

## **YOUNG INDIA LAWYERS' ASSOCIATION v UNION OF INDIA (SABARIMALA CASE ANALYSIS)**

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In its verdict, the five-judge Constitution bench comprising Chief Justice Dipak Misra, Justice Rohinton Fali Nariman, Justice AM Khanwilkar, Justice DY Chandrachud and Justice Indu Malhotra ruled, observed that Article 25, the right to practice religion, is applicable to both men and women.

### **ISSUES:**

1. Whether Rule 3(b) of Kerala Hindu Places of Public Worship (Authorization 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?"

By Rule 3(b), women are not allowed to offer worship in any place of public worship including a hill, hillock or a road leading to a place of public worship or entry into places of public worship at such time, if they are, by custom or usage not allowed to enter such place of public worship.

Section 4(1) empowers the trustee or a person in charge of a place of public worship to make regulations for maintenance of order and decorum and for observance of rites and ceremonies in places of public worship. The regulation making power is not absolute. The proviso to Section 4(1) prohibits discrimination against any Hindu in any manner whatsoever on the ground that he or she belongs to a particular section or class. When the rule-making power is conferred by legislation on a delegate, the latter cannot make a rule contrary to the provisions of the parent legislation. The rule-making authority does not have the power to make a rule

beyond the scope of the enabling law or inconsistent with the law. Whether delegated legislation is in excess of the power conferred on the delegate is determined with reference to the specific provisions of the statute conferring the power and the object of the Act as gathered from its provisions.

Hindu women constitute a 'section or class' of Hindus under clauses b and c of Section 2 of the 1965 Act.

The proviso to Section 4(1) forbids any regulation which discriminates against any Hindu on the ground of belonging to a particular section or class. Above all, the mandate of Section 3 is that if a place of public worship is open to Hindus generally or to any section or class of Hindus, it shall be open to all sections or classes of Hindus. The Sabarimala temple is open to Hindus generally and in any case to a section or class of Hindus. Hence it has to be open to all sections or classes of Hindus, including Hindu women.

Rule 3(b) gives precedence to customs and usages which allow the exclusion of women "at such time during which they are not... allowed to enter a place of public worship". In laying down such a prescription, Rule 3(b) directly offends the right of temple entry established by Section 3. Section 3 overrides any custom or usage to the contrary. But Rule 3 acknowledges, recognises and enforces a custom or usage to exclude women. This is plainly ultra vires.

However, Justice Indu Malhotra, the dissenting judge holds that the 1965 Act is a legislation framed in pursuance of Article 25(2)(b) which provides for the throwing open of Hindu places of public worship. The proviso to Section 3 of the 1965 Act carves out an exception to the applicability of the general rule contained in Section 3, with respect to religious denominations, or sect(s) thereof, so as to protect their right to manage their religious affairs without outside interference. Rule 3(b) gives effect to the proviso of Section 3 insofar as it makes a provision for restricting the entry of women at such times when they are not by custom or usage allowed to enter of place of public worship. Hence, it is intra vires of the 1956 Act.

#### **CRITICAL ANALYSIS:**

The object of the Act is to enable the entry of all sections and classes of Hindus into temples dedicated to, or for the benefit of or used by any section or class of Hindus. The Act recognizes the rights of all sections and classes of Hindus to enter places of public worship and their right to offer prayers. The law was enacted to remedy centuries of discrimination and is an emanation of Article 25(2)(b) of the Constitution. The broad and liberal object of the Act cannot be shackled by the exclusion of women. Rule 3(b) is ultra vires.

**2. Whether the practice constitutes an ‘essential religious practice’ under Article 25? Whether a religious institution can assert its claim to do so under the right to manage its own affairs in the matters of religion?**

Essential part of a religion means the core beliefs upon which a religion is founded. It is upon the cornerstone of essential parts or practices the superstructure of religion is built. Without which, a religion will be no religion.

Test to determine whether a part or practice is essential to the religion is - to find out whether the nature of religion will be changed without that part or practice. If the taking away of that part or practice could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. There cannot be additions or subtractions to such part. Because it is the very essence of that religion and alterations will change its fundamental character. It is such permanent essential parts is what is protected by the Constitution.

In no scenario, it can be said that exclusion of women of any age group could be regarded as an essential practice of Hindu religion and on the contrary, it is an essential part of the Hindu religion to allow Hindu women to enter into a temple as devotees and followers of Hindu religion and offer their prayers to the deity. In the absence of any scriptural or textual evidence, we cannot accord to the exclusionary practice followed at the Sabarimala temple the status of an essential practice of Hindu religion.

By allowing women to enter into the Sabarimala temple for offering prayers, it cannot be imagined that the nature of Hindu religion would be fundamentally altered or changed in any manner. Therefore, the exclusionary practice, which has been given the backing of a

subordinate legislation in the form of Rule 3(b) of the 1965 Rules, framed by the virtue of the 1965 Act, is neither an essential nor an integral part of the Hindu religion without which Hindu religion, of which the devotees of Lord Ayyappa are followers, will not survive.

The fundamental right granted under Article 26 is subject to the exception of public order, morality, and health. However, since the right granted under Article 26 is to be harmoniously construed with Article 25(2)(b), the right to manage its own affairs in matters of religion granted by Article 26(b), in particular, will be subject to laws made under Article 25(2)(b) which throw open religious institutions of a public character to all classes and sections of Hindus.

### **CRITICAL ANALYSIS:**

It is only the essential part of religion, as distinguished from secular activities, that is the subject matter of the fundamental right. Superstitious beliefs which are extraneous, unnecessary accretions to religion cannot be considered as essential parts of religion. One test that has been evolved would be to remove the particular belief stated to be an essential belief from the religion – would the religion remain the same or would it be altered? Equally, if different groups of a religious community speak with different voices on the essentiality aspect presented before the Court, the Court is then to decide as to whether such matter is or is not essential. Religious activities may also be mixed up with secular activities, in which case the dominant nature of the activity test is to be applied. The Court should take a common sense view and be actuated by considerations of practical necessity

The rights conferred by Article 26 are not unqualified. Besides this, they are distinct from the rights guaranteed by Article 25. In **DEVARU**,<sup>1</sup> this Court elucidated on the application of such a right and held that where the denominational rights would substantially diminish Article 25(2)(b), the former part must yield to the latter. However, when the ambit of Article 25(2)(b) is not substantially affected, the rights of a “denomination” as distinct “from the rights of the

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<sup>1</sup> Sri Venkataramana Devaruand ... vs The State Of Mysore And ... 1958 AIR 255, 1958 SCR 895

public” may be given effect to. However, such rights must be “strictly” denominational in nature.

### **3. Whether the exclusionary practice based on a biological factor exclusive to the female gender amounts to ‘discrimination’? Whether this practice violates the core of Articles 14, 15 and 17?**

The freedom to believe, the freedom to be a person of faith and the freedom of worship, are attributes of human liberty. Facets of that liberty find protection in Article 25. Religion then cannot become a cover to exclude and to deny the basic right to find fulfilment in worship to women. Nor can a physiological feature associated with a woman provide a constitutional rationale to deny to her the right to worship which is available to others. Birth marks and physiology are irrelevant to constitutional entitlements which are provided to every individual.

The right to practice religion, as claimed by the Thanthris and worshippers, must be balanced with and must yield to the fundamental right of women between the ages of 10 and 50, who are completely barred from entering the temple at Sabarimala, based on the biological ground of menstruation, in sub-clause (a) of Article 25 (2).

All freedoms have linkages and exist in a state of mutual co-existence. Article 25, which is subject to Part III provisions, is necessarily therefore subject to Article 14, 15 and,17. The denial to menstruating woman to Sabarimala based on the ideology of “purity and pollution” is a violation of the constitutional right against “untouchability”. A claim for the exclusion of women from religious worship, even if it be founded in religious text, is subordinate to the constitutional values of liberty, dignity and equality. Exclusionary practices are contrary to constitutional morality;

Justice Indu Malhotra opines that Religious customs and practises cannot be solely tested on the touchstone of Article 14 and the principles of rationality embedded therein. Equal treatment under Article 25 is conditioned by the essential beliefs and practises of any religion. The contention that the age group of 10 to 50 years is arbitrary, and cannot stand the rigours of Article 14 cannot be accepted, since the prescription of this age-band is the only practical way of ensuring that the limited restriction on the entry of women is adhered to. The right to gender

equality to offer worship to Lord Ayyappa is protected by permitting women of all ages, to visit temples where he has not manifested himself in the form of a 'Naishtik Brahamachari', and there is no similar restriction in those temples. The contention that the Sabarimala Temple would be included within the ambit of 'places of public resort' under Article 15(2) cannot be accepted.

### **CRITICAL ANALYSIS:**

To exclude from worship, is to deny one of the most basic postulates of human dignity to women. Neither can the Constitution countenance such an exclusion nor can a free society accept it under the veneer of religious beliefs.

The refusal of the Constituent Assembly to provide any definite meaning to "untouchability" (despite specific amendments and proposals voicing the need for a definition) indicates that the framers did not wish to make the term restrictive.

The issue for entry in a temple is not so much about the right of menstruating women to practice their right to freedom of religion, as about freedom from societal oppression, which comes from a stigmatized understanding of menstruation, resulting in "untouchability

**4. Whether Sabarimala temple has a denominational character? If it does, is it permissible on the part of a 'religious denomination' managed out of the Consolidated Fund of Kerala and Tamil Nadu, to indulge in practices violating constitutional principles/morality embedded in Articles 14, 15(3), 39(a) and 51-A(e)?**

Coming to the first and the most important condition for a religious denomination, i.e., the collection of individuals ought to have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being,

The first question that arises is whether the Sabarimala temple can be said to be a religious denomination for the purpose of Article 26 of the Constitution. Three things are necessary in

order to establish that a particular temple belongs to a religious denomination. (**S.P. MITTAL v UNION OF INDIA**)<sup>2</sup>

1. The temple must consist of persons who have, a common organization i.e. the existence of a religious sect or body

When asked whether all persons who visit the Sabarimala temple have a common faith, the answer given was that all persons, regardless of caste or religion, are worshippers at the said temple. From this, it is also clear that Hindus of all kinds, Muslims, Christians etc., all visit the temple as worshippers, without, in any manner, ceasing to be Hindus, Christians or Muslims.

2. The temple must consist of persons who have a common faith.

Hindus who worship the idol of Lord Ayyappa as part of the Hindu religious form of worship but not as denominational worshippers. There is nothing on record to show that the devotees of Lord Ayyappa have any common religious tenets peculiar to themselves, which they regard as conducive to their spiritual well-being, other than those which are common to the Hindu religion. The same goes for members of other religious communities. In **DURGAH COMMITTEE**<sup>3</sup>, this Court had held that since persons of all religious faiths visit the Durgah as a place of pilgrimage, it may not be easy to hold that they constitute a religious denomination or a section thereof. Also, in **S.P. MITTAL** the majority judgment did not hold, and therefore, assumed that —Aurobindoism was a religious denomination, that persons who joined the Auroville Society did not give up their religion, also added great substance to the fact that the Auroville Society could not be regarded as a religious denomination for the purpose of Article 26. Therefore, the devotees of Lord Ayyappa are just Hindus and do not constitute a separate religious denomination

3. The said collection of individuals must be labelled, branded and identified by a distinct name.

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<sup>2</sup> S.P. Mittal Etc. Etc vs Union Of India And Others, 1983 SCC (1) 51

<sup>3</sup> The Durgah Committee, Ajmer ... vs Syed Hussain Ali And Others 1961 AIR 1402

The contention that the pilgrims coming to visit the Sabarimala temple being devotees of Lord Ayyappa are addressed as Ayyappans and, therefore, the third condition for a religious denomination stands satisfied, is unacceptable. There is no identified group called Ayyappans. Every Hindu devotee can go to the temple. We have also been apprised that there are other temples for Lord Ayyappa and there is no such prohibition. Therefore, there is no identified sect.

Accordingly, the judges held, without any hesitation, that Sabarimala temple is a public religious endowment and there are no exclusive identified followers of the cult.

Having stated that the devotees of Lord Ayyappa do not constitute a religious denomination within the meaning of Article 26 and that Sabarimala Temple is a public temple by virtue of the fact that Section 15 of the 1950 Act vests all powers of direction, control and supervision over it in the Travancore Devaswom Board which has been unveiled as “other authority” within the meaning of Article 12, resultantly fundamental rights including those guaranteed under Article 25(1) are enforceable against the Travancore Devaswom Board and other incorporated Devaswoms including the Sabarimala Temple.

As far as the funding aspect is considered, it is contended that prior to the adoption of the Constitution, both the Travancore and Tamil Nadu Devaswom Boards were funded by the State but after six years of the adoption of the Constitution, the Parliament, in the exercise of its constituent power, inserted Article 290-A vide the 7th Amendment whereby a sum of rupees forty six lakhs and fifty thousand only is allowed to be charged upon the Consolidated Fund of the State of Kerala which is paid to the Travancore Devaswom Board. After the insertion of Article 290-A in the Constitution and the consequent State funding, no individual ill-practice could be carried on in any temple associated with the statutory Devaswom Board even in case of Hindu temple as this constitutional amendment has been made on the premise that no ill-practice shall be carried on in any temple which is against the constitutional principles

#### **CRITICAL ANALYSIS:**



For a religious denomination, there must be new methodology provided for a religion. Mere observance of certain practices, even though from a long time, does not make it a distinct religion on that account

It is propounded that for the purpose of constituting a religious denomination; not only the practices followed by that denomination should be different but its administration should also be distinct and separate. Thus, even if some practices are distinct in temples attached to statutory board, since its administration is centralized under the Devaswom Board, it cannot attain a distinct identity of a separate religious denomination.

