

Sabarimala Verdict: A Constitutional Revolution

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Abstract

India is a secular state, as enshrined in the Constitution of India. The preamble emphasizes the ideals of justice, liberty, equity and fraternity ensuring the state remains neutral in matters of religion. The very concept of secularism is based on the fact that the state will have no religion but it does not mean that it is an irreligious or atheistic state. Nor is it an anti-religious state. It merely explains that the state has no religion of its own. However, it respects all religions and the constitution guarantees freedom of religion to all citizens fostering a diverse inclusive society. This paper deals revolves around The Sabarimala Temple case which revolves around the constitutional and cultural aspects of religious practices in India. The case sparked debates on the balances between religious freedom and gender equality. In 2018, the Supreme Court lifted the ban on the entry of women of menstruating age into the temple, challenging the tradition that restricted their access. While some hailed it as a progressive step, others argued for the preservation of cultural and religious practice. This abstract encapsulates the multifaceted dimensions of Sabarimala temple case, touching upon issues of constitutional rights, cultural sensitivity and ongoing dialogue between tradition and modernity.

Keywords: Sabarimala Temple, Menstruating age, Secularism, Religion, Ayyappa, Celibacy, Hegemonic patriarchy

Introduction

India being a secular state, does not any religion of its own but it respects all religion and constitution ensures that every person must have equal freedom of religion in order to profess, practice and propagate their religion. The concept of secularism is explained by the Supreme Court of India in *ST. XAVIER'S COLLEGE v. STATE OF GUJARAT*¹ that Secularism neither means anti-God nor pro-God, it treats all the devout, the agnostic and the atheist equally. It eliminates God from the matters of the State and ensures that no one shall be discriminated against on the ground of religion. That every person is free to regulate or mold his relations with his God in any manner. He is free to go to God or to heaven in his own ways. And, that worshiping is left to be dictated by his own conscience.

Article 25 and 26 of the constitution guarantees every individual The Right to freedom of religion which includes the right to freely profess, practice and propagate their religion. Also, it provides the right to the religious institution to manage their religious affairs. But this right stood against an individual's right to

¹ 1974 AIR 1384, 1975 SCR (1) 173

life and personal liberty² as there are so many of religious practices all around the world in different religions which discriminate women and bans the entry of women in religious institutions be it of Muslim women in Mosques, women during menstruation in temples, entry of Parsi women who married inter-faith into the fire temple, female genital mutilation among Dawoodi Bohras etc. There are so many of these which deprive women of their right to equality and the right to freely profess their religion. These all stood in contravention of fundamental Right of equality³, Right to life and personal liberty etc.

Women in our society have always struggled for equal status and representation in public spaces. But the situation is changing now and various reforms have come through the judgments of the Courts. Like in Shah Bano, the Supreme Court has protected the rights of Muslim women from the practice of triple talaq. In the case of *Dr. Noorjehan Safia Niaz vs. State Of Maharashtra & ors.*⁴, the Supreme Court has allowed entry of women inside Haji Ali Dargah and this battle has been a progressive one and reformatory in its nature⁵. Moreover, there are even additional shrines of Muslim Dargah that restricts women from entering into their inner sanctum and we can say the principle of equidistance has been ceaselessly broken.

Now, the case of ‘Indian Young Lawyers Association vs. State of Kerala and Ors.’ involved women’s struggle for getting the entry in Sabarimala Shrine Temple located in the State of Kerala. Women have done a lot of struggle for the protection of their rights. The Ayyappa temple in Sabarimala region in Kerala has been controversial for provision of restricting women of menstruating age (10-50 years of age) to enter into Sabarimala Temple, Kerala. In this case, there were many issues raised in which it was argued by petitioners that provisions related to the restriction of women entry in temples are unconstitutional.

HISTORY AND BACKGROUND OF THE SABARIMALA TEMPLE

The Sabarimala Temple is located at Sabarimala hill inside the Periyar Tiger Reserve in the Perinad Village of Pathanamthitta district of Kerala in India. It is one of the most ancient and largest annual Pilgrimage sites in the world with an estimate of over 40 million devotees visiting it every year. This temple is devoted to Hindu celibate deity Lord Ayyappa. It is a Shasta temple where **Shasta** is a Hindu deity, associated with Shiva and Vishnu and Lord Ayyappa is described as the offspring of Shiva and Mohini.

Sabarimala is an ancient temple which was mostly unreachable for about three centuries. It was in 12th century, a prince of Pandalam Dynasty, Manikandan rediscovered the original path to Sabarimala along with many followers which includes the descendants of the Vavar (a Muslim devotee). This prince is considered as the avatar of Lord Ayyappa and it was believed that he meditated at the temple and became one with the divine. The pilgrims going there have to observe celibacy for 41 days before going to the temple. They are strictly required to follow a lacto-vegetarian diet, prohibited to use alcohol and allow their nails and hairs to grow without cutting. They are expected to bathe twice in a day and visit the local temples. Traditionally, women of reproductive age were not permitted to worship there and the ban on

² Article-21 Constitution of India, 1950

³ Article- 14 Constitution of India, 1950

⁴ 1995 CriLJ 2154, I (1996) DMC 120

⁵ <https://indiankanoon.org>

women entering the temple premises is being practiced for centuries, as Lord Ayyappa the deity of the temple to be a celibate.

In 1991, the Kerala high court judgment provided a legal justification to this interpretation, and forbade women of menstruating age that is of 10 to 50 years from entering the temple.

In September 2018, honorable Supreme Court of India ruled that all Hindu pilgrims regardless of gender could enter the temple. The Constitution bench of the Supreme Court held that "any exception placed on women because of biological differences violates the Constitution" and the ban violates the right to equality under Article 14 and freedom of religion under Article 25.

The judgment of the Supreme court has adopted a reformist approach by upholding human dignity and equal entitlement to worship for all individuals. This verdict has minimized the scope for discrimination of any form of practice under the wrongfully interpreted sanctions of religion, as it is the duty of judiciary to deliver the necessary push for the evolution and social justice.

ISSUES ADDRESSED BY THE SUPREME COURT

There are majorly three issues to be addressed in this case:

- a) Whether the devotees of Lord Ayyappa come under a different religious denomination?
- b) Whether this restriction given in rule 3 (b) of Kerala Hindu Place of Worship Act ,1965 is violative of its parent act?
- c) Whether this restriction imposed by the temple authorities is violative of article -15, 25 and 26?

A. What is a religious denomination?

A Religious denomination is a distinct subgroup or branch within a larger religious tradition or community. These denominations often emerge due to differences in interpretation of religious doctrines, practices, or organizational structures. The key aspects of differences in various religious denominations includes worship styles, sacraments and rites, social and ethical values and historical context.

Examples of religious denomination include-

- Christianity- Catholicism, Protestantism (which further includes denominations like Lutheran, Baptist, Methodist etc.)
- Islam- Sunni, Shia
- Buddhism- Theravada, Mahayana, Vajrayana.

Religious denominations reflect the diversity within a broader religious tradition, offering various paths of expression and interpretation of their faith.

Justice RB Mishra in case of *S.P. Mittal v. Union of India & Ors.*⁶ Held that:

“Religious denomination means a religious sect or body having common faith and organization and designated by a distinctive name.”

Major remarkable focuses of a religious denomination;

1. It has its own organization, not oversaw or constrained by an outside office.

⁶ 1983 AIR 1, 1 1983 SCR (1) 729

2. It is self-financed and not by state or any other outside organization.
3. It has unmistakable practices with particular arrangements of adherents who are solely given to a set of religious practices.

Now it should be noted that the religious functions at Sabarimala Temple are not specific or different from other Hindu temples. The same association is constrained by the statutory board of Travancore Cochin Hindu religious institution act, 1950. It also gets state sponsoring under Article-290-A of the constitution. Therefore, it was held by the Chief Justice of India Dipak Misra & Justice Nariman that the *Ayyappans*, or worshippers of Lord Ayyappa, did not satisfy the judicially enunciated requirements to be considered a separate religious denomination. It was further stated that the exclusion was not an essential religious practice and the devotees of Lord Ayyappa do not come under a religious denomination.

B. The restrictions given in rule 3(b) of this act is violative of its parent act i.e. Kerala Hindu Place of worship act,1965?

Rule 3(b) of Kerala Hindu Places of Worship Act,1956 imposes a ban on entry of women of age 10 to 50 years.

However, this rule is *ultra vires* of section 3 and 4 of the parent act⁷ which provides that-

Under section-3. Places of public worship to be open to all sections and classes of Hindus. -

Notwithstanding anything to the contrary contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law or any decree or order of court, every place of public worship which is open to Hindu generally or to any section or class thereof, shall be open to all section and classes of Hindus; and no Hindu of whatsoever section or class shall, in any manner, be prevented, obstructed or discouraged from entering such place of public worship, or from worshipping or offering prayers thereat, or performing any religious service therein, in the like manner and to the like extent as any other Hindu of whatsoever section or class may so enter, worship, pray or perform:

Under section-4. Power to make regulations for the maintenance of order and decorum and the due performance of rites and ceremonies in place of public worship. -

(1) The trustee or any other person in charge of any place of public worship shall have power, subject to the control of the competent authority and any rules which may be made by that authority, to make regulations for the maintenance of order and decorum in the place of public worship and the due observance of the religious rites and ceremonies performed therein.

Provided that no regulation made under this sub-section shall discriminate in any manner whatsoever, against any Hindu on the ground that he belongs to a particular section or class⁸.

It is said that its deity, Lord Ayyappa, is a “**Naisthik Brahmachari**” and that allowing young women to enter the temple would affect the idol’s “celibacy”. The Travancore Devaswom Board has said that the prohibition on women of menstruating age from entering the temple is a part of '**essential religious practice**' of Lord Ayappa devotees.

Supreme court has ruled that Rule 3(b) is *ultra-vires* the Constitution, Section as well as Section 4 of the 1965 Act which says that the regulations/rules made under this act shall not discriminate, in any manner whatsoever, against any Hindu on the ground that they belong to a particular section or class.

⁷ Kerala Hindu places of worship act, 1965

⁸ bareactslive.com

- Supreme Court condemned the prohibition as **hegemonic patriarchy**. It said that exclusion on grounds of biological and physiological features like menstruation was unconstitutional. It amounted to discrimination based on a biological factor exclusive to gender. It was violative of the right to equality and dignity of women.
- It also held that prohibition founded on the notion that menstruating women are "polluted and impure" is a form of untouchability and the notions of purity and pollution stigmatized women.

C. Whether restrictions imposed by temple authorities i.e. Travancore Devaswom board is violating articles 14, 15, 17 and 26?

It was held that the restriction is in violation of Article 14 as it is discriminatory in nature and such a restriction of entrance even lacks the existence of intelligible differentia and the rational nexus with the object of preventing the deity from being polluted.

It was further held that, as such, exclusion is based on sex; therefore, it is discrimination based on sex, which is prohibited as per Article 15(1) of the Constitution and therefore it violates the said Article.

Article 17 was also said to be violated by the petitioner by such a restriction, as Article 17 prohibits untouchability in any form and the discrimination being done upon women on the grounds of their menstrual cycle stands in violation.

The ban on entry of women of specific age is discriminatory in nature as it is violative of their right to equality along with their freedom of freely practicing their religion. Also, as the worshipers of Lord Ayyappa do not fall under the category of religious denomination so this practice is again violative of article 26 as this particular practice of banning the entry of women is not the essential practice or custom of Hindu religion.

JUDGMENT

On 29th september,2018 Supreme court held in this case by majority of 4:1 that the restriction imposed is unconstitutional. Rule 3 (b) is violative of Kerala Hindu Places Of worship act⁹ as well as of article 14,15, 17, and 25 of constitution of India and was struck down. The honorable Supreme Court of India has allowed the entry of women of all ages to the Sabarimala Temple.

OBSERVATIONS OF JUDGES

- **Justice D.Y. Chandrachud** held that the exclusion of women between the ages of 10-50 years by the Sabarimala Temple was contrary to constitutional morality and that it was against the ideals of liberty, and dignity. He held that the morality under Articles 25 and 26 of the Constitution cannot have the effect of eroding the fundamental rights guaranteed under these Articles. Justice Chandrachud concurred with the opinions delivered by CJI Dipak Misra & Justice Nariman to hold that the *Ayyappans*, or worshippers of Lord Ayyappa, did not satisfy the judicially enunciated requirements to be considered a separate religious denomination. He held that the exclusion was not an essential religious practice
- **Justice D. Y. Chandrachud** in his separate but concurring opinion held that the idea behind the ban was that the presence of women will disturb virginity, and that was placing the burden of men's virginity on women. This stigmatizes and stereotypes women, he observed.

⁹ Section-3 and 4 of Kerala Hindu Places of Worship Act,1965

- **Justice Indu Malhotra** delivered a dissenting opinion. She argued that constitutional morality in a secular polity, such as India, requires a “*harmonization*” of various competing claims to fundamental rights. She said that the Court must respect a religious denomination’s right to manage their internal affairs, regardless of whether their practices are rational or logical.

CONCLUSION

Sabarimala women entry case is a landmark case in the history of the Indian judiciary. It is majorly getting support from intellectuals, liberal groups, women and legal and social workers across the country as they see it as a major reform of our time which tends to uplift the position of women in society. Whereas on the other hand, it is also criticized by many religious groups and local people. Also, one of the arguments put forward by the people opposing the entry of women is that there are many temples across the country where entry of men is not allowed for example- Lord Brahma Temple, Devi Kanyakumari, Kamakhya temple etc. which is a part of our Indian culture and if the honorable court allows for the entry of men in those temples it disregards the unique cultural religious practices associated with the temple. However, the supporters of the decision argue that the constitutional values should take precedence over practices that may perpetuate gender discrimination. The Sabarimala issue clubbed with these three other cases which are-

1. Muslim women’s right to enter into Mosques
2. Parsi-women’s right to enter a fire temple after marrying a Non-Parsi.
3. The practice of female genital mutilation in Dawoodi Bohra Community.

The judgment of September 2018, which declared the prohibition on women's entry into the Sabarimala temple unconstitutional, brought hope for gender equality and inclusivity in religious spaces. It challenged age-old traditions and emphasized the importance of upholding fundamental rights, particularly the right to freedom of religion and the right to equality. The Sabarimala case has set a precedent for addressing discriminatory practices, promoting gender equality, and safeguarding individual rights within the realm of religion.