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# GENDER JUSTICE IN THE FACE OF RELIGIOUS TRADITIONS: AN ANALYSIS OF THE SABARIMALA TEMPLE CASE

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Tanmay Deshmukh, ABACL, Mumbai

## ABSTRACT

Religion has always been a significant aspect of Indian culture, and the rights to freedom of religion and equality are the bedrock of Indian democracy. In the *Indian Young Lawyers' Association v. State of Kerala and Others* case, the Supreme Court had to decide between women's rights and religious rights, and it leaned towards women's rights by allowing women of menstruating age to enter Sabarimala temple. However, this decision has received widespread criticism, and many have questioned whether it contravenes the constitutional mandate of secularism. This paper aims to examine the ongoing Sabarimala debate, which questions whether allowing women of menstruating age to enter Sabarimala is a move towards women empowerment and development. It also seeks to understand the subsequent reaction after the judgment and the reasons behind the criticism it has received. The research will delve into the history and customs of Sabarimala and the reasons behind the ban on the entry of women of menstruating age. Furthermore, it will discuss the arguments presented by the parties in the case, including the position of the temple administration and the state government, and analyze the Supreme Court's reasoning behind its decision. One of the crucial issues that this paper seeks to address is whether the Supreme Court's decision violates the constitutional mandate of secularism. It will explore the implications of the decision on the relationship between religion and the state and the challenges that arise when religious customs conflict with individual rights. It will also examine the debate over whether the judgment reflects the changing societal norms and whether the judiciary has the power to reform religious practices. This research paper will employ qualitative research methods such as literature review, case analysis, and critical analysis to answer the research questions. The literature review will analyze the existing literature on the Sabarimala case and similar cases concerning religious rights and individual rights. The case analysis will examine the Sabarimala case's facts and the legal arguments presented by

the parties. The critical analysis will analyze the Supreme Court's reasoning behind its decision and the subsequent reaction after the judgment.

## INTRODUCTION

Sabarimala Temple, located in the picturesque Periyar Tiger Reserve in Pathanamthitta district of Kerala, India, is a sacred shrine revered by millions of Hindus. Perched atop a hill that towers 3,000 feet above sea level, the Sabarimala Sree Dharma Sastha Temple is dedicated to Lord Ayyappa, who is believed to be the son of Lord Shiva and Goddess Mohini, an avatar of Lord Vishnu. Despite being open to devotees of all faiths, the temple is only open for worship during the three auspicious days of "Mandalapooja, Makaravilakku and Vishu." Before visiting the temple, pilgrims must observe a 41-day period of celibacy<sup>1</sup>, as Lord Ayyappa is revered as an eternal celibate.

Legend has it that Lord Ayyappa was born to vanquish and slay a powerful female demon. As the offspring of two powerful divine beings, he possessed exceptional prowess and eventually fulfilled his mission by killing the demon. However, as a result of his actions, a beautiful woman emerged from the slain demon's body, who had been cursed and was now free. Lord Ayyappa, having promised to answer his devotees' prayers and questions, refused to marry her until the day the "kanni-swamis" or first-time visitors stopped coming to seek his blessings. In the meantime, she waited patiently in a neighboring shrine near the main temple and was worshipped as Malikapurathama. Out of reverence for Malikapurathama and Lord Ayyappa's vow of celibacy, women of menstruating age (between 10 to 50) are traditionally not permitted to enter the temple.

However, in 1991, the Kerala High Court was presented with a challenge to this restriction in the case of *S. Mahendran v. The Secretary, Travancore Devaswom Board*<sup>2</sup>. Despite this, the High Court upheld the long-standing ban on women of a certain age group from entering the temple. It was not until the landmark judgement on 28 September 2018 in the *Indian Young Lawyers' Association v. State of Kerala*<sup>3</sup> that the Supreme Court overturned the ban. The Constitution Bench, headed by then Chief Justice Dipak Misra, ruled in a 4:1 verdict that the temple's tradition violated women's right to equality and right to worship. Nonetheless, Justice

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<sup>1</sup> GOVERNMENT OF KERALA, SABARIMALA SHREE DHARMA SASTHA TEMPLE <http://www.sabarimala.kerala.gov.in> (last visited Oct. 11, 2021).

<sup>2</sup> AIR 1993 Ker 42 (India).

<sup>3</sup> (2019) 11 SCC 1 (India).

Indu Malhotra dissented from this judgement, arguing that an age-old religious custom should not be interfered with and that worship was a sacred experience between the devotee and the worshipped.

While the judgement was a significant victory for advocates of gender equality and women's rights, it was not without controversy, and some devotees still hold strong reservations about the lifting of the ban. Nevertheless, the Sabarimala Temple remains a place of great significance for millions of Hindus worldwide, and Lord Ayyappa continues to be revered as a powerful and revered deity.

## **LEGAL ISSUES**

Whether the exclusionary practice which is based upon a biological factor exclusive to the female gender amounts to “discrimination” and thereby violate the very core of Articles 14, 15, and 17 and is not protected by “morality” as used in Articles 25 and 26 of the Constitution?

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

Whether Ayyappa Temple has a denominational character and if so, is it permissible on the part of a ‘religious denomination’ managed by a statutory board and financed under Article 290A of the Indian Constitution out of the Consolidated Fund of Kerala and Tamil Nadu to indulge in such practices violating constitutional principles/morality embedded in Articles 14, 15(3), 39(a) and 51-A(e) ?

Whether Rule 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules permits ‘religious denomination’ to ban entry of women between the age of 10 and 50 years? And if so, would it not play foul of Articles 14 and 15(3) of the Constitution by restricting the entry of women on the ground of sex ?

Whether Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 is ultra vires the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 and, if treated to be intra vires, whether it will be violative of the provisions of Part III of the Constitution?

## AN ANALYSIS OF THE MAJORITY JUDGEMENT

*Dipak Mishra CJI and A.M. Khanwilkar, J.*

The verdict, jointly delivered by A. M. Khanwilkar, J., and Dipak Misra, CJI, unequivocally stated that women are in no way inferior to men. It further emphasized that the tenets of faith and belief cannot be subjected to religious patriarchy. The dichotomy in religion that restricts women's rights to practice their faith and beliefs was called into question. While women are regarded as divine beings, severe limitations on their religious rights seem incongruous. Therefore, the court's ruling challenged the validity of such restrictions and upheld the principle of gender equality.

It is imperative for society to undergo a paradigm shift, transitioning from a patriarchal hegemony to granting women equal status with their male counterparts. Although religion and faith do not condone discrimination, their practices have entrenched patriarchal ideologies, conferring superiority upon men. Therefore, reformation is necessary to eradicate such practices and ensure gender equality.

The practice of barring women aged 10-50, based on their physiological condition of menstruation, from entering the temple violates the constitutional principle of equality enshrined in Article 14. The exclusionary practice, being beyond the control of women, is discriminatory and runs counter to the sacrosanct principle of equality of status and opportunity. In *Deepak Sibal v. Punjab University and another*<sup>4</sup>, the apex court upheld that the exclusionary practice impinges upon the constitutional guarantee of equality before the law. Similarly, in *Shayara Bano v. Union of India*<sup>5</sup>, the Supreme Court declared the practice of triple talaq as unconstitutional, as it was grounded in physical traits, and conferred superiority to men, without serving any valid objective, and did not satisfy the test of reasonable classification.

In the landmark cases of *National Legal Services Authority v. Union of India*<sup>6</sup> and *Justice K.S. Puttaswamy and another v. Union of India*<sup>7</sup> and others, the venerable Supreme Court expounded that discriminatory practices targeted against women are antithetical to the

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<sup>4</sup> (1989) 2 SCC 145(India).

<sup>5</sup> (2017) 9 SCC 1(India).

<sup>6</sup> (2014) 5 SCC 438(India).

<sup>7</sup> (2017) 10 SCC 1(India).

hallowed principles enshrined in Article 21 of the Constitution, which include the sacrosanct rights of life and personal liberty. The Court's learned pronouncement has emphasized the paramount importance of securing the dignity and autonomy of women, and their inherent right to live with self-respect and self-worth, free from the shackles of exclusionary customs and traditions that seek to perpetuate patriarchal hegemony.

Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 has been found to be in violation of Article 25(1) of the Constitution, which upholds the right to practice, profess and propagate religion. The rule, which bars women of menstruating age from entering the Sabarimala temple, is a clear infringement of the right of Hindu women to practice their religion and is therefore unconstitutional. In the case at hand, the Indian Young Lawyers' Association, along with several other petitioners, argued that the Sabarimala Temple is not a separate religious denomination as it conducts "Puja," which is a fundamental tenet of Hinduism. As a result, it falls under the umbrella of Hinduism and cannot be allowed to discriminate against women on the basis of their menstrual status.

The Supreme Court in the case of *S.P. Mittal v. Union of India & Ors*<sup>8</sup> has pronounced that the term "religious denomination" used in Article 26 of the Constitution must derive its meaning from the term "religion" itself. Hence, a "religious denomination" should have a clear and unequivocal association among its members. These denominations must have a unique set of rites, customs, or practices and must possess their own distinct name and religious institutions. If the characteristics of a particular group vividly demonstrate that it is a distinct sect based on its beliefs and practices, and has a group of followers who share the same faith, then it would rightfully be classified as a "religious denomination"

The evolution of the concept of essential practices in India has enabled the judiciary to intervene in religious matters. The genesis of this principle can be traced back to the landmark case of *Shirur Muti*<sup>9</sup> in 1954, where the Supreme Court, comprising a bench of seven judges, examined a challenge to the Madras Hindu Religious and Charitable Endowments Act 1951. The statute empowered a statutory commissioner to frame and settle schemes, as there were allegations of mismanagement of funds in the religious institution concerned. The petitioner argued that his right to manage religious affairs was being encroached, thus violating Article

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<sup>8</sup> 1983 SCR (1) 729(India).

<sup>9</sup> 1954 SCR 1005(India).

26(b) of the Constitution. In determining what constitutes an essential part of a religion, the Court opined that such an aspect should be ascertained primarily from the doctrines of the religion itself, and that there should be a distinction between religious and secular practices.

The purview of the court's intervention in religious matters, particularly concerning the infringement of civil rights, is constrained and requires careful consideration. Distinguishing between religious customs and the right to worship itself can be a challenging task. Matters that pertain to the conduct of worship, rather than the right to worship, do not typically fall within the jurisdiction of civil courts. In the case of *Bijoe Emmanuel v. State of Kerala*<sup>10</sup>, the Headmistress of a school in Ettumanoor near Kottayam expelled three children, namely Bijoe, Bino Mol and Bindu Emmanuel, for their refusal to sing the National Anthem along with other students. The children, who belonged to the religious sect of Jehovah's Witnesses, asserted their right to worship by stating that they could only sing religious songs and not secular ones. The children approached the High Court of Kerala through a writ petition to challenge the actions of their Headmistress.

According to the petitioners in the Sabarimala Temple case, the temple cannot be considered a religious denomination solely based on the practice of taking an oath of celibacy during a particular period of pilgrimage. All pilgrims are allowed to visit the temple freely, and there is no religious practice that forbids them from seeing women during this period. Moreover, the vow of celibacy cannot be so fragile that it can be broken by merely seeing women. Therefore, celibacy is only a ritual that some Ayyappans follow, while others do not. The devotees of Ayyappa visit the Sabarimala Temple not only to take the oath of celibacy but also to receive blessings from their Lord.

This case also delves into the distinction between public morality and constitutional morality. The concept of morality should not be narrowly interpreted, and the term "morality" in Article 25(1) of the Constitution is not limited to individual perceptions or subjective morality. The Constitution is created by and given to the people themselves, and thus, the notion of morality is public morality and must be understood in the context of constitutional morality.

### ***Justice D.Y. Chandrachud***

The pronouncement made by the Honourable Justice D.Y. Chandrachud underscores the

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<sup>10</sup> 1986 SCR (3) 518(India).

paramount importance of the fundamental principles enshrined in the Preamble of our Constitution, namely, justice, equality, liberty, and fraternity. It is worth noting that while the notion of secularism has always been implicitly intertwined with the fabric of our Constitution, it was explicitly reinforced by the 42nd Constitutional Amendment Act, 1976, which incorporated it into the Preamble. The custom in question, which has come under scrutiny, is antithetical to the very essence and spirit of the constitutional architects. As the Constitution recognizes religion as an intrinsic facet of human identity and accords its citizens the unassailable right to practice their religion freely, it is incumbent upon us to ensure its preservation and protection.

Justice D.Y. Chandrachud further expounded that the impugned custom runs afoul of the provisions enshrined in Article 17 of the Indian Constitution, which unequivocally abolishes untouchability and its pernicious practice in any shape or form. It is notable that the Constitution's framers intentionally refrained from defining the term 'untouchability,' as its insidious manifestations and implications are deeply ingrained in the Indian socio-cultural milieu. The *raison d'être* behind the prohibition of untouchability is to eradicate the odious practice of social ostracization and foster a culture of egalitarianism.

The impugned custom can be construed as one that espouses the dogma of purity and pollution and perpetuates the systemic ostracization of women on account of their menstrual cycle, a manifestation of societal discrimination based on gender. The use of the phrase "any form" in Article 17 of the Constitution entails that the exclusion of women from the precincts of a temple may also be considered as a form of untouchability. Furthermore, Explanation II of Section 7 of the Protection of Civil Rights Act, 1955 explicates untouchability as the act of untouchability or its practice in any form, and even if a person endeavors to rationalize the practice on historical, religious or philosophical grounds, it would still constitute instigation to untouchability.

### ***Justice R.F. Nariman***

While Justice Nariman's judgment is distinct, it harmoniously aligns with the verdict pronounced by Dipak Misra, the former Chief Justice of India, on behalf of himself and A.M. Khanwilkar. Justice Nariman expressed that the writ petition in question raises significant issues concerning fundamental rights under Articles 25 and 28 of the Constitution. The outright and unqualified preclusion of women can be construed as contravening the provisions

enshrined in Article 25 of the Constitution, which guarantees the right to freedom of religion, including the freedom to profess, practice, and propagate any religion.

The Supreme Court has, in its judgment in *Ratilal Panachand Gandhi v. State of Bombay and Ors.*<sup>11</sup>, established that the right to freedom of religion as guaranteed under Article 25 of the Constitution includes the liberty to perform those rituals and practices that are integral to a particular religion. Nonetheless, this right is not absolute and is subject to regulation by the State to ensure public order, health, and morality.

In the American case of *Davis v Beason*<sup>12</sup>, Justice Fields defined religion as an individual's manner of defining their relationship with the Creator, and manifesting reverence, obligations, and obedience towards the Divine Will. While religion may be outwardly expressed through acts, it is fundamentally an intrinsic and personal facet of an individual's being, which is considered conducive to their spiritual well-being. Consequently, the absolute prohibition on women from entering the temple impedes their right to worship and hampers their ability to partake in religious practices that are integral to their faith.

In the case of *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*<sup>13</sup>, Chief Justice Sinha, while dissenting from the majority decision that struck down the Bombay Prevention of Excommunication Act, 1949, articulated certain opinions that were in consonance with the majority judgment. As a result, it was established that the right to freedom of religion as enshrined in Article 25 of the Constitution is an individual right that is distinct from the rights exercised by a collective group or religious denomination. Hence, every individual belonging to a particular community has the right to profess, practice, and propagate their religion, as long as it does not impede upon the rights of others.

## AN ANALYSIS OF THE DISSENTING JUDGEMENT

### *Justice Indu Malhotra.*

Justice Indu Malhotra, while delivering her judgment, highlighted the potential conflict between the right to equality and the right to worship of the devotees of Lord Ayyappa and the deity of the Sabarimala temple. She opined that the doctrine of equality should not be permitted

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<sup>11</sup> 1954 SCR 1055(India).

<sup>12</sup> 133 U.S. 333 (USA).

<sup>13</sup> 1962 Supp. (2) SCR 496 (India).



to override the fundamental right to worship as guaranteed under Article 25 of the Constitution. It is noteworthy that the issues raised in this case have far-reaching and unprecedented consequences for various religions that are practised across the country. As anticipated, the constitution of a nine-judge bench to adjudicate on the matter of religious practices pertaining to women belonging to Islamic and Zoroastrian religions underscores the criticality of this matter.

## **POST JUDGEMENT DEVELOPMENTS**

On the 14th of November 2019, a Bench with a majority of 3:2 in a landmark decision, referred the Sabarimala case to a larger Bench. The learned Justices Nariman and Chandrachud, in their dissenting opinion, dismissed all the review pleas. The erudite Chief Justice Ranjan Gogoi, on behalf of himself and the venerable Justices AM Khanwilkar and Indu Malhotra, pronounced the verdict that a larger bench would decide all such religious issues relating to Sabarimala, the entry of women in mosques and the practice of female genital mutilation in the Dawood Bohra community. The decision made by the Supreme Court had far-reaching consequences, and its impact on various religions throughout the country was unprecedented.

In due course, a 9-judge bench was constituted by the Supreme Court, presided over by the then Chief Justice S.A. Bobde. The hearing on the aforementioned issues commenced on the 6th of February 2020, and the bench constituted was an assemblage of some of the finest legal minds in the country, including Justices R Banumathi, Ashok Bhushan, L Nageswara Rao, Mohan M Shantanagoudar, S Abdul Nazeer, R Subhash Reddy, BR Gavai, and Surya Kant. The Constitution Bench, comprising these learned judges, was tasked with the onerous responsibility of addressing seven pertinent questions relating to the contentious issues under consideration.

The questions are as follows:

1. The interrelation between Articles 14, 25 and 26, i.e., right to equality, the right to freedom of religion and the right to manage religious affairs respectively.
2. The meaning and the intent of the words ‘ public order, morality and health ’ occurring in Article 25(1) of the Constitution.
3. The expression ‘morality ’or ‘constitutional morality ’has not been defined in the

Constitution.

4. The extent to which the court can intervene in deciding whether a particular religious practice is essential to the religion or not, or should that be left exclusively to be determined by the head of the section of the religious group.

5. What is the meaning of the expression 'sections of Hindus' appearing in Article 25(2)(b) of the Constitution?

6. Whether the "essential religious practices" of a religious denomination, or even a section thereof are afforded constitutional protection under Article 26?

7. What would be the permissible extent of judicial recognition to PILs in religious affairs by people not belonging to the concerned religious denomination?

At the outset, a core committee member of the Sabarimala Temple urged the Court to hear and decide the review petition in light of submissions made by the head of the committee. However, CJI Bobde responded:

*"We are not hearing the review petition, are only hearing the 7 points as mentioned in the reference."*

Therefore, at present the review petition for the Sabarimala judgment has been kept aside and matters of public importance in terms of elision is in the forefront.

## CONCLUSION

With a rich history steeped in tradition and mythology, the Sabarimala Temple stands as a testament to the enduring devotion of Lord Ayyappa's worshippers, known affectionately as the "Ayyappans." Their deeply held belief in the deity's celibacy has led them to uphold a time-honored custom of barring women of childbearing years from entering the temple's sacred precincts.

However, the apex court of the land, in its wisdom, held that the aforementioned custom, ostensibly protected under Rule 3(b) of the Kerala Hindu Places of Worship Rules, 1965, is unconstitutional. The court rightly pointed out that this custom violates several crucial articles

enshrined in the Indian Constitution, including Articles 14, 15, 25, and 51A(e). In light of this, the court directed that further measures be taken to ensure the safety of women pilgrims.

The language of Rule 3(b) of the 1965 Rules, which purports to protect the custom, is rife with ambiguity. The rule stipulates that women are absolutely barred from entering a place of public worship "at such time" as they are not allowed to enter "by custom." However, it fails to offer any clarity on what "such time" and "by custom" actually entail. The phrase "by custom" seems to suggest that in the Hindu faith, women are forbidden to enter places of worship during "such time."

The case at hand specifically pertains to women between the ages of 10 and 50, who are barred from entering the Sabarimala Temple. However, it is important to note that female anatomy cannot guarantee menarche and menopause within that timespan. It would be misguided to assume that menstruating women necessarily belong to a certain age group. A girl child of 8 years and a woman of 55 years could both be menstruating, while a girl of 15 years may not have yet experienced menarche. In light of this, it is impossible to determine with certainty what "such time" truly means, or to ask women to confirm their menstruating status. There is no easy formula to determine whether a woman is menstruating, and it would be unfair and unjust to expect women to undergo such a personal and invasive examination.

Customs are deeply embedded in the fabric of every society and hold a special place in the hearts of its people, evoking a sense of tradition, faith and culture. It is an undeniable fact that customs can have both positive and negative consequences, depending on the nature of the practice. While some customs may be steeped in spiritual and religious significance, others can perpetuate gross injustice and oppression. This is precisely why it becomes imperative for the judiciary to strike a balance between protecting the rights of the citizens and respecting their customs and beliefs.

The Sabarimala Temple verdict, which stirred up a hornet's nest in the collective consciousness of the masses, was a prime example of this delicate balancing act. While the Supreme Court ruling upheld the individual rights of women to enter the Temple, it also impinged on the collective customary rights of the devotees, who hold the view that Lord Ayyappa is an eternal celibate and thus, women of a certain age group should not be allowed entry. The conflict between individual rights and collective customary practices is a thorny issue, and in this case,

the individual rights of women were given precedence over the customary practices of the devotees.

It is worth noting that Lord Ayyappa is worshipped in multiple forms across various temples, and women are not prohibited from entering all of them. The Supreme Court verdict was seen as a step towards breaking down the social stigma attached to menstruation, which has been prevalent in Indian society for ages. However, it can also be argued that this judgment was a case of judicial overreach, whereby the judiciary exceeded its mandate and encroached on the domain of the citizens' beliefs and practices.

In the complex web of judicial activism and judicial overreach, the line between the two is often blurred. Judicial activism, which refers to the judiciary's proactive role in advancing public interest and safeguarding individual rights, has its roots in Public Interest Litigation and suo moto cognizance. Judicial overreach occurs when judicial activism goes beyond its limits and infringes on the rights of the citizens. This landmark case is a classic example of both judicial activism and judicial overreach, and has divided the populace into two camps, each passionately defending their views.

In conclusion, while customs are an integral part of society, it is essential to ensure that they do not perpetuate social evils or infringe on the rights of the citizens. The judiciary must strive to balance the rights of the individual with the collective customs and beliefs of the people, in a manner that is fair and equitable to all concerned.

Indeed, the question of the interplay between customary practices and individual rights is one of utmost complexity and nuance. The Sabarimala Temple case has opened up a Pandora's box of sorts, with a multitude of unanswered religious questions now coming to the fore. It is clear that customs must be made pellucid and free from any ambiguity to avoid any future conflicts or confusion.

The competing interests of individual and collective rights are oftentimes intractable and in direct conflict with each other. It is, therefore, the onus of the judiciary to harmoniously reconcile these divergent rights in a manner that is equitable and does not impinge on either party's interests. This requires a judicious balancing act, where the unique characteristics of each case must be carefully weighed and considered in order to arrive at a just and fair outcome.

In conclusion, it is imperative that the judiciary continues to play a pivotal role in safeguarding the rights of all individuals, while also respecting and preserving cherished customs and traditions that hold immense spiritual significance for countless individuals. By doing so, we can hope to achieve a society that is harmonious, just, and equitable for all.