

MOOT PROPOSITION

Disclaimer

This moot proposition, which is entirely fictional, has been formulated solely for the purpose of furthering academic exercise for students of law.

1. Union of *Dharma Rajya* is a Sovereign, Socialist, Secular, Democratic Republic having a federal Constitution providing for securing to all its citizens the cherished values of justice, liberty, equality and fraternity. It was a British colony for about 150 years and achieved independence in the year 1947. The country is a multicultural society, where the inhabitants speak different languages and practice different religious faiths. 'Unity in diversity' has always been the national motto. The citizens of *Dharma Rajya* are proud of their rich and varied heritage. Throughout the history of *Dharma Rajya*, its culture has been heavily influenced by *Dharmic* principles. Over the centuries, there has been significant fusion of cultures between Hindus, Buddhists, Muslims, Jains, Sikhs and various tribal populations in the country. Despite the vast and heterogeneous composition, a cultural unity resulted from some internal forces such as the written Constitution, universal adult franchise, flexible federal structure, secular educational policy, etc. and from certain historical events like the freedom movement.
2. Being a secular country, the Constitution of *Dharma Rajya* provides for the right to freedom of religion as a fundamental right. In fact, there was a conflict between two differing versions of secularism within the Constituent Assembly which adopted the Constitution: one that called for a complete wall of separation between State and Religion as existing in the US, Australia and many other Western countries, and another that demanded necessary State intervention in the economic, financial, political and other secular activities which may be associated with religious practices. A study of the Constitution would reveal that it was the latter version of secularism that prevailed ultimately. But any interference in religious affairs by the State has to be based on the ideals enshrined in the Constitution. Thus, the striking feature of secularism as practiced in *Dharma Rajya* is that the State, both keeps away from religion as well as intervenes in religion.

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3. The State of *Malistan* is one of the states in the Union of *Dharma Rajya* located on the southwestern coast. It is a small state, constituting only about one percent of the total area of the country. Geographically, *Malistan* can be divided into three climatically distinct regions: the eastern highlands, the central mid-lands and the western lowlands. The eastern highland region consists of high mountains, gorges and deep-cut valleys.
4. Although isolated by the mountainous belt, *Malistan* is one of the most densely populated states in *Dharma Rajya*. According to 2011 Census figures, 54.73% of *Malistan's* population are Hindus, 26.56% are Muslims, 18.38% are Christians, and the remaining 0.33% follow other religions or no religion. The state has a unique culture, not only with a diverse religious tradition, but also with its own language. In the nineteenth century, *Malistan* witnessed a cultural and ideological struggle against the backward elements of traditional culture and the ideological hegemony of the upper-caste Hindus. This struggle was due to certain structural changes in the society and the consequent emergence of the educated middle class. The members of that class launched movements to reform the social institutions, religious outlooks and ethical conceptions inherited from the past, since they felt that those were obstacles to natural advance. In the social sphere, there were movements for caste reform or caste abolition, for equal rights of women, campaigns against child marriage and for removal of ban on widow remarriage. It was a crusade against social and legal inequalities. In the religious sphere, there sprang up movements which combated religious superstitions and attacked idolatry, polytheism and hereditary priesthood. These movements, which emphasized and fought for the principles of social justice, gender equality and individual liberty are generally described as the renaissance movements.
5. *Malistan*, fondly known as God's own country, is home to a lot of ancient Temples. Some of the Temples are around 2000 years old and therefore, the state is considered as a spiritual tourist destination in *Dharma Rajya*. In the Hindu scriptures, a temple is a place for *tirtha-yatra*, ie., pilgrimage. One of the famous pilgrim centres in *Dharma Rajya* is the *Dharmagiri* Temple, which is also known as the Temple of *Sri Dharmamurthi*, situated in the middle of a dense forest at a hill top at an altitude of about 900 meters above sea level on the eastern mountain

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ranges of *Malistan*. Various historians have found the Temple to have been constructed by a Raja (King Pandian) of *Dharmamangalam* dynasty at some point between 11th and 12th century AD. Since then, it was owned and run by the *Dharmamangalam* Royal Family until the Temple administration was taken over by the British Government immediately after invasion of *Malistan*. After independence, the management of the Temple vested in the Dharmagiri Temple Administration Committee (DTAC) which is an autonomous body incorporated as per Section 4 of the Malistan Hindu Religious Institutions Act, 1950. Section 15 of the Act confers all powers of direction, control and supervision over the Temple on the DTAC. It is the duty of DTAC under Section 31 of the Act to administer the temple in accordance with the custom and usage of the Temple. The Commissioner of DTAC and his subordinate officers and also persons authorised by them are empowered to enter the premises of the Temple for the purpose of exercising any power conferred, or any duty imposed by or under the Act. The Commissioner is required to submit reports to the State government, once in three months, with respect to the working of the Temple Administration Committee. However, it is the privilege of the family of the Chief Priest to decide on matters relating to rituals and other 'essential religious practices.' The income from the Temple is absorbed in the general revenues of the State and the expenditure necessary for its maintenance and the upkeep is met out of the State Revenues. The accounts of DTAC is audited by the auditors designated by the High Court of *Malistan*.

6. The *Sri Dharmamurthi* temple at *Dharmagiri* is unique in many respects. The temple has arches, courtyards, doorways, images of guardian gods and doorkeepers but has no god or goddess in the form of a deity. There is an empty throne installed inside the *Garbhagriha* or the Sanctum Sanctorum on which the spiritual presence of invisible God *Sri Dharmamurthi* is assumed. Being located atop the hill, it needs a long trek of about 10 kms, to reach the temple. In spite of that, thousands of pilgrims called '*dharma margis*' make such arduous journey every year. The entry door of the shrine is known as '*Swarga Dwar*' or the door to heaven and the exit door is called as '*Moksha Dwar*' or the door to liberation. Next to the Temple on the eastern side, at a level of about 20 meters lower than the Temple, lies a quaint natural lake known as '*Dharma Sarovar*' bounded by steep mountains on the other three sides. The oval shaped lake is about 12 acres in area, has a maximum depth

of about 15 meters and is provided with flight of steps leading down to the lake for bathing. There are 108 holy steps from the lake to reach '*Swarga Dwar*'. In yoga, the number 108 signifies spiritual completion.

7. The blessed water of the '*Dharma Sarovar*' lake is believed to possess miraculous powers. Submerging in that water for the purpose not of using the water's physical cleansing properties but to symbolize a change-of-soul is believed to ritually cleanse a person from deeds of the past leading to a state of cosmic salvation. Salvation as liberation or *Moksha* is understood as perfection based on purification. In Hinduism, utmost purity (*suddha sattva*) is said to be the essential nature of a human being. They only can reach the heaven (*svah*) who are pure like the heavenly beings. In the mortal world, beings accumulate impurities for various reasons. They may arise due to one's own actions or the actions of others. They may arise due to intrinsic or extrinsic factors some of which may be beyond one's control. According to the *Puranas*, as creation progresses from epoch (*yuga*) to epoch, the mortal world becomes increasingly impure. The current epoch, *Kaliyuga* is considered the most impure of all. One of the redeeming features of mortal life is that impurity is a temporary condition, which can be overcome with effort. The scriptures suggest several purification methods to overcome them, which can be broadly classified into three namely ritual, spiritual and ethical. Ritual immersion in the form of total submersion of the body in the water of '*Dharma Sarovar*' is believed by *Dharmagiri* devotees to be a God given method for the common man to attain salvation. As an integral part of *Dharmagiri* pilgrimage, a *dharma margi* immerses himself totally from head to foot in the lake and stays in the bath for 5 minutes praying for the release of any energy that he no longer wishes to carry, or that is not for his highest good. He then prays for spiritual support to raise his spiritual vibration. He views this ritual bath in '*Dharma Sarovar*' as a way of experiencing a spiritual rebirth. It is believed that devotees who after bathing in '*Dharma Sarovar*', visit the temple climbing up the 108 holy steps and offer prayers achieve *Moksha*, a state of eternal purity.
8. There are many conditions to be fulfilled before entering the temple through *Swarga Dwar* and exiting through *Moksha Dwar* of *Sri Dharmamurthi* temple. The pilgrimage to the Temple has five stages. First, the devotees are expected to take a

vow of self-discipline by keeping mind and body pure and clean for a minimum period of 28 days. The second stage includes the physical travel to the pilgrimage site and the third stage is performing the ritual bath wearing only a loin cloth. The next stage is the pilgrim's ascending the sacred 108 steps to the shrine for offering prayers. The final stage is the return journey with pure mind and body. In the entire process of such pilgrimage, a new community of '*Dharma margis*' emerge. The pilgrims transcend their caste, class and other hierarchies and tend to assume a new egalitarian identity of '*Dharma margi*'. Though the pilgrims fall broadly within the Hindu Religion, yet males of all ages may participate on an equal footing, regardless of caste, creed or religion. Muslims, Christians and Buddhists are also known to undertake this pilgrimage, enjoying the same equality.

9. But, the most important feature of *Dharmagiri* pilgrimage is that it is exclusively male-centric. Women and girl children are not allowed to visit the temple premises or to participate in the rituals relating to the pilgrimage. The exclusionary practice of preventing women from entering the *Dharmagiri* Temple after observance of customs, vows and rituals including the most important ritual of submersion of the body in the holy water is based mainly on two streams of reasoning resorted to by different sections of Hindus. Firstly, the biological or physiological phenomenon of menstruation in women is considered to be dirty and impure and therefore a '*dosha*'. Religious customs as well as the traditional science of Ayurveda consider menstrual period as an occasion for rest for women and a period of uncleanliness of the body. It is a recurrent event in a woman's life, which cannot be avoided. A *dharma margi* devotee believes himself to have attained a state of irreversible and eternal purity after exit through the *Moksha Dwar*. But, in the case of a woman, this state of eternal purity cannot be achieved because of the natural impurity accruing to her at regular intervals. This biological infirmity therefore disentitles a woman from seeking *Moksha* during her lifetime through ritual immersion in holy water. Being cursed by the Law of Nature to be impure, she can attain salvation only after death. It is argued that the practice of prohibition for women on this ground started in hoary antiquity, and continued since time immemorial without interruption and thus became a usage and custom. The second reason suggested for excluding females is that it is in their own interest and for their own safety. Being physically weak in comparison to men, women need protective discrimination in

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their favour. It is said that, even while the old custom prevailed, women used to visit the temple though very rarely. There was thus no prohibition for women to enter the *Dharmagiri* temple in olden days, but women in large number were not visiting the temple. That was not because of any prohibition imposed by Hindu Religion but because of other non-religious factors like the strenuous uphill task involved in the pilgrimage and the risk of drowning in the course of ritual immersion. There are at least five reported incidents of tragic death of women due to drowning during the early years of the 20th century in the course of the process of ritual bath.

10. After assuming the charge of management of the Temple, the DTAC, which is under a statutory obligation to administer the temple in accordance with the custom and usage of the Temple, issued the following Notification dated 21-10- 1955:

“In accordance with the fundamental principles underlying the rituals, traditions and customs related to pilgrimage to the venerable, holy and ancient Temple of Dharmagiri, Dharma margis who had not observed the usual vows as well as women and girlchildren were not in the habit of entering the Temple for offering prayers by ascending the holy steps after performing ritual bath. But of late, there seems to have been a deviation from this custom and practice. In order to maintain the Purity and Holiness of this great Temple and to keep up the past traditions, it is hereby notified that Dharma margis who do not observe the usual vows and women including girlchildren are forbidden from entering the Temple.”

The customary practice along with the Notification issued by the Dharmagiri Temple Administration Committee dated October 21, 1955 form the present legal basis for the ban on entry of women into Dharmagiri Temple. The constitutional validity of the above Notification had been upheld by the High Court of *Malistan* in the year 1991.

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11. The cause of action for the present writ petition, which is in the nature of a PIL filed before the Supreme Court of *Dharma Rajya*, arose out of the following facts:

Azyan, a transgender person who is born as a female with predominantly male orientation and a citizen of the Islamic Republic of Afghanistan, came to India in the month of October, 2018. He (the pronoun preferred by the transgender person is used) is aged 34 and born to Muslim parents of Afghanistan nationality. The purpose of his visit was to perform ritual bath in the holy water of '*Dharma Sarovar*' and to offer prayers in the *Sri Dharmamurthi* temple at *Dharmagiri*. According to him, he suffered a lot because of his transgender identity and in course of time, developed a spiritual inclination for Hinduism which holds that suffering can be positive if it leads to progress on a spiritual path. When heard about *Dharmagiri* Temple and the ritual for spiritual cleansing, it became his yearning desire to wash away the impurity of emotional distress from his mind and to reach a state of spiritual tranquility.

12. Azyan is a genetic male whose visible sexual parts are those of a woman. He has female external genitalia, but lacks such internal organs as ovaries and fallopian tubes. Instead, he has certain male internal organs, like seminal vesicles, as well as testes hidden up in the body. It has been medically certified that he will have no menstruation and has no procreative capability.

13. On 18-10-2018, he reached *Dharmagiri* along with two of his Indian male friends for ritual bathing but was blocked by police on security duty. Even though, he told them that his gender identity is that of a man, that he had observed the required vow of self-discipline for 28 days, that he ardently believed in ritual immersion and spiritual salvation, that he belonged to the community of '*Dharma margis*', he was prevented from entering the Temple premises.

14. On the basis of the above-mentioned facts, *Dharmarajya Association for Trans Equality* (DATE), an NGO working for the cause of LGBT community, filed the instant PIL before the Supreme Court of *Dharma Rajya* challenging the constitutional validity of the Notification dated 21-10- 1955 issued by DTAC and praying for the issuance of a Writ of Mandamus to the State of *Malistan*, the *Dharmagiri* Temple Administration Committee (DTAC), the Chief Priest of

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Dharmagiri Temple and the District Magistrate to ensure that all human beings including female devotees and Transgenders are permitted to enter the *Dharmagiri* Temple without any restriction.

15. The Chief Justice of *Dharmarajya* has constituted a Five-Judge Bench in the light of Article 145(3) of the Constitution. The matter is posted for final hearing. The Chief Justice has given liberty to both the parties to frame issues of their choice. Different respondents may be permitted to take different contentions, including contradictory ones.

NOTE: (i) The Constitution and all other laws of *Dharmarajya* should be interpreted *in pari materia* with the Constitution and other laws of India with the limited exceptions herein mentioned.

(ii) The judicial precedents of the Supreme Court and High Courts of India have the same binding force in *Dharmarajya* as they would have in India.

(iii) Position of *Malistan* in *Dharmarajya* is same as that of Kerala in India.
