

SABARIMALA – MYTH BACKED SOCIETY AND WHY LAW SHOULD BE SUBJECTIVE TO CUSTOM

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INTRODUCTION

Custom is a habitual course of conduct observed all over the world voluntarily by the people. Custom has an important role in regulation of human conduct in almost all the societies. In fact, it is one of the ancient sources of law-making. But with development of the society custom gradually vanished and legislation and judicial precedents became the main source. Custom is manmade, by their unconscious adoption of a certain code of conduct. Whenever some issue arises for solution regarding a custom its authority is based on nothing but its prolonged use and recognition by the world. Custom is some kind of a magical rule which is followed from the ancient period. Customary source is one of the major sources of law. Custom, as a source of law, involves the study of a number of its branches: its origin and nature, its importance, reasons for its recognition, its classification, its various theories, its distinction with prescription and usage, and the essentials of a valid custom. The chief nature of the custom is that, it is a generally observed code of conduct. The best illustration of the formation of such followed course of action is the way in which a path is formed. One man is different from the common, in the direction which is suggested either by the purpose he has in his mind, or by mere accident. If others follow the same path, a path is made. Custom may be considered as a fact and a law. As a fact, it is simply the frequent acts concerning the same subject; as a law, it is the result and consequence of that fact. Custom is a code of conduct observed uniformly and voluntarily by the people concerned. In Sanskrit there are three terms; Achara, meaning ‘rules relating religious observances’; then Vyarahara, meaning ‘the rules of civil law’; and finally Sadachara, meaning ‘the usage of virtuous men’. The word Sadachara, therefore, has been used for custom which means, ‘the handed down in regular succession from times immemorial

among the four chief castes (Varna) and mixed races of the country'¹. Custom is a long standing practice. It is a usage that has by long continuance acquired a legal binding force. Custom is a sort of special rule which is in actual existence or possibly followed from time unknown and which has acquired the force of law in specific territory, although it may be contrary to the general law of the land.

There are a number of religions that cross barriers of language and boundaries. It is important when dealing with a person having a life-threatening disease and their family to understand where religion fits within the circle. There are many in the world, religion in the context of their life does not have a significant role as it may have in their homeland. However, when faced with a life-threatening disease and the possible or subsequent death of a partner or friend, religious practices, rituals and beliefs may play an important role. We must not evaluate about people on the basis of their language, sex, and race. In addition, we must not think that all people within a particular area practice the same custom have the same beliefs, or the same language. As with many other things that make us independent, there are many ways and many paths followed. There are many books written on religious views and its practices and rituals in today's modern era.

We live in a law-ridden society; law has cannibalized the institutions which it presumably reinforces or with which it interacts.... We are encouraged to assume that legal behavior is the measure of moral behavior.... Efforts to legislate conscience by an external political power are the antithesis of custom: customary behavior comprises precisely those aspects of social behavior which are traditional, moral and religious--in short, conventional and non legal. Put another way, custom is social morality. The relation between custom and law is basically one of contradiction, not continuity.

"Thus, law is symptomatic of the emergence of the state. ...Custom--spontaneous, traditional, personal, commonly known, corporate, relatively unchanging--is the modality of primitive society; law is the instrument of civilization, of political society sanctioned by organized force,

¹ K.Mohan, *Kshetra Charitra* ,212(2006).

presumably above society at large and buttressing a new set of social interests. Law and custom both involve the regulation of behavior but their characters are entirely distinct...²

IMPACT OF MODERN LAW OVER CUSTOMARY PRACTICES

The petition by the Young Lawyers' Association asking the Supreme Court to lift restrictions on women from entering the Sabarimala temple in Kerala would cause serious impact on the believers. Sabarimala Temple isn't the only place of worship that has barriers on women's entry. Various Mosques, Temples and other places of worship fully or partially restrict women, non-followers, foreigners, the improperly dressed so on and so forth. The court can be expected to do its duty by the Constitution, but will this destroy the believer's faith?

While the issue regarding the entry of women was debated, one of the frequently asked questions was "By whom were these restrictions imposed?" And the answer to this is, Custom itself! According to history, Ayyappa is celibate as he can focus on answering the prayers of his devotees. Faith states that he shall remain celibate till the day kanni swamis (first-time devotees) stop going to Sabarimala Temple to offer their prayers.

Ayyappa is a historical figure. He was the Prince of the Panthalam kingdom, a small kingdom located in the Patthanamthitta district in Kerala State. The palace he grew up in still exists and people can visit it. One of Lord Ayyappa's most loyal friend was Vavar (Malayalam for Babar), an Arab commander, whom he defeated in a battle. Vavar is now enthroned, not as an idol but in spirit form, at a mosque in Erumeli near to Sabarimala. According to belief, Vavar protects devotees who make the difficult 40-km trek through the forests to the main temple at the top of the hill that is the Sabarimala Temple. Non Hindus, like Muslims, make the journey to the mosque at Erumeli and the Vavar shrine.

² **Diamond, Stanley**, in "The Rule of Law versus the Order of Custom," in *In Search of the Primitive* [Transaction Publishers, 1981]; also in Bonignore, et al., *Before The Law*, Fifth edition [Boston: Houghton Mifflin, 1994] <https://www.umass.edu/legal/derrico/diamond.html>

Sabarimala is one of the few temples in India that welcomes the world without any religious discrimination. Pilgrims dress uniformly in black. The color signifies the renunciation of all sorts of pleasures, but it also means that everyone is equal before the Lord, irrespective of caste. In fact, the hierarchy among devotees is based on how many times they have visited Sabarimala. Pilgrims lead an ascetic life for 41 days before undertaking the journey to the Sabarimala Temple. During that time, they pray in groups and as individuals. A Dalit can lead the prayers and a Brahmin in the group must still follow it along with him. This oneness among people are not seen anywhere around the world.

Apart from the historical Lord Ayyappa, there is a puranic legend associated with him, which says he is the son of Vishnu and Shiva. This is believed to be a union of godliness of both the lords and it is not the result of any physical relationship. It means that, he has the traits of both Gods and that's what makes him a particularly powerful deity in the eyes of his followers. Any way you look at it, Sabarimala is the perfect example of inclusiveness. It's one of a kind, and not just a temple the only men can enter. It openly welcomes all people of different caste and beliefs. But why does it restrict women between the age of 10 and 50?

For the answer, we need to go back to history. According to the puranas, Ayyappa was born to destroy a female demon that could only be vanquished by a child born of Shiva and Vishnu. Ayyappa fulfils his destiny by killing the demoness and a beautiful woman emerges from her body. She had been cursed to live her life as a demon, but her death changed the curse. The woman asks Ayyappa to marry her. He refuses her offer and explained to her that his mission is to go to Sabarimala where he would answer the prayers of his devotees. However, he assured her that he will marry her when kanni swamis stop visiting Sabarimala Temple. She now sits and waits for him at a neighboring shrine near the Sabarimala temple and is worshipped as Malikapurathamma Devi. Faith has it that with thousands of new devotees pouring in every year, her wish will be far away from being fulfilled.

This belief is the reason why women of a certain age group do not go to Sabarimala. It is partly out of empathy for Malikapurathamma and her eternal wait and it is also out of respect for Ayyappa's commitment to answer the prayers of his devotees. Since Ayyappa is a celibate, he should not be distracted. For hundreds of years, devotees had been brought up hearing this

story. According to custom and the long story behind it, women who can procure children do not offer prayers to the celibate lord Ayyapa.

Ironically, people who have taken up this issue to the Supreme Court probably do not believe in the back story. If they did, they wouldn't challenge it. Even if the court lifted restrictions, women who believe in the deity will not be queuing up to visit the shrine. This is, ultimately, all about faith. And women who follow the belief shall not act in contrary to the custom.

CRITICAL EVALUATION

The practice of restricting the entry of women belonging to the age group of 10 to 50 years, was challenged as being violative of Articles 15, 25 and 26 of the Constitution before a Division Bench of the Kerala High Court. The High Court held that the restriction on the entry of women between the ages of 10 to 50 years was in accordance with the practice prevalent since time immemorial and was not violative of Articles 15, 25 and 26 of the Constitution.

By this decision we can observe that a religion can lay down a code of ethics and also prescribe rituals, observances, ceremonies and modes of worship. These observances and rituals are also regarded as an integral part of religion. If the tenets of a religion lay down that certain ceremonies are to be performed at certain times in a particular manner, those ceremonies are matters of religion and are to be protected as a religious belief. The practice of celibacy is the unique characteristic of the deity in Sabarimala. Hindu deities have both physical/temporal and philosophical form. The same deity is known for having different physical and spiritual forms. Worship of each of these is unique and not all forms are worshipped by all. The form of the deity in any temple is of supreme importance. Religion is a matter of belief and religious beliefs are held to be sacred by those who share the same.

In the case of Sabarimala Temple, the depiction of faith is in the form of a 'Naishtik Brahmachari'. The belief in a God and the form in which he has manifested himself is a fundamental right protected by Article 25(1) of the Constitution of India. The phrase "equally entitled to" as it occurs in Article 25(1) must mean that each and every devotee is equally entitled to profess, practice his religion, as per the modes of that religion.

The religious following of restricting the entry of women between the ages of 10 to 50 years, is in pursuance of an important religious practice followed over years. The said restriction has been followed at the Sabarimala Temple as derived from the Memoir of the Survey of the Travancore and Cochin States which was published in two parts in 1893 and 1901. In the present nature the character of the temple at Sabarimala is unique on the basis of centuries old religious practices followed to preserve the manifestation of God and the worship associated with it. Any disturbance with the mode and manner of worship of this religious practice or sect would impact the character of the Temple adversely and may affect the beliefs and practices of the devotees of this Temple.

Another contention that was put forth before the Court is that the restriction imposed on the entry of women during notified age groups amount to a form of Untouchability under Article 17 of the Constitution of India. All forms of exclusion do not amount to untouchability. Article 17 pertains to untouchability based on caste prejudice. Literally or historically untouchability has never been to applied to women as a class. The rights asserted here is different from the right asserted by Dalits in the temple entry movement. The restriction on women within a certain age group is based on the historical origin, beliefs and religious practices of the Sabarimala Temple. In the current situation women of the notified age group are allowed entry into all other temples of Ayyappa. The restriction on the entry of women during the notified age group in Sabarimala Temple is based on the unique characteristic of the Lord and not on any social exclusion. The subject sought to be drawn by comparing the rights of Dalits with reference to entry to temples and women is wholly misconceived and should not be maintained under the same subject matter.

CONCLUSION

The Human mind often works based on its perception and the way one conceives a message. The modern laws came to existence in the last 3-4 centuries. Earlier, mankind was controlled by the beliefs and faiths of various religions. Even today the religious faiths and beliefs play a major role in the minds of humans. They hesitate to do certain things because of their fear of God. Faith is the fundamental foundation of our existence. The importance of faith cannot be

underestimated. People have moved mountains with their faith. Even when situations seemed dire and bleak, it was their faith that carried men through. Understanding the mode in which a religion influences human beings helps us determine ways in which we can increase the well-being of them. If religion was nothing more than a facilitator of social relationships, future research and study would focus on alternative ways to achieve social relationships. Since religious beliefs and faith was found to be a major aspect of the relationship between religion and human well-being, religion must be recognized as a unique factor that influences human well-being. Religion is the practical side of philosophy. Philosophy is the rational thinking of religion. The philosophy of Hinduism is not a type of armchair. It is not meant for any intellectual curiosity or vain discussion. Hindu philosophy is a way of living. The philosophers of Hinduism seriously reflects after hearing Vedic chants and mantras, constantly meditates, and then gains the magical idea of Self-realization or Atma-Sakshatkara. Moksha is his ulterior goal. He continuously works to attain Jivanmukti throughout his life. Religion is a spiritual practice of human life for a Hindu. Religious faith and beliefs are really the culture of freedom for him. Religion governs all the major departments of Hindu life. He realizes the freedom of the soul in every department of his life. Religion is the only way to him for the self-realisation of perfect freedom in his life. It is in India alone that each and every man knows something about philosophy. The cowherd who tends the cattle, the peasant who ploughs the fields, the boat-man who pulls at his oar, sing songs replete with philosophical truths and myths. Even the barber in the barber shop repeats OM NAMA SHIVAYA, before he takes up the razor. The Paramahansa Sannyasins, the supreme monks of Hinduism, have spread the highest of Vedanta from door to door. In exchange for a handful of rice, they have spread this to people, through religious songs, vedic chants, the priceless gems of Hindu religion and philosophy. Therefore religions and its beliefs are not to be disturbed upto a limit as the soul of an ancient culture lies in it.