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# THE BATTLEGROUND OF SECULARISM V/S EQUALITY: THE CASE OF SABRIMALA TEMPLE

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Rashmi Rekha Acharya, KIIT School of Law, Bhubaneswar, Odisha

## ABSTRACT

Being a historically diversified self-proclaimed secular country, India is a perfect place to study the intricate and the frequently contentious confluence between law and the religion. The statute of our Indian Constitution which talks about religious freedom allows the government to regulate and prohibit certain aspects of religious activity. The judiciary controls and plays a significant role in assessing the scope whereby the state could constitutionally control the religious affairs within itself by interpreting constitutional guarantees for religious freedom. This article aims at discussing about the devotees who are basically women of menstrual age who must not be permitted in the temple of Sabrimala, by highlighting ideas of distinction between the secularism governed by the state and the religious affairs or rituals in which it should not intervene. Allowing various PILs questioning the religious activities in the Sabarimala case could have an impact on the country's secularism. The Sabarimala temple should be protected under Article 25 of the COI since it cannot be considered purely on the basis of Article 14 of the COI, since equality prevails among equals. This article basically talks about the Sabrimala Verdict which polarized public opinions and sparked a nationwide protest, many of which were endorsed by political parties; it is also expected to have far-reaching implications for India's future regulation of religious affairs.

Keywords: *Article 25, Judiciary, Religion, Sabrimala temple, Secularism*

## INTRODUCTION

### *"Devotion cannot be a subject to gender biasness"*

Chief Justice Dipak Mishra

India is an ideal place to study the complicated interplay of religion and governmental power. The country's unique religious, sociological, and political settings are excellent for delving into the contentious debates over religious freedom and secularism. The SC of India will be the focus of this research, as it is where some of the most challenging religious legal disputes are resolved. In India, the issue of plurality is brought to the fore by diverse religious landscape. Here, the social and legal significance of religious freedom determination is reflected by the debate surrounding the SC judgement on the controversy over the entry of women in the premises of the temple. This case of Sabarimala is among the most recent uprisings for women's rights. It is a fight by women against centuries of exploitative religious principles that prevent them from entering the sacred premises of the Sabarimala Temple at the time of menstruation. Such protests opposing women's rights demonstrates that establishing gender equality in India is still a pipe dream.

People from different backgrounds of life, rich and poor, came to see the Sabarimala Temple. However, in 1991, a Kerala High Court bench made a decision against the Travancore Devaswom Board, which barred women between the ages of 10 and 50 from entering, claiming that such a practise of not allowing women in that age group was common in the past due to traditional practises, and ordered the Kerala government to take appropriate measures to uphold its decision. The matter has been a smouldering fire ever since. But then, the Young Lawyers Association in India filed a case in the SC, urging that women in the aforementioned age category be admitted to the temple due to which there were long battles which were fought against such beliefs.

Hence this article will basically preview the case of Sabrimala Temple to show how the Supreme Court's decision has far-reaching societal implications.<sup>1</sup>

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<sup>1</sup> Silvia Tieri, Sabrimala: Controversy over Women's Access to the Temple, RESEARCHGATE (Mar. 20, 2022, 8:00 PM), <https://www.researchgate.net/publication/332414499>

## BACKGROUND ISSUES OF THE CASE

There were major issues which were laid down in the case of Sabrimala. Some of them were:

- The Prohibition on women based on the biological considerations is in violation of Articles 14, 15 and 17, and any practise that is in violation of the other rights stated cannot be protected by "morality" under Article 25.
- Is the practise of not including women an "essential religious practise" under Article 25, and can a religious organisation claim to be covered by the freedom to govern its own affairs in religious matters?
- Is it true that the rules which were laid down by the Public Worship Authorities of Kerala allow a 'religious denomination' to exclude women aged 10 to 50 from entering? Or, if it does, does restricting women's admittance on the basis of sex violate Art 14 & 15(1) of the COI?

## SECULARISM V/S EQUALITY

The foundational component of the Constitution is secularism. All religions and religious denominations are treated equally by the state. The state can restrict secular activities by establishing legislation.

Secularism is a form of faith that is based on logical faculties and allows one to see the imperative needs for all aspects of human advancement. The court should not ordinarily intervene in matters involving strong religious feelings. Art 25 of the COI protects the Sabrimala Temple and god, and religious acts cannot be judged solely on the grounds of Art 14. Religious practises cannot be judged purely upon the basis of equality solely. It depends upon the believers, and not only the court, to basically establish what the essential practise of a religion is.<sup>2</sup>

In the case filed by the Indian Young Lawyers Association,<sup>3</sup> Justice Indu Malhotra While dissenting from the majority opinion stated that the basic right to religion cannot trump the right to equality. Above all, constitutional principles take precedence. The preamble clearly

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<sup>2</sup> TIMES OF INDIA, <https://timesofindia.indiatimes.com/blogs/in-conversation/sabarimala-secularism-and-sensationalism/> (last visited Mar. 20, 2022).

<sup>3</sup> Indian Young Lawyers Association v. State of Kerala, Writ Petition(Civil) No 373 of 2006.

states that "We the citizens of India solemnly settles to encompass India a supreme, socialist, secular, and democratic republic," implying that the citizens accept the rule of law and that India should remain a secular nation where citizens' rights are prioritised and no segment of the population is discriminated against. If religion discriminates on any basis, the author believes that the discriminatory provision should be removed rather than the right to equality.

In areas of religion, logic cannot be raised, according to Justice Malhotra, who also stated that the religious community, not the court, determines what constitutes important religious practise. The constitutional morality would empower everyone to live out their convictions. Unless there is an aggrieved individual from that section or religion, the court must not intervene.

But the court did not agree with religion being the only arbiter of what is and is not permissible. The notion that the court cannot intervene in such situations is unfounded, as there have been several cases in the past where the court acted as a well-wisher for the general population, saving them from exploitative and unreasonable religious rules.

In the past, the court has interfered in religious cases such as in the case of Shani Shringnapur temple and Haji Ali Dargah, where the women were denied access due to the Bhumata brigade's protest. The court intervened in these cases since it was not a vital religious practise like that of the Ayyappans. The sole essential practise for Ayyappa devotees is celibacy, which has nothing to do with the prohibition on women entering Sabarimala. Instead, this provision is against constitutional morality because it prevents half of India's population from visiting a public place. And according to the Indian Constitution, religion is considered as a collection of people classified under the same religious sect, name or institution with a shared faith that is identified by a totally separate name. Hence the followers of Ayyappa do not form any separate religious sect because they do not have any common faith or common name. Ayyappans are basically Hindus since Ayyappa is the son of the Hindu gods Vishnu and Siva.

If Hinduism is to become their religion, it must first become a religious ideology of social equality. While women's "non-entry" can be a religious tenet, it cannot be assumed that its limitation will fundamentally and irrevocably damage the sect's survival and core belief system in this scenario.

## **THE SUPREME COURT VERDICT**

The SC declared on Sep 28, 2018, in a 4:1 decision, that the prohibition on women entering the Sabarimala shrine was unconstitutional and discriminatory. As a result, it was ordered that the restriction of women under any age group entering the temple be lifted. The allegations which were put forth by the petitioners were upheld by CJI Dipak Misra, A.M. Khanwilkar J, R.F. Nariman J, and Justice Dhananjaya Y. Chandrachud, with only Justice Indu Malhotra delivering a dissenting opinion.

### **Opinion of CJI Dipak Mishra**

Religion is a part of living integrally tied to dignity of an individual and patriarchal practises based on marginalization between the one genders in lieu of the other could usually not be recognized to impinge on basic freedom to practise and proclaim one's own religion. He claimed that the practice in the Sabarimala Temple of excluding women between the age group of 10 & 50 years deprived women of their right to freedom of worship, as guaranteed by Article 25 of COI. He came to the conclusion that the Sabarimala tradition of exclusion of women in the Sabrimala temple is subject to state-mandated reform at the earliest by striking down the rules made by the Public Worship Authorities of Kerala by stating the rules to be ultra vires to the constitution to which Justice Chandrachud has concurred upon.

### **Opinion of Justice Nariman**

He expressed a concurring viewpoint. He claimed that Ayyappa devotees in the Sabrimala temple do not form any distinct religious sect in the society. He identified those people as Hindus who worship the idol of the Ayyappa. As a result, looking at the facts and circumstances, he concluded that the presence of the blind denominational freedom in the temple of Sabrimala, as guaranteed by Art 26, is subject to an urgent social reform mandate in the state, as guaranteed under Art 25(2) (b) of the COI.

He laid emphasis on Art 25(1) which safeguards the crucial and fundamental right of women between the ages of 10-50 years to enter the Sabarimala Temple and exercise their opportunity and freedom of worship and also stated that there were present sufficient materials and factual evidence to finally draw to a close that the barring of women from Sabarimala violated the basic right under Article 25(1) of the COI and stroked down the rules made by the Public Worship Authorities of Kerala.

### **Opinion of Justice Chandrachud**

In a separate and concurring decision, Justice Chandrachud stated that the Sabarimala Temple's exclusion of women aged 10 to 50 years was antithetical to the constitutional morality and values and undermined the ideas of liberty, and dignity. He argued that morality as defined by Art 25 & 26 of the COI cannot be used to erode the fundamental rights secured by these Articles. The Ayyappans, or worshipers of Lord Ayyappa in the Sabarimala Temple could not meet the standards designed by the judiciary to be designated a totally different religious denomination or sect. Hence Justice Chandrachud agreed with CJI Dipak Misra and Justice Nariman's findings. He claimed that the practise of exclusion was not really a necessary religious practise.

He was also of the view that women's physiological traits, such as menstruation, have no influence on the constitutional rights that are given to them, according to Justice Chandrachud. The condition of a woman at the time of menstruation cannot be any solid constitutional ground to deprive her of the dignity, and the shameful act connected within it has basically no position in our constitutional system.<sup>4</sup>

### **Dissentient Stance of Justice Indu Malhotra**

A conflicting outlook was given by Justice Indu Malhotra. She claimed that in a secular nation like India, constitutional morality necessitates the 'attunement and harmonization' of multiple competing and clashing up of interests to the fundamental rights of the COI. She also stated that regardless of whether a religious denomination's activities are rational or logical, the Court must accept its right to conduct their internal affairs.

She said that the Sabarimala Shrine meets the criteria for being classified as a distinct religious group. She concluded that the Sabarimala Temple has the basic right to conduct its own individual business under Art 26(b) and is not subjected to the mandate under Art 25(2) (b) of the COI, that solely applies to Hindu religions.

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<sup>4</sup> Rajesh M, Sabarimala Case: Religious Rituals And Religious Rites in Hindu Law, LEGAL SERVICES INDIA. BLOG (Mar. 20, 2022, 9.45 PM), <https://www.legalserviceindia.com/legal/article-5253-sabarimala-case-religious-rituals-and-religious-rites-in-hindu-law.html>

According to her the "constitutional morality" must be viewed in the context of India's multicultural society. She remarked that the state needs to respect the religious freedom of various persons and religions.

She argued that Art 14 cannot trump Art 25, which protects everyone the right to profess, practise, and propagate their faith and their own religion. She concluded by saying that the rules which were made by the Public Worship Authorities of Kerala do not conflict with the parent act and said that the provision 'carves out an exemption in the context of public worship'. The rule was in accordance with the Constitution's Article 26(b) of COI.<sup>5</sup>

## **REACTIONS ON THE BAN LIFTING**

The controversy of the Sabrimala has seen various protests and mass mobilisation from both sides on multiple occasions and through various media throughout the years. Women were mobilised and took part in both pro and anti-ban demonstrations.

Enraged women across India protested online in 2015 after the Travancore Devaswom Board made a sexist remark about the auspicious arrival of a future menstruation-detecting gadget. Inspired by a young student's post upon that user-generated content portal youth ki awaaz about menstrual taboo, 21 ladies across social media submitted photos of pads with the popular hash tag "Happy to bleed." Soon after, in the initial years of 2016, the female supporters who were in favour of the ban launched the "Ready To Wait" initiative, voicing their desire to desist from visiting the shrine until they are 50 years old, claiming that the restriction is motivated by Ayyappan's brahmachari nature rather than discrimination against women.

With the recent legal developments in the Sabarimala case in 2018, a new wave of demonstrations erupted. As the elections loomed gradually, the Sabarimala matter became more politicised, with the government, the political parties, and political organisations by all taking part in demonstrations. Crowds began demonstrating in support of the ban just prior, and mainly after, the Supreme Court's verdict. Women's public meetings, mobs of pilgrims denying women's entrance to the hill even after the prohibition was removed, and blockades and assaults on journalists were among the protests. Protesters frequently acted on the orders of various religious boards and organisations.

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<sup>5</sup> Pragma Dixit, Sabrimala Case Summary, LAW CIRCA. BLOG (Mar. 20, 2022, 8:35 PM) <https://lawcirca.com/sabarimala-case-summary/>

The "Kerala Wall," a "620-kilometer long human chain of millions of women standing beside one another on the roads of Kerala, owing to effective mobilisation spearheaded by the Indian Communist Party i.e. Marxist - the present government in Kerala, marked the beginning of 2019. The BJP attempted to gain a foothold in the state by rallying the pro-ban front, taking advantage of the verdict's unpopularity among a portion of Keralites (men and women). After the entry of the two fertile-aged women inside the temple under the protection of the police during January 2019, it resulted in protests that temporarily paralysed the state and even resulted in one death. The Congress party, which has traditionally allied itself with secular principles and is also in a minority in Kerala, has unexpectedly criticised rather than endorsed the court's decision.

## **CONCLUSION**

Sabrimala has been currently the most contentious topic, and the issue does not appear to have been settled even after the Supreme Court's decision. The order to allow women inside the temple has enraged various devotees, resulting in current protests; however, the moment has come down to find an answer to the problem with diligence and basically find a final fix to the solution. Now it is the time for individuals to rise above their petty fundamentalist feelings and work together. In the case of Sabrimala, it was not just about the ability to practise religion; it was also about the women who were treated unfairly and were deemed impure because of their biological menstruation trait. Hence the dissenting opinion of Justice Indu Malhotra has been disagreed by the author.

The author is certain that the Supreme Court's decision to permit women to visit Sabrimala was in the best interests of the constitution and the general public. However, one important issue that has yet to be resolved is that, while the SC has allowed women to enter the temple, there are no norms or rules in place to make sure that they may do so securely. Women's admittance into Sabrimala is still a pipe dream for them; women have only been permitted to access the temple on paper so far, defeating the fundamental point of the ruling.

According to us, this is a situation that requires tight government action, and we will strongly oppose any politicization of this issue. It is well recognised that the executive must carry out the Supreme Court's decision, and we fail to see basically how this case is an exception or deviation, because the authorities and the people in the administration have entirely ceased to provide or bestow women with the access to the temple's sanctum sanctorum.



The women must not be looked as neglected citizens ever. India is currently engulfed in a swarm of patriarchy, which needs be eradicated. The author is not in benevolence of female predominance either; instead, we basically need a society in which there is an equilibrium and fairness between the genders, and this equilibrium can only be attained by converting people's discriminatory mentalities as good.