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Sabarimala Judgement: Result of Resolution in Constitution?

Bhavya Pankaj

Visiting Faculty, ILS Law College Pune

Abstract:
This research paper delves into the analogy between the protective bark of a tree and the adaptability of legal provisions within society. It underscores the critical necessity for laws to evolve in response to changing societal dynamics, thereby facilitating progress rather than hindrance. Using the Sabarimala Temple case in India as a focal point, this research paper examines the landmark decision by the Supreme Court, which involved the constitutional clash between the right to religion and the right to equality. It further explores the intricate fabric of India as a nation deeply rooted in religious customs and traditions and how the Supreme Court's contemporary judgment reflects the delicate equilibrium required in such a context. This analysis underscores the enduring significance of liberty, equality, and dignity within India's constitutional framework.

Keywords: Adaptability of laws , Sabarimala Temple case ,Right to religion ,Right to equality and Societal dynamics

1.1 INTRODUCTION-

If the bark of the tree which is there for the protection of free from any how to aggression failed to expand along with the growing tree then either it will choke the tree or if it is a living tree it will shed that bark to grow new bark for such protection. Similarly, if any law or a provision fails to give the pace with the changing circumstances of the society then it will be pretty evident that will create impediment in society's development, and these laws will create a problem rather than solving the problem. Therefore it must shake off the inhabiting legacy of its call-in your past and assume a dynamic role in the process of social transformation. Our constitutional freedom mustn't depend on diktats Social norms or popular morality. Where in judiciary shall work as the catalyst for social change with its slightly push and gears the wheels of evolution as well as social justice.

On September 28, 2018, the Supreme Court of India in the case of the Indian young lawyers Association versus the State of Kerala, famously known as Sabarimala Temple case, has given a historical judgement where rule 3(b) Of Kerala Hindu places of public worship act 1965, was right down on the ground of being unconstitutional. Here female at there mensuration age was provided to enter the temple of a Sabarimala as it was said to be a religious practice. However, this decision was not easy for Supreme Court to decide as articles 15, 25, 26 were juxtaposed. In other words, Supreme Court had to Choose between the right to religion and the right to equality.

The fact that India has been an Incontrovertibly religion-oriented country, Where Customs and tradition have always been An Essential and constitutive Part of Indian society. Honourable Supreme Court has

taken contemporary and Stave off the decision. Also if we see our constitutional trinity of liberty, equality and dignity run deeper than they appear and this was taken into the consideration by Supreme Court in this judgement.

1.2 SIGNIFICANCE OF STUDY

Equality of women and secularism is a too burning topic in India because both of them are changing their form. Both concepts can be seen in the case of the Sabarimala temple verdict In which the entering of women between the age group of 10 to 55 was prohibited as a religious essential practises. The research has tried to understand why the contemporary approach is been adapted by the Supreme Court of India for interpretation of the constitution and it is to understand why quality is given more importance upon essential religious practises.

1.3 RESEARCH QUESTION-

1. Whether the Sabarimala verdict has changed the trajectory and interpretation of the religion essential practises?
2. Whether interpretation is done by the bench is directing our society towards social change?

1.4 AIMS AND OBJECTIVES-

The primary aim of my research project is –

1. To understand judges approaches
2. To understand the significance of essential religious practices
3. To understand by Sabarimala judgement can we work as a social engine.

1.5 RESEARCH METHODOLOGY-

Doctrinal research is chosen for this paper due to the availability of various resources. The research model adopted is a historical as well as an analytical model. The conventional legal resources such as the Act passed by the parliament, books, articles and reports by the committees will be primary sources of this research. Systematic analysis of the abovementioned resources will be the adopted method for the study.

1.6 LITERATURE REVIEW

In this research work, article journals and books of various authors and publishers shall be analysed to find out the answer to the research questions,

1.) ANALYSIS OF SABARIMALA ISSUE: LAW, SOCIAL CHANGE AND JUDICIARY ACTIVISM BY AWLIKA A. DUTTA, PUBLISHED IN YOUTH KI AWAAZ, ON 26TH DECEMBER 2018.

Author **Awlika A. Dutta** His article **"Analysis Of Sabarimala issue: law, social change and Judiciary activism"**[1] says that it is important to note that the social revolution, social activism, in the beginning, was as important as a legally valid argument state committee. Furthermore says that a social change that is happening might be a few inessential now but it is not. Even social change has a great

[1] https://www.youthkiawaaz.com/2018/11/an-analysis-of-the-sabarimala-issue-law-social-change-and-judicial-activism/

impact on every individual and especially On the legal system and it is there to keep pace with changes that are happening so that the legal system won't collapse.

2.) SABARIMALA VERDICT: A WATERSHED MOMENT IN THE HISTORY OF AFFIRMATIVE ACTION BY AISHA JAMA IN THE LEAFLET CONSTITUION FIRST ON OCTUBER 30TH 2020.

Author **Aisha Jama** in her article "**Sabarimala verdict: a watershed moment in the history of affirmative action**"[2] said that our society is changing into Modern democracy because of its social fabric changes and search custom where dignity and equality Of women are been compromised shall be put to the end. As any such practices will not let us have development. Furthermore, the author talks about approaches that were made by the judge and it was an intellectually liberal and contemporary approach.

3.) WHY THE SABARIMALA VERDICT ACT OF AND SOCIAL ENGINE BY SWAPAN DAS GUPTA IN TIMES OF INDIA ON OCTUBER 30TH 2020.

Author, **Swapan Das Gupta in his article "Why the Sabarimala verdict act of and social engine"[3]** said that essential religious practises are progressive in nature where the change in religious practises is very much ongoing process he explains that there was so many religious practises that we have been using but after the court order, it have been discontinued for example child marriage was one of the customs which was practised for the longest time and now it is criminalised similarly in Sabarimala case when a certain practice which was taking place was against women dignity was is said to be discontinued.

4.) A GOD WHO HATE WOMEN BY DR MAJID RAFIZADEH

Author **Dr Majid rafizadeh** In his book **a God who hate women[4]** said that all the religious Scriptures are been interpreted in a way that men will always Get up a hand in the society and mostly this interpretation of Scriptures is done in the patriarchal Eire which gives the reason for happening of such discrimination against women.

5.) NATURE OF A JUDICIAL PROCESS BY BENJAMIN CARDOZO

Author **Benjamin Cardozo** in his book **Nature of a judicial process[5]** said that the work of a judge is to do interpretation and developing in a way wherein they can solve the problem and difficulty.

1.7 SCOPE AND LIMITATION –

Scope:

My area of research is about how in the Sabarimala temple verdict have made a great difference in giving more importance to the right to quality and to understand the directory of essential practises test. Furthermore, my area of research will be around the approach that has been used by the judges while giving the verdict here.

[2] https://www.theleaflet.in/sabarimala-verdict-a-watershed-moment-in-the-history-of-affirmative-action/
[3] https://timesofindia.indiatimes.com/blogs/right-and-wrong/why-the-sabarimala-verdict-is-an-act-of-social-engineering/
[4] A God who hate women BY Dr Majid rafizadeh, page No.54,page No,78.

[5] Nature of a judicial process BY Benjamin Cardozo, page No. 11.

Limitation:
My area of research will be limited to analyse the Sabarimala case and approaches of interpretation been chosen by the judge.

CHAPTER-2

1.8 Whether the Sabarimala verdict has changed the trajectory and interpretation of the religion essential practises?

The temple Sabarimala is situated in the state of Kerala in the Western Ghat of India. This temple is of Lord Ayyappa, a son of Lord Shiva and Lord Vishnu who was in the avatar of Mohini, in order to kill Demon. The general believes of Lord Ayyappa deity in the Sabarimala temple is that It was installed in the temple and took the form of a Nastik Branmachar, Which is an eternal celibate. Here devotee or pilgrims to take pilgrimage do hiking of 13 km (14 km, who choose to travel from a forest), Or assume a 41 Days of penance during their journey Of the Lord. Also, these devotees observe other things as well like, no physical relationship with their spouses, no drinking alcohol, Provision on any kind of interacting with women in daily life, working barefoot etc.
However, no one sees if this is been observed by devotees.
Furthermore, women and menstruating age i.e 10 to 55 are strictly prohibited to enter the temple because women presence would affect the austerity and celibacy of deity.

Travancore devaswon Bored (Statutory body that manages the temple) Issued a notification in October 1955 expressing the prohibition of any devotees who did not observe the penance and female between the age of 10 to 55 from entering the temple[6].
But after this in 1965, the state government of Kerala enacted the Kerala Hindu Places of public worship(Authorisation of entry) Act where the main aim was to provide a better provision for entry of all classes and sections of Hindus into public worship places.
Section 3 of the act says that regardless of any practising custom to the country no Hindu or any class or section shall be prevented from entering the place of public worship[7]. However, there was A clause inserted wherein it Was made to the subject to the right to the religious denomination to manage its affairs in a matter of religion. Most state governments also framed provisions under section 4[8], which say the same. However, rule 3(b) Of this regulation denies Women the right to enter a place of public worship. Where there is a prevailing custom, which again seems to be against the objective of the parent act. As a result of this very room, a challenge was made before Supreme Court in the Sabarimala case[9]
A number of the question was raised in the year were in all of these questions was interlinked. Question or followed:-

1. Whether rule 3(b) Was ultra wire of parent statute.
2. Weather rule 3(b) is contrary to the fundamental right under the constitution.
3. Whether the community who is the believer Visiting the Sabarimala temple can be constituted as to be separate religious denomination and be protected under the fundamental right of the Constitution.

[6] ibid[26](Chandrachud J.
[7] The Kerala Hindu places of public worship (authorisation of entry) act 1965.
[8] The Kerala Hindu places of public worship (authorisation of entry) act 1965
[9] INDIAN YOUNG LAWYER ASSOCIATION & ORS. VS. STATE OF KERALA & ORS. 2018 SCC OnLine SC 1690.

4. Whether or not the exclusion of women from entering the temple is a subject of the practice of untouchability and against the right to religion.
5. Whether or not exclusion capable of being protected as an important part of a right of freedom of religion or individual and groups

Later in judgement Justice Chandrachud concurring opinion tried to solve the Clash between the right to religion and the right to equality. Justice Nariman tried to answer the first question by the head of his concurring opinion, wherein he suggested that rulemaking power, which is been conferred by the legislature on delegated cannot authorise the delegatee to make a regulation that is beyond the scope of a parent law[10]. where section 3 of Kerala say that public worship should be open to all classes and sections of the Hindu custom or no usage Not matter what can have the overriding effect therefore rule 3(b)was ultra-virus.

However section 3, of Kerala I did not allow the government to create an exception for this general rule when the temple in question or denominational Temple.

Supreme Court tried to Interpret when a temple will regard as a denomination. It shall seem and the temple has a collection of individuals who have a system of beliefs. Here Supreme Court observed the following elements which are required for a Temple to be a religious denomination and they are:-

1. Common faith
2. Common organisation
3. Designation by a distinctive name[11]

This approach of the J.Nariman was to make sure that when any future decision is been taken, it will be Backed by the foundation or ground. Her, that judgement but the first question was given affirmatively. However Justice Nariman refrain himself from going any further especially on the question of locus standi, Perhaps it was done because of judicial discipline[12]

"Nevertheless, find it absolutely necessary to go into the more controversial question, which was can women be denied from entering into a temple as a custom will be considered as religious practises? And how we are going to allow any such custom, wherein women rights to freedom of religion as well as the women right against discrimination are grossly distorted.

Justice Nariman very intelligently chooses a very smooth path where he talked about article 15(1),[13] which is controvertibly Consider as the primary limb of Indian equality. provided that State shall not discriminate against any citizen on the ground of religion race, caste, sex, place of birth or any of them. These choices very much clear the intention of justice that equality for all and no discrimination is going to be part of modern democracy. However, this was no doubt, controversial choice to make as article 15, 25 and 26 was standing against each other where it will almost impossible to choose any one of them

[10] ibid[89](Nariman J).
[11] S.P. Mittal Etc. Etc vs Union Of India And Others on 8 November, 1982 AIR, 1 1983 SCR (1) 729

[12] Gautam Bhatia, 'The Sabarimala Judgment – II: Justice Malhotra, Group Autonomy, and Cultural Dissent' (Indian Constitutional Law and Philosophy, 29 September 2018) <https://indconlawphil.wordpress.com/2018/09/29/the-sabarimala-judgment-ii-justice-malhotra-group-autonomy-and-cultural-dissent/> accessed 7 June 2019; Anand Prasad, 'The Sabarimala Verdict: Locus Standi, Rationality and Schools of Thought' (Bar and Bench, 27 October 2018) <https://barandbench.com/the-sabarimala-verdict-locus-standi-rationality-and-schools-of-thought/> accessed 7 June 2019.

[13] Indian Constitution act 1950

without Killing the scope of other. It will be similar where you are been asked to choose between your hands and legs.
That is why Justice Chandrachud actually made this quite clear that it will not be right by the court to deal with this situation with theological analysis and in this movement Justice Chandrachud actually, agrees with this ended opinion of Justice Indu Malhotra. Where is she said that to deal with a custom or logically and legally will not be the right thing to do. However, this question remains there whether Discrimination of women will consider as a religious practice or not.
Justice Chandrachud said that "the court Out not to enter into scriptural or dogmatic analysis, but should May consider whether a practice is an amount to a violation of a person's fundamental right or not"[14]

However, he chooses to have an Anti-exclusion test. Which will help to determine "whether a religious practice cause the exclusion of individual in a manner which impairs the dignity or Hamper their access to basic goods"[15].

And where it did Do so, the right to freedom of religion must be given away to the overachieving values of a liberal constitution[16].

In framing this test, the anti-exclusion test, Chandrachud. J depend on an essay by Gautam Bhatia[17], Where it was said that articles 25 and 26 for not standing along rather they are seamless Web of fundamental rights.
Chandrachud J held.
" build the edifice Of constitutional liberty fundamental human freedom in Part three or not disjunctive or isolated. The exit together. It is only in cohesion that they bring a real sense to the life of the individual as the focus of human freedom. The right of the nomination must then balanced with the individual rights to which each of its members has protection in establishing meant of part III of the Indian constitution.[18]

For a better understanding if we see other fundamental rights let us take a sample of the right to equality that is from articles 14 to 18.
But for this case researcher, we will acknowledge only articles 14,15 and 17. Where in article 14 and said that it is vertical protection where it says the state cannot deny to any person equality before the law. On the other hand article 15 provides protection, inter-alia, against horizontal discrimination. And article 17 says that the practice of untouchability is a punishable offence. Anything or action which is creating disability because of his such practice of untouchability shall be also said to be a punishable offence. "Also noted the fact that no Were term untouchability is been defined so we cannot say that this

[14] Interestingly did this something dissenting judge, Justice Malhotra also held that "should not include in the theoretical analysis to test whether the practice was essential to religious or not but she differs with Chandrachud .J as the rest of the majority by holding that the community believe in the case constituted as a separate religious denomination and they are right or group trumped any individual women's right of freedom of religion.
[15] Sabarimala(n1)[289Chandrachud J
[16] ibid
[17] Gautam Bhatia, freedom form community, individual right, group life, state authority and religious freedom under Indian constitution (2016)5(3) Global constitutionalism 351.
[18] Sabarimala (n1) [286](Chandrachud J.

untouchability is caste specific. This interpretation was actually done to mould the case turn without even touching other dogmatic practises.

The right to religion Is constrained in articles 25 and 26 of the Constitution. When we see that everyone have a right to profess their own religion but shall not be against the public order, morality and health.

Here "wanted to talk about the doctrine of essential practises for not only to justify the state intervention that is Article 25(2)(a)[19] Expressly allowed the state to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practices. Couldn't see that there were so many incidences where the fact was not given dominance when it was related to religious essential practices as the same thing was seen in the case of Sastri yanapushadji v mudas bhadardas vaishaiy[20].

Something was taken how to work court have actually decided the support to any such fact-finding or intervention where it was talked about the exclusion of a woman As religious practices. Later Justice Chandrachud very intellectually, being in excellent with history of essential practises as well as accident critique of it, said that the main answer to this question is it's are given by Dr BR Ambedkar, chairperson of the drafting committee of Indian constitution in the speech that:-

"the religious conceptions in this country are so vast that they cover every aspect of life, from birth to death…I do not think it is possible to accept a position of that sort…we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that…laws relating to tenancy or laws relating to succession, should be governed by religion"

Furthermore court in the judgement of Madras versus Shiver Mutt[21] where "actually disqualify between religious practice and secular. "Tried to make this point wherein no practice can be considered as a religious practice where dignity and equality of the person are compromised but having said that somewhat every person do Opt in their dignity from religion because religion is everybody's part of life since from their birth. And therefore this direct link between religion and social life however Ronald Dworkin wrote "Government must never restrict freedom just because it assumed that there is just one way for people to live their lives, is intrinsically better than other, but if during the living that way of life someone dignity is compromised then it will be harmful to society".

And if we are going to see Indian History wherein every time there was discrimination that was happened within relation it has impacted individual dignity, persons right to life have also infringed. It is almost difficult to even think that most secular courts be it anyplace, ever going to give the decision on the logical creed and Canons.

Benjamin N Cardozo in his famous book nature of the judicial process it was given that what shall judge do to decide the case when there is no precedent For such a situation wherein judge have two options either to follow consciousness or the subconsciousness of his mind to come across the judgement.[22] which somewhat we can see in this case as Supreme Court of India while deciding this case did not interfere with the scope of a right to freedom of religion and write equality but also achieve the social engine of the society. At last, they come across to creating Equilibrium between the right to equality and

[19] Indian Constitution act 1950.
[20] Sastri yagnapushaji versus mudas bhadardas vaishaiy AIR 1966 SC 119
[21] The Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 282.
[22] Nature of a judicial process by Benjamin Cardozo page no.11

right to religion wherein they discover that Any religious practises Is to be essential only when it did not infringe the dignity of a person. Therefore religion is an integral part of any human being because every human gets her/his religion right from birth and even before receiving their name. That is why the right to religion is strongly linked with the dignity of the person, hence every person shall get the right to practice the right to religion and it is immaterial that what cast they have or that sex they have. Because the right to religion is an integral part of the dignity of an individual and patriarchal practice based on exclusion could not be allowed to infringe upon the fundamental freedom to practice and profess one religion and therefore the prohibition of the entry of the women under the age of 10 to 55 under the rule 3(b) of the Kerala Hindu public worship was said to be unconstitutional and struck down.

CHAPTER 3

1.9 Whether interpretation is done by the bench is directing our society towards social change?

We already saw in the last chapter that how Supreme Court create equilibrium between the right to religion and right equality without actually killing the scope of each other where the researcher will try to understand the approach made by the court and the reason for such approach and how such achievements will work as a social change in country. Incontrovertibly Sabarimala judgement will lead our society to a feminist jurisprudence as we see in the previous chapter that regressive interpretation of such short Of scripture cannot be used for elongating the His community practises, especially based on the biological state of a person. It will be not constitutionally valid to restrain the entry of a woman because of their physiological state, which Transgresses the spirit of the right to equality under Article 14. Today we are reaching towards modern democracy State and we have a more institutionalised justice system wherein the court uphold the rule of law and also many a time court try to fill up the gap of lacuna In voluntary left by the legislator. But this is also something that we have noticed by the passing of the time that adjudication made by the constitutional court on the matter of religion always been a matter of this agreement in society as intentionally drawn to religious beliefs as India.

In the case of a Sabarimala there we saw it was made in the favour of a feminist jurisprudence her article 14, 15 and 26 of the Constitution was very much stagnant from each other but the quality as to dignity was given more light.

Transformation in Constitution

because there is a change in circumstances of the social-political fabric of modern democracy and secularism in our nation, it is very much important for the judges to do the interpretation of Constitutional Hello cautiously. Wherein the approach I will be intellectually liberal towards constitutional amendments. During that interpretation constitutional court shall not limit its self solely to the “legislative intent”. In this case, Sabarimala Temple case, there was a contemporary approach Which was made by the court as, Constitution is a living tree and the responsibility to watershed search tree is been shouldered and judiciary system. Where they have to make certain amendments just to have pace with changing fabric of society. The Sabarimala judgement was a changing point for the Indian judiciary as it has provided the push to changing social integration and breathe life into feminist jurisprudence. This attitude of the judiciary system reflects the vertical relation between state and subject. Therefore this suggests that right under part three are recognised by constitutional rather than creating it. “The right or inherent, sacrosanct and characteristic of constitution integrity”.

The fundamental right depicts that article 25 gives "freedom to consciousness" to every person furthermore it also bestowed the power to the state to legislate the religious practices so it can facilitate reform.

Revolution in the Constitution

Truly Sabarimala judgement is bold, stagnant towards the change and unabashed narrative.

"The Supreme Court has do take in reformative and interventionist Approach" in this verdict, Where they have put human dignity and equal entitlement for worshipping above.

This verdict has tightened the noose around essential religious practises and because of that initially whatever practice used to seek escape through Window of essential religious practises or restraint therefore it is a truly disruptive yet empowering verdict. Sabarimala verdict is going to reduce the scope of a discriminating practice in the name of religious essential practises and will also put a stop to the wrongful interpretation of sanctions of religion. The transformative nature of the Constitution was acknowledged and asserted that as a living document. Way back in 1983 where a progressive interpretation and reformative approach was administered by Justice PN Bhagwati who was straw striving to have constitutional reform in the case National Textile worker union U.R P.R Ramakrishna,1984, where it was stated that "We cannot allow the dead hand of a route to shift the growth of living present. A law cannot stand still, it must change with the changing social concept and values" This decision is striving for substantive equality given due to recognition to the naturally occurring difference and creating the rightful Niche Of strengthening individual autonomy as of all groups with special emphasis on rights of women.

CHAPTER-4
CONCLUSION AND RECOMMENDATIONS

India, a historically religious and patriarchal society, witnessed a watershed moment in the form of the Sabarimala judgment—a significant step towards societal transformation. As our society evolves, embracing modernity and secularism, it adapts to changing circumstances in the fabric of modern democracy. These changes reflect our evolving daily lives, which, in turn, impact religious practices. In this evolving landscape, the values of equality, dignity, and liberty, integral to our constitutional trinity, remain non-negotiable. Simultaneously, religious practices have evolved over time. Many Hindu temples no longer endorse the sacrificial ritual of animals, and the exclusive right of Brahman priests to conduct Pooja or worship has faded. The abolishment of caste restrictions, criminalization of practices like Sati, and more have been driven by social change. However, it's important to note that the right to religion is enshrined in fundamental rights, and the right to equality is equally fundamental. The Sabarimala case presented a significant test of constitutional morality. The majority bench's verdict against Rule 3(b) declared the exclusion of females aged 10 to 55 from the temple as unconstitutional. The courts adopted reformative and interventionist approaches in delivering this judgment, making it an act of social engineering. Rather than adhering to established morality, they sowed the seeds for further change in the future

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