition I have before me Your  
33 Lordships judgment when My Lord if...

34 **JUSTICE AHSANUDDIN AMANULLAH:** Nedumpara, please have water you missed to  
35 know that in your water bottle there was no water, it was empty.

1 **MATHEW J NEDUMPARA:** Yes, yes, there was no water yes.

2 **JUSTICE AHSANUDDIN AMANULLAH:** Change your water bottle, please have it.

3 **MATHEW J NEDUMPARA:** I'm grateful to Your Lordships. So ***Trimurti Fragrances***  
4 ***(P) Ltd.*** where My Lord Chief Justice and Justice M.M. Suresh, Sundresh both were the  
5 Parties and there their Lordships have taken a view that numerical strength is the  
6 determinative factor. I have a right to dissent. My Lord, what is a precedent? It is a principle  
7 which a court of competent jurisdiction, superior court has evolved where none existed and/or  
8 where for a resolution of issue which was before it or a principle which has been repeatedly  
9 and repeatedly, repeatedly reaffirmed. So, precedential value of a judgment is the principle  
10 and not the numbers. And it is in contrast with the *res judicata*. *Res judicata*, a bench of five  
11 judges called an innocent man guilty of murder, sentenced to death. He is innocent, but  
12 because the court has found him guilty, he will be hanged. So therefore an erroneous decision,  
13 right or wrong is binding and where the matter is, if there is a division of the bench, what is  
14 determinative is the relative strength, the majority, numerical strength, that is what is  
15 applicable to *res judicata*. When it comes to the question of My Lord, the precedent, the  
16 number does not matter.

17 Now this, this, all over all over the world except in India and it has been noted in paragraph  
18 44 in ***Antulay's*** case that we follow a new jurisprudence where the presidential value of a  
19 judgment is determined based on the strength of the bench and *inter se* strength of the, within  
20 the bench; so, that was, that is absolutely incorrect. Why I, why I emphasize on this, My Lord,  
21 in all humility, I consider many judgments the greatest respect of this court, constitutional  
22 judgments are without ....which is fundamentally wrong. The first the judgment in  
23 ***Kesavananda Bharati***. In three sentences My Lord, I can convince Your Lordship how  
24 flawed it is.

25 **JUSTICE B.V. NAGARATHNA:** We are not...

26 **MATHEW J NEDUMPARA:** No, no, no, no, because ***Kesavananda Bharati*** is referred  
27 to in many, I have only three sentences only, these are these are fundamental things,  
28 fundamental things ***Kesavananda Bharati*** case is...

29 **CJI SURYA KANT:** Mr. Nedumpara, please confine to the issues.

30 **MATHEW J NEDUMPARA:** I am only on this issue, only on this. I am only saying three  
31 sentences. The world is interested in three sentences why the ***Kesavananda Bharati***  
32 judgment is flawed. Before ***Kesavananda Bharati Ubi jus ibi remedium***, right remedy  
33 forum. When I come before Your Lordship, Your Lordship would ask, "Nedumpara, why are  
34 you here?" I would like to plead violation of Fundamental Rights. After ***Kesavananda***

1 **Bharati** I would come to the court and say, "My Lords, none of my Fundamental Rights are  
2 infringed, and but the basic structure." Because of the reverence to the judgment of the  
3 **Kesavananda Bharati**, Your Lordship will not ask me if the basic structure has crashed,  
4 how come it mattered to you if none of your rights are infringed? So therefore, My Lords,  
5 **Kesavananda Bharati** opened the gates of this court for busybodies to come, for somebody  
6 to come to approach this court that none of my rights are infringed and without complaining  
7 any violation of Fundamental Rights, is a scenario which is most unfortunate.

8 And My Lord, in the **Coelho case** the nine judge Constitution Bench tried to do some, undo  
9 some of the mischief arising out of the **Kesavananda Bharati** by saying that Fundamental  
10 Rights is also... is also basic structure.

11 **CJI SURYA KANT:** We understood that. Next point Mr. Nedumpara.

12 **MATHEW J. NEDUMPARA:** My Lord now, the whole question is the question is PIL. PIL,  
13 My Lord, *pro bono* litigation, absolutely legal. Somebody is in jail, I take up his case. The A in  
14 jail, he is the petitioner, not me. Maybe **Mathews J. Nedumpara vs. Union of India** may  
15 be the title, but the man in jail, the undertrial whose cause I take up, he is the petitioner;  
16 therefore, that is Constitution, there is a person aggrieved, he is entitled to remedies and there  
17 is a forum, right remedy forum. On the contrary, the public interest litigation is all about  
18 stepping in the shoes of the Attorney General who is the sole representative of the... sole  
19 custodian of the public interest, *parens patriae*, so the PIL petitioner is an Attorney General  
20 and there are some cases PIL has done some good, but today I raised this issue because PIL  
21 has become a great mischief. Issues concerning the public at large are decided behind their  
22 back. There are many instances, many instances, because I when I raised this issue I raised  
23 the cause of the merely for 4 or 5 lakhs of slum-dwellers in Bombay. Your Lordship may not...  
24 Krishna Iyer's book of the Bench speaks about the PIL instituted by Bombay Environmental  
25 Action Group. Behind the back of the slum-dwellers; An order came to be passed to demolish  
26 all their shanties and 4 lakh shanties were demolished. It happened in Bombay. I came to  
27 Bombay as an outstation lawyer. My Lord, all *ex-parte* orders were passed directly in this  
28 slums to be demolished, committees were constituted, appointing the Chief Secretary, Police  
29 Commissioner and to give report to the court and My Lord any number of petitions were filed.  
30 It was never received. One finally I took... My Lord I believe in Constitution means not  
31 democratic means. But as a last resort I organised slum-dwellers, ladies in five buses, made  
32 them enter one by one to the Court of Courtroom of Justice Borkar and that was the end of the  
33 torture of the demolition.

34 **CJI SURYA KANT:** We have understood your points.

1 **MATHEW J. NEDUMPARA:** Demolition of these slum-dwellers. Therefore, My Lord, I am  
2 not saying that My Lord, Your Lordship should absolutely shut your doors to the PIL if  
3 something good, but PIL leaves something to be kept in mind is completely without  
4 jurisdiction and My Lord all that if somebody comes with a My Lord, any of seeking any of this  
5 in the nature of mandamus, a quick time proceedings where public authority has failed to  
6 discharge its function. Certainly, yes, for which we don't have to say it is a PIL.

7 Now, My Lord now, My Lord, I may be forgiven, My Lord, I am a critic, I am a bona fide critic  
8 I have been working for last 20 years for judicial reforms. My Lord this is sad that SLPs are  
9 dismissed in a few seconds. We need to hear the common litigant. Common litigant, now the  
10 manner this this Bench... I am not blaming anybody with the folded hands only I am saying  
11 this...

12 **JUSTICE B.V. NAGARATHNA:** The forum for all this...we can ask you to stop arguing...  
13 the way you are...

14 **MATHEW J NEDUMPARA:** Five courts were closed, you know five courts were closed so...

15 **JUSTICE B.V. NAGARATHNA:** Criticism outside the courthouse.

16 **MATHEW J NEDUMPARA:** My Lord, so many...

17 **JUSTICE B.V. NAGARATHNA:** Concentrate on the subject or close your arguments. This  
18 is not a forum for all this.

19 **MATHEW J NEDUMPARA:** Yes, My Lord. Now coming to Ayyappa. I am coming to  
20 Ayyappa. These are all, these are all things... the grievance of the people. My Lord, with folded  
21 hands only these are the real...

22 **CJI SURYA KANT:** You have made enough reels for social media...

23 **MATHEW J NEDUMPARA:** Now, coming to the Ayyappa, Lord Ayyapa, My Lord. Now  
24 there are there are certain religious beliefs which may in essence be violative of the Equality  
25 Clause of the Constitution. I'm a Christian; Syrian Christian. Many practices we follow are  
26 discriminatory of women. And there the... there the court cannot step in. Any reform has to  
27 come, the reform has to come from within. And then My Lord, then My Lord tomorrow, the  
28 Ayyappa devotees, ladies come forward and said that the shrine should be open to us, certainly  
29 the, My Lord that will happen, and all that I know that not a single devotee exist, all the lady  
30 devotees, my Ayyappa Devotees Association, my clients are all ladies. They all believe that this  
31 is the ordain of Lord Ayyappa, and My Lord, it is the duty of the court My Lord to protect their  
32 belief. Until and unless and in so long as there is no counter argument that until and unless

1 the at least a few women come up and say yes, we want to go to Lord Ayyappa and it violates  
2 our fundamental rights.

3 **CHITAMBARESH:** Can I have two minutes, My Lord? My Lord, not more than two minutes.  
4 The temples in Kerala are different from temples in other parts of the country. There is a  
5 mythological story behind that. Parashurama threw an axe from Gokarna which fell near  
6 Kanyakumari, and this land came to be called as Kerala. He had two tasks before him: one to  
7 make the land fertile and another to make the land holy. To make it fertile, to desalinate that  
8 land, My Lord, he invoked the blessings of *Vasuki*, the serpent king who spit venom and made  
9 it fertile. And the other aspect is to make the land holy, he consecrated 108 Shiva temples and  
10 108 Devi temples. The as far as the Kerala temples are concerned, *chaitanyam* is infused in it;  
11 divinity is not inborn. You can close down a Balaji temple in Tirupati or Shri Rama temple in  
12 Ayodhya for a week and reopen it thereafter, divinity will not be lost. But as far as Kerala  
13 temples are concerned, unless the religious practices and *tantrik* rituals are continued daily,  
14 My Lord, the divinity will diminish. So, that aspect of the matter, may kindly be borne in mind.

15 **MATHEW J NEDUMPARA:** May I submit, My Lords, the argument notes?

16 **CJI SURYA KANT:** We'll close the arguments, Madam Indira, you will start tomorrow.

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**END OF DAY'S PROCEEDINGS**