BEFORE THE HON'BLE SUBORDINATE JUDGE'S COURT, KOTTAYAM

ORIGINAL SUIT NO. 106 OF 2015

Plaintiffs	**Defendants**
Knanaya Catholic Naveekarana Samithy and 3 others.	The Metropolitan Archbishop, The Archeparchy of Kottayam and 6 others.

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Place : Kottayam
Date : 05.04.2021

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Rejoinder Arguments on behalf of the Plaintiffs.

I. General Submissions

1 It is submitted that the efforts made by the Defendants during evidence and argument stage is to create confusion and a smokescreen and to escape from proper adjudication of the Suit by the Hon'ble Court for the pleadings and evidence produced by the Plaintiffs. Irrelevant judgments, provisions of law, Provisions of Canon law and Bible are quoted just to create confusion.

2 The dispute in the Suit before the Hon'ble Court is whether the endogamy practice in the Defendant No. 2 is contrary to Church law and civil law of India. The Hon'ble Court is duty bound only to consider facts relevant to the above question of law. It may not interest this Hon'ble Court to know the Church theology and Church history as argued in detail by the Defendants that too without any pleading or evidence having no relevance to the question of law before this Hon'ble Court.

3. The Plaintiffs filed the Suit mainly complaining about the practice of Endogamy in Defendant No.2 and the resultant expulsion of members as also to protect the interest of those members who remain bachelors on account of facing expulsion if they marry from

outside the community. These are grave civil right violations in the form of blatant discrimination among citizens in a democratic country like ours.

It has come out in evidence that the strict endogamy is not practiced in the Catholic Church or anywhere else in the world. Therefore quoting of international human right law, the old testament etc will not be correct as this barbarian practice is not followed in the modern world.

4. The Defendants are repeatedly claiming themselves to be "Knanaya Catholic Community". Such a community is not present in the party array; nor has any such party been impleaded to the Suit. Knanaya Catholic Community is not a party in the Suit. Are Knanaya Community members in the Catholic Church other than in the Defendant No. 2 part of this community? Answer is No. Further, Knanaya Community is present in various other Christian Churches also where there is no practice of endogamy ;and no proof to the contrary is available on record. Plaintiff's case is against the Catholic Church. Catholic Church did not approve any such name 'Knanaya' till about the year 2000. In the history of the Catholic Church no diocese has been created for any community with endogamy right. Therefore, the suit is confined to Catholic Church only and whatever averments made about Knanaya Community in the Written Statement or during arguments have no relevance in the suit.

5. Most of the submissions made by the Plaintiffs are unanswered in the Reply Arguments of the Defendants. The main defense in the Written Statement was that by issuing the Bull dated 29.08.1911 the Catholic Church created a diocese for Knanayites with endogamy rights. The Plaintiff met this contention by the submissions made under para 4 of the Written Arguments (Page 69 - 113). Both the witnesses stated that only for the reason of Bull, the practice was possible in the Church, otherwise it would have been confined to

community and independent of the diocese they can continue Endogamy practice. Kindly see para 24, 37 and 41 of the Written Statement of the Defendant and Para 6.4 (page 136 – 138) of the Written Arguments of the Plaintiffs. No arguments have been made by the defendants on these points. Therefore, this contention of the Defendants have been found to be false and not maintainable. During Arguments the Defendants shifted the argument from Papal Bull of 1911 to custom of the community which has no merit or relevance as the suit is against Catholic Church.

6. More than a dozen text books published by Defendant No. 2 have been produced as Exhibits by Defendant No.7. Absolutely no evidentiary value can be derived from those documents. By producing other Exhibits the Defendants have utterly failed to establish that the Catholic Church allowed practice of Endogamy in the Defendant No. 2.

7. Even, the Defendants failed to produce any evidence from their exhibits that the Kananyties practiced endogamy. All what is stated is about rivalry between southists and northists. No credible evidence could be produced by the Defendants before the Hon'ble Court that the community practiced strict endogamy. Knanayites are like any other community in the world.

8. Even assuming without admitting that the Knanayties practiced endogamy in their community, that itself is not enough to claim such a right in the religion of the Catholic Church. When a community joins the Catholic Church, they are bound to be governed by the rules of the religion of Catholic Church. The Catholic Church does not and cannot allow practice of Endogamy in the Church. The Claim that Church allowed endogamy practice when the Defendant No. 2 was established is an utter lie which has already been established during the Arguments of the Plaintiffs. No evidence could be produced by the Defendants that the Pope was even aware of the Endogamy

practice in Defendant No.2 till the year 2000, not to speak of granting any right to practice endogamy in the Church in 1911. (Kindly also see submissions "contention on Customary law in page 179 below)

9. **The contention about Endogamy as a customary law.** This is dealt with in contention No. 4 (page179) below. In the Catholic Church, any custom which is having force of law, can only be an established custom existing in any of the 23 Sui irus Churches and not of any diocese or parish within any of the 23 sui irus Churches. Therefore, the alleged endogamy practice by the Defendant No. 2 is not a valid custom at all, under Church's law. Pope is even not aware of such a practice of Endogamy in Defendant No. 2 as also such a practice is in violation of Church law.

10. It is an admitted position from the cross examination of the DW1 and DW2 that if Papal Bull of 1911 was not issued, Knanayites could not have implemented Endogamy in the Catholic Church. It was also admitted by them that Knanayites could practice Endogamy even now also, but independent of the Catholic Church, as they were allegedly practicing before the year 1911 (for which also there is no credible evidence on record). Therefore when it is established through documentary evidence that no such Endogamy right was allowed in the Papal Bull of 1911, the suit may be allowed.

11. According to Church Law a person who receives baptism becomes a member of the Catholic Church in the Parish he is baptized. Once he becomes a member, he continues to be a member in his Parish till his death and is entitled to receive all holy sacraments including the sacrament of marriage. The Defendant No. 2, contrary to Church law, refuses to allow the members to receive the sacrament of marriage in one's Parish and diocese and also refuses to allow one to continue as a member in the Parish and Diocese.

(Kindly see para 3.6.2, 3.6.3 and 3.6.4 (page 54 – 60) of the Written Arguments of the Plaintiff filed on 08.03.2021).

12. Judgments cited by the Defendants are not at all relevant to the facts of the subject case. In fact many of those judgments support the submissions of the Plaintiffs.

II Response of the Plaintiffs to the Defendants' arguments on maintainability, rights, cause of action, locus standi and the subject matter of the Suit.

1 The subject matter of the suit is the illegal practice of endogamy in the Defendant No. 2 and the consequent expulsion of members from it. According to the Plaintiffs this practice of endogamy is in violation of Catholic Church law as also a civil right violation, a Constitutional right violation and a grave human right violation.

According to Indian Law anything under the sun can be the subject matter of a suit provided it should be valid under CPC. The relevant provision in CPC is section 9. The test stipulated in section 9 is that the suit should be of "Civil nature" and should not be "barred under any statute". The aforesaid subject matter passes the test laid down under section 9 CPC and the submissions have already been made in para 2 (2.1 to 2.11) page 15-24 of the Written arguments filed on 08.03.2021.

Defendants admit that they practice endogamy in Defendant No. 2 but the defense taken is that the same is allowed by the Catholic Church.

This being a civil dispute, is to be adjudicated by the Hon'ble Court.

In order to bring clarity and to meet the objections raised during the reply arguments by the defendants which are mentioned as headings herein, the Plaintiffs bring to the kind attention of the Hon'ble Court two distinctive group of prayers made in the Plaint. They are :

(a) Prohibit the practice of endogamy in Defendant No.2. The relief claimed under this head are Relief A, B and C.

(b)To re-admit the former members who were expelled from Defendant No. 2 as they were victims of the practice of endogamy by the Defendants. The relief claimed under this head is mainly Relief D. Relief A declaration is also applicable here.

The Plaintiffs would make submissions separately for the aforesaid two groups of prayers.

2. When various reliefs are claimed in a Suit, the Hon'ble Court may consider each and every reliefs and if satisfied, may grand all or some of the reliefs sought in the Plaint, on the basis of pleadings and evidence in the case.

3. **Submissions for the reliefs A, B & C**

The Plaintiffs deal with maintainability, right, cause of action and locus standi for the aforesaid reliefs hereunder:

As submitted earlier the subject matter of the Suit is whether endogamy being practiced by the Defendant No. 2 should be declared as illegal and grand relief under Relief A and if yes whether Relief B and C should be allowed against Defendant 1, 2 and 3.

First issue in this regard is the competency and locus standi of the Plaintiffs to file the suit for obtaining the Reliefs A, B & C. The admitted position is that the Defendant No. 2 practices endogamy. If a member of the Defendant No.2 considers such a practice as illegal, either under Church law or under civil law, he can challenge such a practice in a Court of law. It is his individual right to challenge such an action of Defendant No. 2. Admittedly Plaintiff No. 4 is an existing member of Defendant No.2 and he has every right to file the Suit against the Defendants including Defendant No.1 and 2 for the Reliefs A, B & C. Please refer Para 3 of Plaint Exhibit A-5 as also para IV of the Written Arguments of the Defendants (Page 4) as also cross

exam of Plaintiffs witness). Therefore the maintainability with regard to the right of plaintiff No. 4 cannot be questioned by the Defendants.

Plaintiff No. 1 is proved as the Association of both existing and former members of Defendant No.2. The Plaintiff No.1 is registered under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955 and is a separate legal entity whose object is to end the endogamy practice being implemented by the Defendant No. 2. The Plaintiff No. 1 can sue and be sued in its name under the Indian law. Thus the Plaintiff No. 1 is also entitled to file a suit for obtaining relief A, B & C in the Hon'ble Court.

Plaintiff No. 2 and 3 are proved as former members of Defendant No. 2 (Exhibit A-1 to A-4). Also see admission in para IV in page 4 and para 1 and 2 in page 12 -13 of the Written Arguments of the Defendants. They were expelled constructively as a result of endogamy practice being followed by Defendant No.2. For the time being let us forget about their expulsion . They are at present members of Syro Malabar Church which is admittedly the parent organization of Defendant No. 1 and 2. The practice of Endogamy in one of the Dioceses of Syro Malabar Church, which is one of the 23 Sui-juris Church is contrary to Article of faith of every Catholic as also contrary to Church law and a Civil right Violation in the Syro Malabar Church. The Plaintiff No. 2 and 3 are entitled to file a suit for getting relief A, B & C, even also as a member of Syro Malabar Catholic Church and the Suit is against Catholic Church (Defendant 1 to 6). They are entitled to protect the holiness of Catholic Church as every Catholic prays as an Article of faith. Therefore independent of cause of action of expulsion from Defendant No. 2, as a Catholic, they are entitled to file the suit for the reliefs of A, B & C. The aforesaid submission is subject to the submission that for the ground of expulsion also the Plaintiff No.2 and 3 are entitled to file the Suit.

If any one of the Plaintiffs is entitled to file the Suit then the Suit is maintainable.

Now let us see according to the Defendants, who can file the Suit for eradicating this illegal practice followed by Defendant No.2.

According to the Defendant nobody is competent to challenge the illegal practice. According to them existing members cannot challenge this illegal practice. According them former members can not challenge the illegal practice. If at all any member wants to marry another Catholic from outside Defendant No.2 then he should sign the consent letter to go out from Defendant No.2, otherwise he cannot marry. It is their contention that, as consent letter is signed then he cannot file Suit as he has gone out voluntarily. The person who wants to conduct such a marriage, if he refuses to sign the consent letter, he cannot marry and therefore no cause of action will arise for him according to the Defendants. These hyper technical arguments can not restrict this Hon'ble Court when such a grave civil right violation is brought before the Hon'ble Court. Supreme Court in AIR 1981 SC held as under :

> *"63. XXXXXX.. Our current processual jurisprudence is not of individualistic Anglo- Indian mould. It is broad-based and people- oriented and envisions access to justice through 'class actions', 'public interest litigation', and 'representative proceedings'. Indeed, little Indians in large numbers seeking remedies in Courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of 'cause of action' and 'person aggrieved' and individual litigation is becoming obsolescent in some jurisdictions."*

(Kindly see page 29 of the Written Argument of the Plaintiffs)

In P. M. A. Metropolitan Vs. Moran Mar Marthoma, in para 27, it is stated as under :

> **one of the basic principles of law is that every right has a remedy. "Ubi Jus ibi remediem" is the well known Maxim**

Therefore the Plaintiff submits that so far as Relief A, B & C are concerned the Plaintiffs pass the test of maintainability, right and locus standi. So far as cause of action is concerned the same is explained in para 51 and 52 of the Plaint which is already elicited in para 3.9 (page 64-67) of the Written Arguments of the Plaintiffs. The Plaintiff issued legal notice and when the Defendants refused to stop the Endogamy practice by issuing a reply notice, cause of action has arisen in favour of the Plaintiffs for filing the Suit claiming the Reliefs A, B and C.

4. **Limitation for the reliefs of A, B & C**

Limitation is a mixed question of law and fact. It is an undeniable fact that in the pleadings or evidence, such an objection has not been taken by the Defendants. It is the contention of the Defendants before the Hon'ble Court that they were practicing endogamy, they are practicing endogamy now and they will continue practicing endogamy in future also. Therefore this legal breach is of continuing nature and therefore the cause of action is also continuing. Therefore for the reliefs A, B and C limitation is yet to start. Without prejudice it is also submitted that according to the Defendants the relevant article for limitation is Article 58 of the Limitation Act. Article 58 will apply only in the event of declaration alone is sought in the Plaint. In other words article 58 applies for declaration simplicitor. This Article will not apply if further reliefs are sought for in the Plaint. In this case they are reliefs B and C.

5 **Specific Relief Act**

Another contention raised by the Defendants is that section 4, 41(J) and 39 of the Specific Relief Act prohibits granting of declaration and injunction prayed for in the Plaint. The Plaintiffs submits that the subject matter of this suit is not covered under the provisions of Specific Relief Act. The Specific Relief Act is not exhaustive. All kinds of Specific Reliefs are not in the contemplation of the Specific Relief Act. Generally property disputes and contractual disputes are contemplated in the Act. The Plaintiffs have cited two Supreme Court judgments in the Written Arguments in page 141-142 wherein Supreme Court held that Specific Relief Act is not exhaustive and in a proper case, the Courts hands are not tied by the provisions of the Specific Reliefs Act for granting relief . The Ld. Counsel for the Defendant did not comment on the specific argument of the Plaintiffs in this regard. Subject to the aforesaid submission Plaintiffs further submits that stipulation in the sections 4, 39 & 41(J) of specific Relief Act are complied with in the suit. What is required under article 4 is that "individual civil right". As explained above, each and every Plaintiffs have individual civil right to file the Suit.

Under section 41(J) what is required is a personal interest in the matter. All of the Plaintiffs have personal interest in the matter.

Under section 39, it can be seen that the relief sought under A, B & C are very much capable of enforcing without any difficulty.

Therefore even though Specific Reliefs Act as such is not applicable, otherwise also there is no prohibition or impediment under Specific Relief Act for granting the reliefs claimed in the Plaint.

Also kindly see "contention No. 2 in page 158 below.

6 **Applicability of O1 r8 C. P. C. for these reliefs.**

It is the Plaintiffs submission that for granting relief A, B and C o1 r8 application is not mandatory. These reliefs can be granted independent of o1 r8 application also. However as an abundant caution the application under o1 r8 was also made by the Plaintiffs for all the reliefs. However for grant of relief A, B and C, the application under o1 r8 is not mandatory unlike reliefs sought in relief D.

7. Maintainability etc of Relief D in the Suit

Relief D in the Plaint is as under:

D) Pass a permanent mandatory injunction directing the Defendant No.1 and 2 to re-admit members along with their spouses and children whose memberships were terminated by the Defendant No.1 and 2 for marrying a Catholic, **if the former members are qualified in all other respects.**

(Emphasis supplied)

Kindly see the bold portion. The relief D is different from the reliefs B and C and is concerned with re-admission of former members and not about existing members. Unlike relief B and C, this relief is sought against Defendant No. 1 and 2 only. On the basis of granting this relief expelled members i.e. Plaintiffs No. 2 & 3 or any other person having the same interest as stipulated under o1r8 will be entitled to return to Defendant No. 2 but they will not get an automatic re-entry into Defendant No. 2 on account of the condition stipulated in the Relief. The Plaintiffs are very much conscious of the fact that once the expelled members are out, for getting re-admission, there may be other provisions of canon law which desist their re-entry due to various reasons all of which cannot be conceivable at present. Therefore automatic and enbloc re-entry is not sought for to all the expelled members. O1r8 application was

filed in order to make eligible the expelled members back to the mother diocese. The declaration A coupled with prayer D will enable them to come back to their mother diocese. However as submitted earlier it is not as if a flood gate is opened and all of a sudden hundreds of former members are coming back to the mother diocese. The defendants can regulate their re-entry for legally justified other reasons as the grant of relief D is with condition. However when relief A declaration is allowed the Plaintiffs and the former members of Defendant No.2 having the same interest are entitled to relief D for the pleadings and evidence produced by the Plaintiffs before the Hon'ble Court. The locus standi, right, cause of action, maintainability etc are the same as submitted under relief A, B & C above.

III. The Plaintiffs submits brief reply to the Arguments of the Ld. Counsel for the Defendant No. 7

1. Contention – 1 – Defendant No. 2 is an unincorporated body

Defendant No. 2 is an unincorporated body consisting of 1.25 lakh members and each and every member should have been made a Defendant. Entire members are "necessary party" and therefore suit is not maintainable against the 2nd Defendant as all necessary parties are not present.

Plaintiffs response

At the outset it is submitted that no such contention was raised by the Defendant No.2 or even the Defendant No.7 in their written statement. No such contention has been raised in the evidence of the Defendants also. Therefore no issue was framed on this objection taken during arguments.

On the other hand, in the pleadings the Defendant it has been admitted expressly and by necessary implication that Defendant No.2

is in the hierarchy and integral part of Catholic Church and is under the Supervisory Jurisdiction of Defendant No. 3 to 6 and is governed by the Church laws of Catholic Church. Some of the admissions made by the Defendants are elicited in para 1.29 (page 13) of Written Arguments filed by the Plaintiffs on 08.03.2021. Most of the pleadings in the Plaint are to be taken as admitted by the Defendants by necessary implication under order VIII rule (3-5(1)) of the CPC.

Under Cannon law Article 191 legislative, executive and judicial powers of the Defendant No.2 are exclusively vested in the Bishop and not in the members of the Church. Cannon 177 defines what is an Eparchy which is Defendant No. 2. Cannons 177 to 278 of CCEO (page 67 to 110 of Exhibit A-9) prescribes the position, duties, obligations and rights of Defendant No. 2 in the Catholic Church.

Defendant No. 2 is an institution within the Catholic Church governed by Church laws including Canon law and therefore not an unincorporated body, as claimed for the first time during reply arguments, that too contrary to the pleadings in the Written Statement.

So far as notice to be given to the 1.25 lakh members are concerned, it is submitted that there is no such legal requirement. Notice was required to be issued, under O1r8(2) and the same has been issued which is satisfied by advertisement in the local Newspaper and the same is undisputable. On the basis of the paper publication, the Defendant No. 7 applied to the Hon'ble Court under O1r8(3) and got impleaded as Defendant in this case.

In support of its contention, the Ld. Counsel for the Defendant No. 7 cited a judgment - ***Corporation of TVM Vs. K. Narayana Pillai 1968 K. L. T 285*** (Para 10) regarding impleadment of a foot ball association as an additional defendant by impleading its treasurer.

The judgment cited is not relevant in the facts and circumstances of this case.

Defendant No.2 is not in the place of the foot ball Association and the reasons are submitted here in above.

In that judgment when the Appellant requested the Court to implead the foot ball association as an additional defendant, the issue was considered by the Court. The Hon'ble Court expressed its doubt as to whether by issuing notice to the Secretary, can the Association be bound by the decree. The Court left the matter to the Trial Court. No such law has been laid down by the Court in that judgment as claimed by the Defendants during arguments.

2. **Contention No.2 - Whether the injunction cannot be granted under Section 4 and 41 (J) of the Specific Relief Act.**

At the outset the Plaintiffs submit that it is the settled law that Specific Relief Act is not exhaustive and the subject suit cannot be tied down to the provisions of the Specific Relief Act. (Kindly see the para 8 – page 140-142 of the Written Submissions of the Plaintiff)

No such contention has been taken by the Defendants in the pleadings or Affidavit of Evidence. Section 4 (before amendment in old Section 7) was in the negative form that "Relief not granted to enforce penal law". With the amendment in the new section, it is made positive and prohibitive in its effect. The only meaning is that Civil rights can be enforced and not penal laws. Without prejudice it is also submitted that as submitted above, all the Plaintiffs have individual Civil right to file the Suit.

If the rigid interpretation as advanced by the Defendant is accepted as correct, public interest litigations, representative suits as prescribed under O1 r8 of CPC etc will come to a naught. Kindly see

a portion of AIR 1981 SC 298 quoted in para 2.16 (page 27-29 of the Written Arguments of the Plaintiffs).

In section 41 (J) what is required is that Plaintiff should have "Personal interest". The Defendants argument is that instead of "Personal interest", personal "cause of action" should be read in Section 41(J) of the Act. The only requirement is that as the Suit is under O1 r8, any one of the Plaintiffs should have "personal interest" in the matter. When O1 r8 and Specific Relief Act Section 41(J) are read together what is required is "interest" and not "cause of action." The Plaintiffs submission is that each and every Plaintiffs have both "Cause of action" and "interest" in the case as they oppose practice of Endogamy in the Catholic Church.

It is the averment of the Defendants 1 and 2 that they were expelling members, they are expelling members and they will continue to expel members who marry Catholics of non-knanaya origin in future also, for enforcing endogamy in Defendant No.2. Therefore the issue is in the nature of a continuing breach and therefore cause of action is also continuing.

There is no such law that only present members alone can challenge this endogamy practice. The contention that the Plaintiff No. 2 and 3 had gone out from Defendant No. 2 voluntarily is proved as incorrect. Kindly see para 3.9 (page 64-69) and para 2.23 (page 31-32) of Written Arguments of Plaintiffs. It is the admission made by the Defendants and defendants' witnesses that those who marry from outside community will not be allowed to continue in the Defendant No. 2. The common interest stipulated in O1r8 is the practice of Endogamy and the resultant expulsion of members from the Defendant No. 2 on the implementation of the illegal practice of Endogamy in the Defendant No.2. Whether Plaintiff No. 2 and 3 were expelled long back is of no relevance when such an issue is decided under O1 r8, representative suit. So far as Plaintiff No. 1

and 4 are concerned, kindly see para 2.15.2 and 2.15.3 (Page 26-27) and para 2.20 (page 31) of the written Arguments of the Plaintiffs.

According to the Defendant nobody can file suit to challenge this illegal expulsion. According to the Defendant, Plaintiff No. 2 and 3 are already expelled and therefore they have no interest. According to Defendants, Plaintiff No.4, even though an existing member, he has no right to challenge this illegal practice as he did not suffer any expulsion and he had married another member of the same community.

All these arguments are without any merit. What is required is an "interest" in the subject matter. Kindly take the case of the 4th Plaintiff. He is a member of Catholic Church. He is a member of Defendant No. 2 Defendant No. 2 is violating the Church laws and civil laws of the nation. He has every right as a member of Defendant No. 2 to approach the Hon'ble Court to end the illegal actions of the Defendant Nos. 1 and 2 and to bring defendant No. 2 compliant to the laws of Catholic Church. An expulsion from the Church is not a pre-requisite for having "interest" in the subject matter of the suit. His faith is that Catholic Church is one, holy, universal and Apostolic. When Defendant No. 1 and 2 violate this faith as also the New Testament and Cannon laws, and commit civil and human right violations he has a right and duty as a member to end the illegality perpetuated by the Defendant No. 2 and to bring back the holiness of the Church by filing this suit.

Similar is the case with Plaintiff No.1. Plaintiff No.1 is a legal entity having existing members as also expelled members from Defendant No. 2. It represents existing members also and can file Suit to protect the interest of those members who are already expelled or existing members who may be expelled in future on account of the practice of endogamy in Defendant No.2.

There is no such law that expelled members cannot file suit against the Defendants. The suit is not against Defendant No. 1 and 2 alone. Suit is against the Catholic Church. They have certainly " Personal interest" in the subject matter even as a member of Defendant No. 4, or even as a Catholic.

3. T**he Defendants Contention No. 3 – Religious rites in all the Dioceses of Defendant No. 4 are the same**

The "religious rites" are the same whether the Plaintiffs are in Defendant No. 2 or in any other dioceses of Defendant No. 4 and there is no injustice in expelling members from their existing parishes. Therefore, it is contented that suit is not maintainable, is the contention of the Defendants.

Both Plaintiffs and Defendants agree on this point. Plaintiff submits that as the religious rites are the same, the Defendants cannot claim any protection under Article 25 of the Constitution of India for religious rites.

The contention of the Defendants that as the religious rites are the same, the Plaintiffs should not make any complaint when they are expelled and get membership in any other Catholic diocese, is baseless and reveal the cruel mindset of the Defendants. For a Catholic, parish is his second home. He, his parents and forefathers create assets in the parish by constructing parish Church and associated establishments. He contributes for the salary of the priests. He participates in the Church services with his near and dear, friends and neighbors which is the freedom and comfort he is enjoying as a member of the parish community. His children participate in the Sunday school classes with their cousins and friends. Every Sunday is a day of obligation for a Catholic to participate in the Church services. Most of the elderly go to their Parish Church every day morning to attend daily mass along with

their neighbours. All these rights available to him as a member, are denied to him and his family by the expulsion from Defendant No. 2. It is true that there is no absolute prohibition for the expelled members to attend Church services. But the Parish priest's services for the religious functions for him is an emphatic no. In his own built Church his legal right is lost and he becomes a stranger. At times he even has to face abuses from extremist members and occasionally from the Parish Priest also for the sole reason of marrying another Catholic outside Defendant No. 2. The feeling is like a house owner being considered like an unlawful tenant in his own house.

The contention that the expelled members get admission in another Parish in another diocese is incorrect. The Defendant No. 1 and 2 treat such persons with contempt and provide no help in getting admission in another diocese. He has no right to get membership in any other diocese. He is at the mercy of that Diocese who can decline his application for membership. He has to pay a heavy admission fee, if he is allowed to become a member. The most important tragedy is that if at all he is lucky to get admission in another parish, the Parish in which he gets admission mostly will be very far off from his home. Mr. Stephen George, Defendant No. 7, during cross examination has admitted that the parish Churches in Defendant No.2 are within walkable distance. The expelled members cannot reach the new Parish where he and his family are strangers, without the aid of transportation, when his own Parish is at a walkable distance. Most of the expelled members are from poor financial back ground. They are denied their religious freedom and social life. The expelled members are uprooted from their society and no compensation is paid for the wealth created by him in his Parish. They are not allowed to be buried in the family cemetery where their parents are laid to rest (para 18 of the Plaint). During cross exam of Defendant No.1 he had also stated that the new parish to be found

out by the intending expelled member should be of Syro Malabar Church and even Latin Catholic Church is not acceptable. Many of the unfortunate expelled members could not get membership in Parishes as they were far off or those Churches are unaffordable to him to pay huge membership fee. They remain without Parish or membership in Catholic Church and are spiritually orphaned. A baptized member is entitled to continue in his Parish Church till his death, according to Church's Law. Kindly see para 18 to 22 of the Plaint which is reproduced in Para 1.18 to 1.22 (Page 7 to 9) of Written Arguments of the Plaintiff.

4. Contention No.4

Another Argument raised was that the Plaintiffs also ought to have sought permission from the Court to issue notice to Defendant No. 2 under o1r8. The argument is misplaced. Firstly Defendant No. 2 is not an unincorporated entity. Secondly if the Defendant No. 2 was of the opinion that it is an unincorporated entity (which is not its case before the Court) it ought to have filed application under o1 r8. A party who intends to represent people of similar interest should file application under o1 r8 and not the adversary party. Plaintiffs cannot represent Defendants by filing o1r8 application as their interest are not similar.

5. **Contention 5**

Reliefs Claimed in the Plaint cannot be allowed

(a) Contentions of the Defendants on the Relief under A, declaration

It is the contention of the Defendants that in the relief claimed, no declaration is sought for any particular Plaintiff.

It is submitted that the relief of Declaration is to be allowed to stop the Endogamy practice in Defendant No. 1, which is against Church

Law and a Civil right violation. Without prejudice it is also submitted that in a suit under o1 r8 what can be sought is a judgment *in Rem* and not judgment *in Personnum*. Each and every member or former member is entitled to get the declaration for the grounds stated in the Plaint. Otherwise, whenever any member wants to marry another Catholic outside Kottayam Diocese (Defendant No.2), he has to file a suit for a cause of action arisen to him. There could be thousands of suits to be filed individually. By providing o1r8 this requirement is dispensed with by the legislature. With this declaration any member could marry another Catholic and continue to be in the membership of Defendant No. 2. Time and money are saved. The individualistic cause of action is a thing of the past and was prevalent upto 19th Century only. The 20th Century has seen the emergence of class action and representative suits. Courts in India will not accept hyper technical arguments about individualistic cause of action, not to speak of interest in the suit. To the extent possible Courts welcome representative suits and class actions which will help avoidance of unbearable burden of pendency of huge number of cases.

So far as the individual rights are concerned each and every Plaintiff is entitled to get relief of declaration in the Suit and the grounds are already explained herein above under Sl. No.2 (page 158 above) as also in the Written Arguments filed by the Plaintiff on 08.03.2021. In the respectful submission of the Plaintiffs, even a Catholic other than the members and former members of Defendant No.2 can maintain such a suit as the practice of endogamy is against the articles of faith, law of Catholic Church as also violation of human rights and the Constitution of India.

(b) Relief under B & C

Defendants Contention – Relief claimed are of general nature

The Relief claimed in B and C are not general in nature. These reliefs are consequential to the relief of declaration sought under relief A. All arguments made under relief A applies in these reliefs also.

(c) **Relief D - Same objections as above**

Relief D is as under:

D) Pass a permanent mandatory injunction directing the Defendant No.1 and 2 to re-admit members along with their spouse and children whose memberships were terminated by the Defendant No.1 and 2 for marrying Catholic, **if the former members are qualified in all other respects.**

(Emphasis supplied)

Relief D is different from relief B and C

In this relief the Plaintiffs did not seek for a general or enmass re-admission back to the Defendant No. 2. All the Defendants could decide about the re-admission on a case to case basis and if there is a valid reason under Church law for not allowing re-admission, they could exercise that right. Therefore allowing this prayer is not an automatic re-admission of the expelled members to the Defendant No. 2 by the Defendants by virtue of adding the phrase "if the former members are qualified in all other respects". The main objective of the suit is to stop the barbarian practice of endogamy in the modern world which is in violation of Church law, articles of faith of Catholic Church, a civil right violation, a fundamental right violation, violation of Article 51 (A) of the Constitution and a grave human right violation, which is covered mainly under Relief A to C.

Also kindly see para 8 and para 2 of the Written Arguments filed by the Plaintiffs on 08.03.2021.

6. Contention 6 - Comments on Documents B- 22 to B- 43 produced by Defendant No. 7

The Ld. Counsel for the Defendant No. 7 referred to B-22 to B-43 to support the argument that the Knanayites practiced endogamy. B-34 to B-43 are the religious text books printed by the Defendant No.2 and taught in the Sunday school to its students. These exhibits have no evidentiary value. On the other hand through these books it can be seen that the Defendant No.1 and 2 brain wash the adolescents and promote communalism.

B-27 is written by a Knanayite. In B-30, the concerned Article is written by Knanayites.

So far as other Exhibits are concerned, a perusal of these documents would reveal that these Exhibits are not an authority about the endogamy practiced by the Knanayites. They are not establishing that Knanayites practiced endogamy. At the most what is stated is about rivalry between Southists and Northists. Same Exhibits also reveal that there were similar rivalry between other factions of Catholics also. In one of the Exhibits (Exhibit B-23) similar marriages not taking place between communities in the Catholic Church were created. It is also revealed that separate dioceses were cheated for taking into account communities generally, but no endogamy rights were allowed in any of the Dioceses of the Catholic Church (para 4.11 (page 102-103) of Written Arguments of the Plaintiffs). Rivalry between Southists and Northists is not a ground for terminating membership of Southists from their own parish Church for a marriage with another Catholic. These documents also state that even Kananyites' forefathers did not practice endogamy.

Kindly see para 4.5.3 (Page 85-87) of the Written Arguments filed by the Plaintiffs on 08.03.2021.

IV. **Brief comments on some of the Arguments of the Ld Counsel for the Defendant No. 1 and 2**

Most of the arguments of the Ld. Counsel already stand covered by the Written Submissions filed by the Plaintiffs on 08.03.2021 as also under III above. Therefore, wherever required, only a brief response is submitted.

In para 5 (b) (iv) Page 4

The cause of action for all the Plaintiffs is the illegal practice of Endogamy in the Defendant No. 2. As stated in this para of the Arguments of the Defendant, Plaintiff No.2 and 3 are former members and Plaintiff No. 4 is the existing member of the Defendant No. 2.

It is contended that the bye-law of the first Plaintiff (Exhibit A-6) shows that the area for operation of Plaintiff No.1 is Kottayam District only. It is also contended that the Defendant No. 2 is operating beyond Kottayam District and therefore Plaintiff No.1 has no legal right or capacity to file the suit against Defendant No. 2. Such a contention has no legal basis. Even if the area of operation of Plaintiff is Kottayam District only, that is not an incapacity to file suit against Defendant No.1 and 2. Whether Defendant No. 2 is operating outside Kottayam District also is not relevant fact for filing the suit against Defendant No.2 and others.

Another contention raised is that second plaintiff is residing in Alleppey District and therefore he is ineligible to be the president of Plaintiff No.1. There is no such law that just because area of operation is in Kottayam District, president should also reside in Kottayam District. There is no such disqualification either in the bye-law or in the Travancore-Cochin Literary, Scientific and Charitable Societies Act that a person residing outside Kottayam District cannot be member of Plaintiff No. 1. The bye-law Exhibit A-

6 in clause No. 6(a) defines the qualification of member which is as under:

"6 . അംഗത്വം

(a) വിവാഹം മൂലം കോട്ടയം രൂപതയിൽനിന്നും പിരിഞ്ഞു പോകേണ്ടിവന്ന സ്ത്രീ പുരുഷന്മാർക്കും അവരുടെ കുടുംബാങ്ങൾക്കും സംഘടനയുടെ ആദർശങ്ങളെ അനുകൂലിക്കുന്ന കോട്ടയം രൂപതാ അംഗങ്ങളായ പുരുഷന്മാർക്കും സ്ത്രീകൾക്കും സംഘടനയിൽ അംഗമാകാം."

The suit is in compliance with the provisions of Specific Relief Act. Alternatively, it is submitted that the Reliefs in the subject case can be allowed independent of the provisions of the Specific Relief Act. Kindly see para 8 (page 140-141) of the Written Arguments of the Plaintiff filed on 08.03.2021 and in page 154 and 158 above.

(v) There is no such law that an Association has no right for instituting a suit for enforcing fundamental right of an individual. Further, the Defendants' objection is for enforcing fundamental rights and have no such contention that for enforcing a civil right Suit cannot be filed by Plaintiff No. 1

(vi) There is no such law that under o1r8 Plaintiffs can file Suit only for establishing a public right having common interest. The judgments cited by the Plaintiffs in Para 2.17 and Para 2.18 of the Written arguments of the Plaintiffs will reveal this point. These judgments would reveal that even when there is no independent individual right, if there is a common public or private right, Suit under o1r8 is maintainable.

(vii) The judgments ***Premji Ratansey Shah Vs. Union of India reported in (1994) 5 SCC 547***.

The para quoted is out of context and the Plaintiffs have the right to file the suit. Plaintiffs 2, 3 & 4 are members of Catholic Church. The suit is filed against Catholic Church for a direction to follow the

Church law and to not to expel members from the Church by enforcing the illegal practice of Endogamy. Any member of the Church can file Suit for stopping this illegal activity of the Catholic Church. It is not required that they should be the current members of Defendant No.2. Any member of Catholic Church can file such a suit to end the illegal practice of endogamy in the Catholic Church and to redeem the glory and purity of the Church. Admittedly, Plaintiff No.4 is presently an existing member of Defendant No.2 and he has every right to challenge the illegal practice followed by the Defendants by filing the suit. He need not go out of Defendant No.2 for becoming eligible to file the suit for ending the barbarian practice of Endogamy and the resultant expulsion by Defendant No. 1 and 2.

It is contented by the Defendants that Article 58 of the Limitation Act will apply to the subject suit. The contention is incorrect. As the cause of action is of continuing nature limitation will not start at all. Without prejudice it is further submitted that the Article 58 will apply only in the case of declaration simplicitor and will not apply when further reliefs are sought in the suit

(ix-xii) A false contention is made that the Plaintiff had stated that para 5 in the Plaint is sufficient for substantiating its contentions. It is not correct. The entire pleading in totality is to be considered to assess the contentions of the Plaintiffs for granting reliefs. It is the settled law that the Plaint is to be considered in totality for granting reliefs sought in the Plaint.

In ***AIR 1976 SCC461, Madan Gopal Kanodia Vs. Mamraj Maniram and others,*** *the Supreme Court held that "we are unable to see any substantial variation between the pleadings of the Plaintiff and the evidence led by him at the trial. It is well settled that pleadings are loosely drafted in the Courts and the Courts should not*

scrutinize the pleadings with such meticulous care so as to result in genuine, claims being defeated on trivial grounds".

In ***AIR 1976 SCC 744 , Udhav Singh Vs. Madhav Rao Scindia,*** *the Supreme Court held that "we are afraid, this ingenious method of construction after compartmentalization, dissection, segregation and inversion of the language of the paragraph, suggested by Counsel, runs counter to the cardinal canon of interpretation, according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context, in isolation. Although it is the substance and not merely the form that has not be looked into. The pleading has to be constructed as it stands without addition or subtraction of words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole".*

In ***AIR 1999 SCC 3029 , Syed Dasstagir Vs. T. R. Gopalakrishna Setty,*** *the Supreme Court held that "in construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression may be pointed, precise, sometimes vague but still could be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. In India most of the pleas are drafted by counsels hence aforesaid difference of pleas which inevitably differ from one to other. Thus, to gather true spirit behind a plea it should be read as a whole".*

Assuming that para 5 is confined to Plaintiff No.1, even then it can be seen that in the Written Arguments the Defendant No. 1 and 2

admits that the Defendant No. 3 was a former member of Defendant No.2 and he had to go out from the Defendant No.2 for marrying a Catholic from outside Defendant No.2. The Defendant No. 1 and 2 also admitted that the Plaintiff No.4 is still an existing member. Cause of Action is the same for all Plaintiffs.

Kindly see para 3 in page 150.

(C) (Page -7) - The contention is that Defendant No. 2 is like a club. Defendant No. 2 is not akin to a club; but it is true that the Defendant No. 2 wants to run it like a club, a club of the elite, where the downtrodden and poor have no place. If the members cannot find spouse from the Diocese, they are expelled. According to Defendant No. 1 and 2 blood purity is the necessary qualification for the membership of the alleged club. However, the Defendant No. 2 is not a club at all, in the legal sense. The Defendants' own pleadings is contrary to this argument of the Ld. Counsel wherein Defendants have repeatedly admitted that Defendant No.2 is an integral part of Catholic Church and is governed by well defined rules and regulations. Kindly see some of the admissions made by the Defendant No. 1 & 2 in para 1.29 page 13 of the written arguments of the Plaintiff. Therefore, the judgments quoted in para (C) have no application to the facts of the case.

The Defendant No.2 is not a voluntary association but is part and parcel of Catholic Church. The Defendant No.2 is governed by well defined canon law provisions and supervised by the Defendant No. 3 to 6. Defendant No. 2 by the Defendant No. 1 and he alone has the legislative, administrative and judicial power in Defendant No.2.

C (vii &viii) Page 10 - The judgment AIR 1995 SCC 2001 will not assist the case of the Defendants for the reason that the subject suit is filed to direct the Defendant No.2 to follow the canon law which is the Constitution of the Catholic Church as admitted by DW-1 during cross examination. In the P. M. A Metropolitan case Supreme Court held that parties are bound by the Constitution made in 1934. In the present case the Constitution of the parties is the Cannon law.

(x &xi) Page 10 – Ecclesiastical Tribunals

The contention that the Defendants have Ecclesiastical tribunals and therefore suit cannot be filed is without merit. What is meant by Tribunal is a Court established by law of the Nation and not by a Defendant in a case. Further in the so-called Ecclesiastical Courts the complainants like Plaintiffs have no access. In such a tribunal the judge is the Defendant's man, the prosecutor is the Defendant and even the lawyer of the Plaintiff if appointed from the panel of lawyers of the Defendant. There is no room for any fair adjudication and is a clear case of natural law violation. "Nemo judex in sua causa" is the settled law and the latin maxim meaning – No one can be the judge of his own cause. Canon 997 is an appeal against decrees. Here the challenge is not against any Decree. In any event, jurisdiction of civil Courts cannot be taken away by these namesake, partisan tribunals. Kindly see para 34 of the judgment of the Supreme Court P. M. A Metropolitan Vs. Moran Mar Marthoma quoted in para 2.7 page 18 of the written arguments of the Plaintiffs.

(xii) Page 11 -The issue involved in the case is not a religious matter. It is the admitted position that in the marriage the religious ceremonies are the same whether inside Defendant No. 2 or in any other diocese in Defendant No.4. The Defendant No. 1 and 2 claims

that they are an ethnic community and they have a right to implement endogamy as a community law in the Defendant No. 2 even though Church law of Defendant No. 2 does not allow such a practice.

(xiii) Page 11- Comments on judgments

Arch diocese (Defendant No.2) has no right to promulgating particular law as per CCEO 1502(2). So far as the sacrament of marriage is concerned, only the Pope and the Roman Curia alone are competent to amend or change or add any Canon law. CCEO 191 is concerned with the power of the Defendant No. 1 in Defendant No. 2. As admitted by the DW1 in cross exam, the law is one and common for all dioceses of Syro Malabar Church. The law of sacrament of marriage cannot be amended by any diocese or Arch diocese. The alleged Arch diocesan law which has no legal force is in force only from 2010 and no evidence is produced by the Defendants as to what was the law prevalent before the year 2010. The diocesan law made by Mar Mathew Makil namely " Book of decrees" did not have any such restriction. Even in B1 there is no prohibition or expulsion mentioned for the marriage of a member from outside the community. The only para mentioned even in 2010 enacted B1 in page 85 is as under:

അതിരൂപതയ്ക്കു വെളിയിൽ നിന്നും വിവാഹം കഴിക്കുമ്പോൾ

അതിരൂപതയ്ക്കു വെളിയിൽനിന്നു സമുദായം വിട്ടു വിവാഹം നടത്തുവാൻ ആഗ്രഹിക്കുന്നവർ. അതിരൂപതാ അധ്യക്ഷനിൽനിന്നും അനുവാദം വാങ്ങിയിരിക്കണം. കുരിയപത്രത്തിൽ അപേക്ഷ എഴുതി ബഹു. വികാരിയച്ചന്റെ ശിപാർശയോടെ കുരിയായിൽ സമർപ്പിക്കണം. അതിരൂപതയ്ക്കുവെളിയിൽ നിന്ന് വിവാഹം നടത്തുവാൻ ആഗ്രഹിയ്ക്കുന്ന വ്യക്തിതന്നെ അപേക്ഷ സമർപ്പിക്കേണ്ടതും, വരന്റെയും വധുവിന്റെയും പേര് , വീട്ടുപേര് , മാതാപിതാക്കളുടെ പേര് , ഇടവക , രുപത, ഇടവക മധ്യസ്ഥന്റെ പേര് എന്നിവ കൃത്യമായി

എഴുതിയിരിക്കേണ്ടതും ആയതിനുള്ള കാരണങ്ങൾ രേഖപ്പെടുത്തേണ്ടതുമാണ്. സ്ഥിരവാസമോ താത്കാലിക വാസമെങ്കിലുമോ (quasi domicile) ഉള്ള സ്ഥലത്തെ അജപാലന പരിധിയിലുള്ള ഇടവകയിലേക്കാണ് സാധാരണ ഗതിയിൽ ഇടവക ചേരേണ്ടത്

The Defendant No. 1 has no authority to legislate as to who can be a member of the Defendant No. 2. He has no legislative power under CCEO to prescribe membership condition. Further under CCEO, all members who had been baptized in the Defendant No. 2 will have every right to receive all sacraments in the same diocese (cross of DW1 in page _55 of Written Argument) and admittedly the Defendant No. 1 and 2 refusing the continuance of members in the Diocese on account of the practice of Endogamy.

F) Page 16- Whether Suit is properly instituted (Page 16 of the Arguments)

Two arguments are made under this head

(a) Defendants 5 and 6 are representatives of Vatican State

(b) Service of Summons is not made to Defendant 5 and 6 and not through their agent.

So far as (a) is concerned, the same is already answered in Para 2.25 of the Written Arguments of the Plaintiff (page 33 -34)

Contention that the summons should be served on the Defendant No. 5 and 6 directly and not through the Agent is in correct. The institution of the Suit is prescribed under Order IV. The institution of the Suit was done as prescribed under Order IV. Service of summons is prescribed under Order V and not under Order III. The judgment cited by the Defendants namely "Indira R Pillai Vs. Federal Bank and Others" the law laid down is just contrary to what is argued by the Defendants in this para and support the submission of the Plaintiffs. Order V rule 12 and 13 stipulates that the summons can

be served on the Agent. The Defendants themselves admit the position that the Apostolic Nuncio is the Agent of Defendant No. 5. In the Written Argument of the Defendants in para 4 page 65 (top) it is stated as under:

"Further Exhibit B-7 is a letter issued by the Apostolic Nuncio on behalf of the Congregation of Oriental Churches……."

The Hon'ble Court got served the summons on the same Apostolic Nuncio. The summons was served and this Hon'ble Court was satisfied with the service of summons and subsequently declared Defendant No. 5 and 6 ex-party. If the Defendant No. 5 and 6 wants to get the ex-party, order set aside they should follow due process of law. The Defendant No. 1 and 2 have no locus standi to challenge the service of summons or the ex-party order passed by this Hon'ble Court.

Contention on Customary Law

Defendants content that since admittedly the endogamy practice is prevalent from the time of Bishop Alexander Choolaparambil, this is a custom of the Church for the last 80 years and therefore the same is protected as customary law.

When the Defendants admit that the practice of Endogamy in the Church started at the time of Bishop Alexander Choolaparambil which was on the basis of a false interpretation of the Papal Bull dated 29.08.1911, then no custom in the Church can be claimed. Kindly see para 4.16 and 4.17 (page 106-109) of the Written Arguments of the Plaintiffs. Also kindly see para 4.5 (page 75-90) of the Written Arguments of the Plaintiffs. The practice of endogamy in the Church is started on the basis of a misinterpretation of a Bull and the same cannot be perpetuated under the garb of custom in the Church. No custom can start on the basis of a misinterpretation of a Bull of the Pope. Church never accepted endogamy as a customary law as it is

contrary to Church law. When the CCEO was promulgated in 1990, all the customary law till that time was included in the Canon Law. Kindly see the cross exam of Fr. Jay Stephen.

" 84

……

……

ഒരേ റീത്തിൽ വിവാഹ കുദാശകൾക്കു ഒരേ നിയമമാണുള്ളത് എന്ന് പറഞ്ഞാൽ നിഷേധിക്കാമോ? ഒരേ നിയമം തന്നെയാണുള്ളത് .

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ഒരേ റീത്തിൽ നിയമത്തോടൊപ്പം അതിന്റെ ട്രഡിഷൻ ഉം പാലിക്കുന്നു. അങ്ങ് പറഞ്ഞത് തെറ്റാണു . ഒരു റീത്തിൽ ഒരു സമുദായത്തിന്റെയും ട്രഡിഷൻ പാടില്ല എന്നും ഒരു രീതിൽ ഒരു നിയമമേ ഉള്ളു എന്നും പറയുന്നു? ശരിയല്ല. സെക്കന്റ് വത്തിക്കാൻ കൗൺസിൽ വിവാഹം സംബന്ധിച്ചു സഭ നിയമങ്ങൾക്കൊപ്പം Tradition ഉം പാരമ്പര്യങ്ങളുമൊക്കെ പാലിക്കാം എന്ന് പ്രതിപാദിച്ചിട്ടുണ്ട് .

എന്നായിരുന്നു രണ്ടാം വത്തിക്കാൻ കൗൺസിൽ ? 1962 - 65 കാലത്തായിരുന്നു. 1990 ൽ CCEO ഉണ്ടാക്കിയപ്പോൾ ഈ കൗൺസിൽ എല്ലാം പരിഗണിച്ചല്ലേ നിയമ നിർമ്മാണം നടത്തിയത്? എല്ലാ കാര്യങ്ങളും നോക്കിയാണ് "

Custom is not a defence even otherwise as the same is a violation of the Civil right of the citizens of India, as also a fundamental right violation and a human rights violation. Under the garb of custom, members from the Parish Church which is constructed by members, cannot be expelled. Sathi and untouchability were also practiced once as customary laws in India.

Another important submission is that customary law can be enforced only by any one of the 23 Sui –juris Churches in the Catholic Church and any diocese within any of the Sui Juris Churches cannot have its own customary law. The Syro Malabar Church, which is one of the 23 sui-juris Churches, does not and cannot claim any such customary law. This is revealed from cross examination of DW1 which is quoted above in page 84 of cross examination. Further, the production of B-19 destroys the contention of the customary

law of the Defendants, in which it has been stated that Catholic Church will not accept practice of endogamy.

In the Written Statement, the only ground mentioned for the practice of Endogamy in the Church was the Papal Bull. In para 24 of the Written Statement it is stated as under:

" This right is permitted by the Holy See, through its Papal Bull"

" Pro Gente Suddistica "……"

Similar statements are also made in para 37 and 41 of the Written Statement.

When the Defendants, after the submissions of the Plaintiffs, found that the defense of practice of endogamy cannot be sustained on the basis of the Papal Bull dated 29.08.1911, the Defendants are attempting to shift from contention based on Papal Bull of 1911 to contention based on customary law. Under customary law they have advanced two arguments, namely:

(a) The alleged practice of endogamy in the community is to be enforced as customary law of the Nation by the Hon'ble Court.

(b) The practice of endogamy should be treated as customary law under canon law of Catholic Church and a few canons were quoted in support of their contention.

So far as customary law to be enforced by the Hon'ble Court is concerned, it is submitted that nowhere in the pleadings such a contention was raised, no evidence was adduced before Court regarding the requirements of practice of endogamy to be enforced as a law by the Hon'ble Court. Above all, any such practice is contrary to the fundamental rights of citizens of India as also violative of the Preamble and Article 51(A) of the Constitution of India. Further such a practice is contrary to the Marriage Act of Christians and when such a practice is contrary to statute also, the contention is invalid.

In Bhimashya Vs. Janavy 92006) (13) Supreme Court cases 627, a case arising from Hindu Adoption and Maintenance Act, 1956 where custom is allowed to be raised as a ground, unlike the present case, the Court *inter alia* held as under:

"Para 23 : It is well-established principle of law that though custom has the effect of overriding law which is purely personal, it cannot prevail against a statutory law, unless it is thereby saved expressly or by necessary implication. (See Magistrates of Dunbar V. Duchess of Roxburghe?, Noble V. Durell8) A custom may not be illegal or immoral, but it may nevertheless, be invalid on the ground of its unreasonableness. A custom which any honest or right minded man would deem to be unrighteous is bad as unreasonable. (See Paxton V. Courtnay9).

Para 24: In Mookka Kone V. Ammakutti Ammal10 it was held that where custom is set up to prove that it is at variance with the ordinary law, it has to be proved that is not opposed to public policy and that it is ancient, invariable, continuous, notorious, not expressly forbidden by the legislature and not opposed to morality or public policy.

Para 30 : There was no specific plea relating to custom though some vague and indefinite statements have been made in the plaint and that too in a casual manner. No issue was framed and no evidence was laid to prove custom."

In the Judgment of ***Ratanlal @ Babulal Chunilal Samsuka vs. Sundarabai govardhandas Samsuka (D.) th. Lrs. & Ors****. Judgment dated 22nd November 2017 Hon'ble Supreme Court in Civil Appeal No.6378 of 2013 it is held inter-alia as under:*

As per the settled law under Section 3(a) the Act, the following ingredients are necessary for establishing a valid custom-

a. Continuity.

b. Certainty.

c. Long usage.

d. And reasonability.

As customs, when pleaded are mostly at variance with the general law, the should be strictly proved. Generally, there is a presumption that law prevails and when the claim of custom is against such general presumption, then whoever sets up the plea of existence of any custom has to discharge the onus of proving it, with all its requisites to the satisfaction of the Court in a most clear and unambiguous manner. It should be noted that, there are many types of customs to name a few general customs, local customs and tribal customs etc. and the burden of proof for establishing a type of custom depend on the type and the extent of usage. It must be shown that the alleged custom has the characteristics of a genuine custom viz., that it is accepted wilfully as having force of law, and is not a mere practice more or less common. The acts required for the establishment of customary law ought to be plural, uniform and constant.

It is very much evident that the appellant in this case has failed to produce any evidence to prove that such practice has attained the status of general custom prevalent among the concerned community. Custom, on which the appellant is relaying, is a matter of proof and cannot be based on a priori reasoning or logical and analogical deductions, as sought to be canvassed by the appellant herein. Hence the issue is answered against the appellant."

It can be seen that the Defendants contention of custom cannot satisfy any of the four tests mentioned above.

Customary Law under the Catholic Church

1) No custom can be claimed derogative of divine law, Cannon 1506(2). Gospel of Jesus is divine law. In the Gospel the greatest commandment of Jesus is "love God and love your neighbor". By removing the member from the diocese and

society by the practice of Endogamy in the Church, the Defendants are propagating hatred. Endogamy is contrary to the Gospel of Jesus. Not even a single phrase from the Gospel could be cited by the Defendants in support of their contentions.

2) Endogamy is in violation of the Articles of faith of the Catholics.

3) Endogamy was claimed not as a custom, but as a result of granting of Endogamy right in the Papal Bull dated 29.08.1911 which is found baseless, incorrect and a result of misinterpretation.

4) Any custom can only be claimed which is uniformly practiced in any of the 23 Su. Juris Churches. No diocese can claim a custom independent of any of the 23 Sui Juris Church customary laws.

5) The illegal and illegitimate practice was challenged by many members. For the last 30 years Biju Uthup case is pending challenging the endogamy practice. No proof as to when the Endogamy practice started is adduced by the Defendants.

6) All customs prevalent and allowable were included in the CCEO when it was promulgated in the years 1990. Therefore there is no basis for the Defendants' contention. All other customs other than those included in the CCEO are prohibited (Canon 6 (2)).

7) A Catholic can be removed from the Parish membership only for grave violation of Canon Law which are described in para 3.6.4 (page 60 of Written Argument). For practice of Endogamy, the Defendants do not allow the members to continue in the Diocese (Ref. No. 2)

8) Conditions prescribed in Canon 1506, 1507, 1508 and 1509 are not fulfilled for the illegal and unjust endogamy practice. No pleadings or evidence is before the Hon'ble Court as to how these provisions will apply in the case.

9) Canon law provides as to the conditions for a valid marriage between two Catholics. Only Pope and his Roman Curia can prescribe any further conditions for a valid marriage. Compliance of Endogamy is not a condition for valid marriage under Canon Law.

10) Jesus came to the world, and the Gospel and other parts of the New Testament were written before the Knanayites came to India and therefore there will not be any mention in the New Testament about the practice of Endogamy by the Knanayites.

11) Practice in the old testament time is already explained in para 3.4.6 to 3.4.10 page 46 to 49 of the Written Arguments of the Plaintiffs.

12) Vatican Council II did not approve endogamy in the Catholic Church. According to Vatican Council-II Endogamy is a Sin and contrary to the sacrament of marriage.

13) There is no personal jurisdiction granted for Knanayites by the Catholic Church. If that was so, all the Knanayites within the Catholic Church would have been in Defendant No.2. It is like any other diocese, except to the extent that Defendant No. 2 in collusion with Defendant No. 4 without informing the Pope and Defendant No. 5 and 6 about the unchristian illegal practice of endogamy by the Defendant No. 2, got extended the jurisdiction upto the territory of Syro Malabar Church in the year 1955. The further extension of Defendant No. 2 to a few places in Karnataka was done as a result of collusion between Defendant No. 4 and Defendant No.2 without any mandate from the Pope. This is also evident from B-19 where in the Defendant No. 5 categorically intimated Defendant No. 1 that Catholic Church will not approve endogamy practice.

In para 29 of the Written Statement a false contention was raised that " A member in a Syro Malabar Church cannot claim

as of right to be member in a particular parish or diocese". The Church law is that when a person is baptized he becomes a member in that Parish and he continues to be so till his death. Now in the Written Arguments under K (para 2 in page 63) it is admitted as under:

"The membership in the parish or diocese is determining on the basis of his/her place of residence".
Kindly see the submissions of the Plaintiff in para 3.6 and 3.7 (page 52-61) of Written Argument of the Plaintiffs.

Human Right Violation by the Defendant

The Defendants made a perverted argument that excommunicating member from Defendant No. 2 is protected under Human Right Conventions.
It is submitted that Human Rights are for humans and not for organized mobs who deny human rights. Human Rights are those rights which belong to an individual by virtue of being born as a being human. Human beings ought to be protected against unjust and degrading treatment. Human Rights being essential for all round development of the personality of individuals in the society is protected and made available to all the individuals.

All the provisions of International covenants quoted in the Arguments of the Defendants (Page 46-55) support the Argument of the Plaintiffs that such a practice of endogamy by the Defendants is a human right violation of the members who are expelled as well as those who remain unmarried.

The Plaintiff's comments on some of the judgments cited during the arguments of the Learned Counsel for the Defendants

The Plaintiff submits that a number of judgments were cited during arguments. Most of them can be found as not even remotely applicable to the facts of the subject case. However, comments on a few of the judgments quoted are submitted hereunder:

1) In Page 38, Para 11, ***Gokal Chand v. Parvin Kumari, AIR 1952 SC 231***.It is submitted that the Defendant is not qualified to avail the customary law as held by the Hon'ble Supreme Court of India in this case, for a variety of reasons which are explained hereinabove. Further, in that case, documentary evidences were adduced in support of proving custom by a public record of custom. In the subject case there is neither documentary evidence nor oral evidence.

2) The judgments of Kerala High Court quoted in Page 39, Para 12, namely,***Odivalu Fathima Vs Hassan Ismail 1997 (2) KLT SN 4 P.6*** and ***Varkey Vs St. Mary's Catholic Church, Mulakkulam, 1997 (2) KLT 192*** are also not applicable to the facts of the subject case.

3) In Page 44, under Para 18, ***Ass Kaur Vs Kartar Singh,AIR 2007 SC 2369***,is quoted. The aforesaid case has no application in the subject case as the same was under Hindu Law which recognises customary law as its part. In the subject case the position is different.

4) The next case referred is in Page 45, under Para C, ***Indra Sawhaney Vs Union of India, 1993 SC 477***. This judgment

is quoted for an argument that Supreme Court recognized practice of endogamy among the Catholics. First of all, the Para is incorrect. This judgment does not lay down any such law. Reference by the Defendants have been to an *obiter-dicta*while describing caste system in India. The said judgment is concerned with reservation for socially and educationally backward classes in employment.

5) In support of the endogamy practice, in Page 46, Para 2, three judgments are quoted they are (1) ***K.C. Vasant Kumar and Anr. V. State of Karnataka, AIR 1985 SC 1495,*** (2)***Valsamma Paul Vs Cochin University, (1996) 3 SCC 545,***and (3) ***Punit Rai Vs Dinesh Chowdary, (2003) 8 SCC 204.*** The First two judgments are mainly concerned with reservation in public employment and the third one is an election case where determination of caste was the issue. Nowhere, even remotely, has the Supreme Court recognized or approved any endogamy practice as the same is a violation of the fundamental rights of the citizens of India. It is further submitted that the Defendants relying on the judgment in "*Valsamma Paul Vs Cochin University*" for a contention of endogamy is really absurd. The said judgment supports the case of the Plaintiff and a few relevant Paragraphs are quoted hereunder:

> *"16. The Constitution seeks to establish secular socialist democratic republic in which every citizen has equality of status and of opportunity, to promote among the people dignity of the individual, unity and integrity of the nation transcending them from caste, sectional, religious barriers fostering fraternity among them in an integrated Bharat. The emphasis, therefore, is on a citizen to improve excellence and equal status and dignity of person. With the*

advancement of human rights and constitutional philosophy of social and economic democracy in a democratic polity to all the citizens on equal footing, secularism has been held to be one of the basic features of the Constitution (Vide : S.R. Bommai v. Union of India) and egalitarian social order is its foundation. Unless free mobility of the people is allowed transcending sectional, caste, religious or regional barriers, establishment of secular socialist order becomes difficult. In State of Karnataka v. Appa Balu Ingale this Court has held in paragraph 34 that judiciary acts as a bastion of the freedom and of the rights of the people. The Judges are participants in the living stream of national life, steering the law between the dangers of rigidity and formlessness in the seamless web of life. Judge must be a jurist endowed with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future to decide objectively, disengaging himself/herself from every personal influence or predilections. The Judges should adapt purposive interpretation of the dynamic concepts under the Constitution and the act with its interpretative armory to articulate the felt necessities of the time. Social legislation is not a document for fastidious dialects but means of ordering the life of the people. To construe law one must enter into its spirit, its setting and history. Law should be capable to expand freedom of the people and the legal order can weigh with utmost equal care to provide the underpinning of the highly inequitable social order. Judicial review must be exercised with insight into social values to supplement the changing social needs. The existing social inequalities or imbalances are required to be removed re-adjusting the social order through rule of law. In that case, the need for protection of right to take water, under the Civil Rights Protection Act, and the necessity to uphold the constitutional mandate of abolishing untouchability and its practice in any form was emphasized.

22. In the onward march of establishing an egalitarian secular social order based on equality and dignity of person, Article 15(1) prohibits discrimination on grounds of religion or caste identities so as to foster national identity which does not deny pluralism of Indian culture but rather to preserve it. Indian culture is a product or blend of several strains or elements derived from various sources, in spite of inconsequential variety of forms and types. There is unity of spirit informing Indian culture throughout the ages. It is this underlying unity which is one of the most remarkable everlasting and enduring feature of Indian culture that fosters unity in diversity among different populace. This generates and fosters cordial spirit and toleration that make possible the unity and continuity of Indian traditions. Therefore, it would be the endeavour of everyone to develop several identities which constantly interact and overlap, and prove a meeting point for all members of different religious communities, castes, sections, sub-sections and regions to promote rational approach to life and society and would establish a national composite and cosmopolitan culture and way of life.

24. The approach in reconciling diverse practices, customs and traditions of the marriages as one of the means for social and national unity and integrity and establishment of Indian culture for harmony, amity and self-respect to the individuals, is the encouragement to inter-caste, inter-sect, inter-religion marriages from inter-region. The purposive interpretation would, therefore, pave way to establish secularism and a secular State.

25. At the cost of repetition, it is stated that pluralism is the keynote of Indian culture and religious tolerance is the bedrock of Indian secularism. It is based on the belief that all religions are equally good and efficacious pathways to perfection or God-

realization. It stands for a complex interpretative process in which there is a transcendence of religion and yet there is a unification of multiple religions. It is a bridge between religions in a multi-religious society to cross over the barriers of their diversity. Secularism is the basic feature of the Constitution as a guiding principle of State policy and action. Secularism in the positive sense is the cornerstone of an egalitarian and forward - looking society which our Constitution endeavours to establish. It is the only possible basis of a uniform and durable national identity in a multi - religious and socially disintegrated society. It is a fruitful means for conflict-resolution and harmonious and peaceful living. It provides a sense of security to the followers of all religions and ensures full civil liberties, constitutional rights and equal opportunities.

26. Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and an indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth-cultural, social and economical. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights……"

32.The immediate question arises : Whether recognition of the community is a precondition? Though it was consistently held that recognition is a circumstance to be taken into consideration, marriage being personal right of the spouses they are entitled to live, after marriage openly to the knowledge of all

the members of the community or locality in which they live and by such living they acquire married status. In the light of the constitutional philosophy of social integrity and national unity, right to equality assured by the human rights and the Constitution of India, on marriage of a man and a woman, they become members of the family and are entitled to the social status as married couple, recognition per se is not a pre-condition but entitled to be considered, when evidence is available. It is common knowledge that with education or advance of economic status, young men and women marry against the wishes of parents and in many a case consent or recognition would scarcely be given by either or both the parties or parents of both spouses. Recognition by family or community is not a pre-condition for married status."

6) In Page 57, Para 5, ***Superintendent & Legal Remembrancer, State of West Bengal Vs Corporation of Calcutta, AIR 1967 SC 997*** is quoted, where there is nothing which supports the contentions of the defendants in this case. Further, in the Puttuswamy case what is "common law" is clearly explained and is no wheresupporting the contentions of the Defendants.

7) A contention was raised in Page Nos. 60-61, Para I, wherein the Letter to the Romans 4:15 and 5:13 are quoted. The same are as quoted below:

Romans 4:15 - *"… where there is no law, there is no violation"*

Romans 5:13 - *"For until the law, sin was in the world, but sin is not imputed when there is no law"*

What is mentioned here is the time when law was not given in the world. That period was before Abraham and Moses. As there was no law, there was no sin. The law was given in the Old Testament times through prophets. The law was given very clearly to Moses by giving the famous "Ten Commandments". By quoting this, the defendant is trying to create a confusion. When Jesus came to the world, he has given a new law which is different from the law prevailing in the Old Testament time. Therefore, the quoting of judgments under this Para has no relevance to the facts of the case.

8) In Page 69, Para 3, ***Acharya JagadishwaranandAvaduta Vs Commissioner of Police, AIR 1984 SC 51,***and ***S. P. Mittal etc. v. Union of India &Ors., AIR 1983 SC 1*** etc. are quoted to find out the meaning of "Religious Denomination". The Defendant No. 2 cannot come under the definition of a Religious Denomination as they themselves claim in the pleadings and evidence, that they are not a Religious Denomination but only an ethnic sect. What is the religious practice which will qualify under Article 25 is well explained in the judgment***A.S. Narayana Deekshitulu Vs State of Andhra Pradesh, AIR 1996 SC 1765***, wherein it is held *inter-alia* as under:

> *"88. Article 25 and 26 deal with and protect religious freedom. Religion as used in these Articles must be construed in its strict and etymological sense. Religion is that which binds a man with his cosmos, his creator or super force. It is difficult and rather impossible to define or delimit the expressions "religion' or matters of religion" used in Article 25 and 26. Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as Cosmos, his maker or his creator which, he believes, regulates the*

existence of insentient beings and the forces of the universe. Religion is not necessarily theistic and in fact there are well known religions in India itself like Budhism and Jainism which do not believe in the existence of God. In India Muslims, believe in Allah and have faith in Islam, Christians in Christ and Christianity: Parsis in Zorastianism: Sikh in Gurugranth Sahib and teachings of GurunanakDevji, its founder, which is a facet of Hinduism like Brahmos, Aryasamaj etc.

91. The Court , therefore, while interpreting Articles 25 and 26 strikes a careful balance between the freedom of the individual or the group in regard to religion, matters of religion, religious belief, faith or worship, religious practise or custom which are essential and integral part and those which are not essential and integral and the need for the State to regulate or control in the interest of community.

93. The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community-life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Article 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matter of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos, Creator and realise his spiritual self. Sometimes, practices religious or secular."

9) In Page 71, Para 7, ***Sardar Syedna Taher Saifuddin Sahib Vs State of Bombay, AIR 1962 SC 853*** has been quoted. The facts of that case and the subject case are different. In that case, the Supreme Court found that Dawoodi Bohra sect is a religious group within the Muslim Religion. Further, in the aforesaid judgment, the excommunication done by its head was compared to the excommunication by the Pope which means that such a power is vested in the Pope only and not anybody

else in the Catholic Church. The law laid down in this judgment (AIR 1962 SC 853) is not agreed to by the subsequent benches and in AIR 2005 SC 752, the Supreme Court decided to refer the case to a larger bench (*Para 13,14*). The Reference is now pending in the Hon'ble Supreme Court of India and the case is tagged with the Sabarimala Case.

V. **Consequences of filing Exhibit B-19 by the Defendants**

The subject suit was filed by the Plaintiffs on 1st September 2015 praying for prohibiting endogamy practice in the Catholic Church. On 25th November 2020, i.e after 5 years from filing of the Suit a private correspondence dated 15th November 2017 exchanged between D1 and D5 is produced before the Hon'ble Court by the Defendants wherein D5 has categorically stated that in the Catholic Church endogamy will not be permitted. This revelation was the reason for the Defendant No. 3 to 6 not opposing the Suit. This revelation is the reason for the Defendant No. 1, his Eminance Mar Mathew Moolakat, not coming forward and give evidence to defend his Written Statement, as His Eminence cannot go against the official position of the Catholic Church regarding Endogamy. This revelation also discloses that this endogamy practice will not be allowed in Syro Malabar Church which is one of the 23 Sui irius Churches of Catholic Church. The revelation also reveals that the endogamy practice in Defendant No. 2 is not in accordance with Church law. "**Defacto tolerance"** mentioned in the letter can be stopped any time as the same is not **dejure** and the fact that the Defendant No. 5 did not oppose the Suit.

A Court of justice cannot tolerate such inhuman and barbarian endogamy practice as the same is a civil right violation, a fundamental right violation as also a human right violation.

For the submissions made above and the submissions made on 8th March 2011, it is prayed that the Hon'ble Court may be pleased to grand the reliefs claimed in the Plaint.

GEORGE THOMAS

Counsel for the Plaintiffs

Place : Kottayam
Date : 05.04.2021