

# JUDGMENT WRITING COMPETITION

Bharatstan is a country located in South Asia. The nation has a federal democratic parliamentary form of government. It is a nation which believes in the principle of 'unity in diversity' as it comprises of various religious sects and customs. Merela is a State located in the South of Bharatstan, it is a State which is considered as a land of temples. One such temple is 'Malasabari' which houses the deity Swami Akellappa.

It is the second largest seasonal pilgrimage in the world. An estimated 3.5 crores of pilgrims visit the shrine every year. It is said that the pilgrims have to fast for 41 days to cleanse their minds before going to Malasabari. The hill-top shrine is nestled in the Western Ghats in Pathanadepta district about 3000- feet above sea level. Devotees from across the country visit the hill-shrine during the festival season between November and January every year.

The temple has restrictions on the entry of women in the age group of 10-50 years in the shrine because the presiding deity Lord Akellappais considered to be a 'naishtikabrahmachari' (perennial celibate). The temple's management does not allow women on the account of purity.

The State government of Merela passed the 'Merela Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 (Hereinafter referred to as Rules.). According to rule 3(b) of the rules 'women at such time during which they are not by custom and usage allowed to enter a place of public worship shall be included in the class of person who shall not be entitled to offer worship at any place of worship'

Yasaswini is a devotee of lord Akellappa. After gaining her parent's confidence, she signs up for the rigorous process that every devotee goes through before they go to Malasabari. She drapes herself in the black clothing, bathes only in cold water, eats when she is seated on the floor, walks barefoot and wakes up before the sunrise to pray to lord Akellappa, everyday reaffirming her belief and faith in him. Finally, it is the day to go to Malasabari. She gets on to the Shramana Express, eagerly waiting for the harsh journey to begin so that she will see the idol himself. But, after she steps down at the station and begins the trek, she is stopped by the guards stating that she is not eligible. She tries her best but they deny the entry. At this, Yasaswini stays there as a protest and this issue gains momentum and wide news coverage. A female lawyer Darshana was outraged by this and takes up Yasaswini's case. She files a PIL at the Supreme Court of Bharatstan challenging the practice.

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Meanwhile, several similar petitions are filed before the SC by advocate Shralini and many others, the court decides to club all the petitions together and deliver a joint order

- The Following were the issues recognised by the Supreme Court:
  - a) Whether the restriction was a valid religious restriction?
  - b) Whether the Akellappa Devotees visiting Malasabri form a religious denomination and whether their discrimination is justified by the act?
  - c) Whether the practice is in violation of Article 14 of the Constitution of Bharatstan.

To this, the contentions of the parties are as follows:

Issue 1:

- Darshana: “The practices followed by the various religious establishments across the country represent the staunch patriarchy followed by a vast majority of the people of Bharatstan. This is in blatant violation of the principle of equality enshrined in the Constitution. These practices should be stopped as the law does not differentiate between a man and a woman and both their religious rights are inherently recognised in the Constitution.”
- State of Merala: “The restriction of entry of women in the menstrual age group cannot be tested on the ground of fundamental right to equality since it involves essential and integral part of practicing religion, which includes the ”right to exclude persons”.

Issue 2:

- Darshana: “The devotees visiting the temple form a religious denomination but this does not allow the temple authorities to discriminate so explicitly based on the test laid down by the fundamental rights “
- The State of Merala: “The rights of the temple are determined by the high priests of the temple. Such things are a right that the people have given to themselves as per the Constitution to govern their own religious practices. Therefore, this act of restricting women is absolutely justified.”

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Issue 3

- Darshana: “The practice is clearly in violation of article 14, 15 and 17 and not protected by morality as used in Article 25 and Article 26 of the Constitution.”
- State of Merala: “The right to exclude persons who are not allowed to participate in worship according to the tenets of the religious institution in question is a matter of religion and such essential or integral parts of religion are immune from challenge under article 14. Also, legislations and precedents are not the only source of law, custom also has a weightage that needs to be taken into consideration”

These were the contentions by both the parties. The matter is listed for orders on the 4th of March, 2018.

The Laws are para materia to the laws of the Republic of India and the laws of the State of Merela are para materia to the laws of the State of Kerela.