



XII AMITY NATIONAL MOOT COURT COMPETITION, 2019

AMITY LAW SCHOOL, LUCKNOW

MOOT PROPOSITION

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MOOT PROPOSITION

- 1) The Himaya Temple, located in Tenjiku (a city in the Union of Indiana), is a renowned religious spot for most of the people residing in Tenjiku. Lakhs of pilgrims visit the place every year and complete mountainous trek to reach the shrine. The temple nestles at a height of 1260 meters above sea level. The Himaya Temple is one of the few temples in Tenjiku that welcomes men and women of every caste. Devotees dress uniformly in black. The colour signifies a renunciation of all worldly pleasures, but it also means that everyone is equal before Tenji, irrespective of caste.
- 2) The temple is also prominent for another reason — the selective ban on women entering it. Women aged between 10 and 50, that is those who are in menstruating age, are barred from entering the temple. Although there are numerous Tenji Temple in Indiana, the Himaya Temple depicts Lord Tenji as a ‘Naistika Brahmcharya’ i.e., his powers derive specifically from abstention from sexual activities.
- 3) It is believed that Lord Tenji’s powers derives from his ascetism, in particular from his being celibate. Celibacy is a practice adopted by the pilgrims before and during the pilgrimage. The pilgrims have to follow a strict vow over a period of forty one days, which lays down a

set of practice. The said set of practice also includes maintaining hygiene including taking bath twice a day and also taking one meal a day.

- 4) As per the religious text Tenji was born to destroy a female demon who, thanks to a boon, could only be vanquished by a child born of both Shiva and Vishnu (the form of Mohini). When Tenji fulfils his destiny by killing her, a beautiful woman emerges from the body. She had been cursed to live as a demon, but her killing reversed the curse. Now free, she asks Tenji to marry her. He refuses, explaining to her that his mission is to go to Tenjiku where he would answer the prayers of his devotees. However, he assures her, he will marry her when kanni-swamis stop coming to Himaya. She now sits and waits for him at a neighbouring shrine near the main temple and is also worshipped as Masma. And that is why women do not go to Tenji. It is partly out of empathy for Masma and her eternal wait and it's also out of respect for Tenji's commitment to answer the prayers of his devotees.
- 5) The Indiana Young Lawyers Association and five women lawyers approached the Supreme Court of Indiana seeking a direction to allow entry of women into the temple without age restrictions. Another group of women, part of the "Happy Mensuration" campaign, has also sought the court's direction on whether society should continue to bear with "menstrual discrimination."
- 6) Their petition contended that discrimination in matters of entry into temples was neither a ritual nor a ceremony associated with the religious text and beliefs. Such discrimination was totally anti-Hindu. The religious denomination could only restrict entry into the sanctum sanctorum and could not ban entry into the temple, making discrimination on the basis of sex.
- 7) The Tenji Board, which maintains the temple, had replied that the ban was in accordance with centuries-old tradition. Lord Ayyapa, being a Naishtika Brahmachari (one who has vowed to remain celibate). Another argument put forth by the temple authorities is that since the deity inside the temple is in the form of a 'Naistika Brahmcharya', therefore the women

of certain age group are not allowed inside the temple since they are not in a position to observe penance for 41 days due to physiological reasons.

- 8) The on-going matter in the Supreme Court has also put the spotlight on a 1991 Tenjiku High Court judgment, wherein the division bench of the HC held that the restriction was in accordance with a usage from time immemorial and not discriminatory under the Constitution. Upholding the restrictions, the High Court, in its judgment, said: "According to 'The Himaya Thanthri', these customs and usages had to be followed for the welfare of the temple. He said only persons who had observed penance and followed the customs are eligible to enter the temple and it is not proper for young women to do so."

Though, courts have generally not interfered in the traditions and practices followed in religious place, it has never failed to uphold equality whenever discrimination was reported. In this conflict of worshipping rights versus customs, the issue is now pending before a seven judge bench of the Hon'ble Supreme Court of India, wherein arguments have to be made on the following issues:

- I. Whether the petitioner and the subsequent interveners have the locus to file the present Writ Petition?
- II. Whether the Hon'ble Supreme Court has the jurisdiction in defining the boundaries of religion in public spaces?
- III. Whether the said restriction imposed on the women and children of certain age amounts to violation of their Fundamental Rights as enshrined in the Constitution, specifically violation of Articles 14, 15(3) and 17 in light of Rule 3(b) of Tenjiku Hindu Places of Public Worship (Authorization of Entry) Rules*?

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

- Rule 3: The class of persons mentioned here under shall not be entitled to offer worship in any place of public worship or bath in or use the water of any sacred tank, well, spring or water course appurtenant to a place of public worship whether situate within or outside precincts thereof, or any sacred place including a hill lock, or a road, street or pathways which is requisite for obtaining access to the place of public worship:

(b) Women at such time during which they are not by custom and usage allowed to enter a place of public worship.

Note:

- The laws of Union of Indiana are *pari materia* to that of Union of India.
- The judgment rendered by the Hon'ble Supreme Court of India in the case of *Indian Young Lawyers Association & ors v. The State of Kerala & ors*¹ shall not be treated as a binding precedent, since the present case shall be treated to be pending before a larger bench.

¹ Writ Petition (Civil) no. 373 of 2006