

# FAITH vs. RATIONALITY: THE ECCLESIASTICAL APPROACH OF THE SUPREME COURT

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## ABSTRACT

*In the past few years, the Hon'ble Supreme Court of India has tested various religious practices on the anvil of Article 14 and the principles of rationality embedded therein. In the course of time, the Supreme Court of India has assumed the power that was once exercised by the Authorities of the Church to determine the righteousness of a religious practice. The development of conflicting interpretations of faith has rendered faith submissive to the subjective views of the learned Judges. Right from determining the essentiality of a religious practice by looking into the tenets of the religion to undertaking a holistic approach guarded by the spirit of Constitution, our beliefs and faiths have assimilated to the kinks put forth by the Apex Court of India. Less than one year after associating the notions of privacy with religious practices, the Hon'ble Supreme Court of India has gone on to determine the validity of the exclusion of women aged between ten to fifty years from entering the Shrine of Lord Ayyapan at Sabarimala. A deep analysis of the Sabarimala judgement reveals a good deal of lacunae that ought to be addressed. Looking beyond the Sabarimala judgement, faith remains a toy of speculation and protection of faith under Article 25 is a question that receives endless conflicting discussions.*

## ECCLESIASTICAL JURISDICTION

Ecclesiastical Jurisdiction was once exercised by the authorities of Church as a tool to make the people identify certain religious practices as divine and others as a source of sin. Amidst the soothing breeze of diversity, the Hon'ble Supreme Court of India has gradually assumed the ecclesiastical function of the land. Through a course of judicial interpretations, the Apex Court of India has gone on to determine the rationality of different beliefs. Right from nullifying the practice of Talaq-e-Biddat<sup>i</sup> to decreeing that the slaughtering of cows on Bakr' Id<sup>ii</sup> is not an essential religious practice, the Supreme Court has brought forth tremendous changes in our faiths. The inconsistency of interpretations can be manifestly witnessed. When excommunication is given the cloak of Constitutional protection<sup>iii</sup>, the exclusion of a class of women from entering the Sabarimala temple is prohibited<sup>iv</sup>. As it was rightly pointed out by senior counsel, FS Nariman, "Judges become theologians and are forced to make roving inquiries about all or any religious texts, beliefs or practices. Once the door is opened, there is no limit to which the Court cannot go."<sup>v</sup>

## THE THREE WAYS OF FAITH

It has been held in multitude of cases that only integral and essential parts of the religion are protected under Article 25 of the constitution.<sup>vi</sup> Broadly there are three judicial approaches in this regard. **First**, the approach that regards the religious tenets as finally determining the essential part of the religion. **Secondly**, the approach that looks to communitarian practice that receives or accepts some beliefs or ritual as an essential part of the religion. **Thirdly**, the holistic approach that looks not only to the text and context, but also to the spirit of the Constitution in this regard. The first approach was initiated in *Sri Lakshmindra Thirtha Swamiar*<sup>vii</sup>, where Mukherjee, J., for the Apex court observed, "What constitutes the essential part of a religion is primarily to be ascertained with references to the doctrines of the religion itself." The Second approach relies on communitarian conscience, as viewed by Venkatramana Aiyer, J., for the Supreme Court in *Venkataramana Devaru*<sup>viii</sup>, "the matters of religion in Art 26(b) include even practices which are regarded by the community as part of its religion". The third approach regards that not only the religious tenets and communitarian conscience, but also considerations to exclude superstitious beliefs, narrow mindedness and sectarianism should be employed in

identifying essential parts of the religion. Gajendragadkar, J., in *Durgah Committee*<sup>ix</sup> case cautioned that court should rationally examine the beliefs and exclude superstitious ones from becoming essential parts of religion. Over the course of time, the spirit of conscience has witnessed an eventual decline to serve the subjective assumptions of the learned Judges.

## **A PUTTASWAMY PERSPECTIVE: RELIGION AND PRIVACY**

The Supreme Court of India *in re* Puttaswamy<sup>x</sup> has held that privacy was absolutely necessary to enjoy the rights under Article 25 of the Constitution. Furthermore, it has been agreed by the Hon'ble Supreme Court that the freedom under Article 25 should not encroach upon the religious freedom of other persons<sup>xi</sup>. It is humbly submitted that if this was the case, there is an ambiguity as to who can be benefited from such kind of interpretation. The followers of a faith will certainly claim the benefit of privacy in matters of religious worship and so will the persons who intend to follow the faith. Above all, the deity himself can be considered as a juristic person<sup>xii</sup>, making him to be entitled to such kind of right as well. It is humbly submitted that the inconsistent judicial interpretations of faith by the Apex Court of India has left the freedom of conscience to dwindle into meaningless beliefs at the mercy of the Hon'ble Supreme Court.

## **WHAT WENT WRONG IN SABARIMALA<sup>xiii</sup> ?**

To begin with, the Writ Petition (Civil) filed by the petitioners under Article 32 is by itself not maintainable. It has been pointed out that the petitioners came to know about the restriction prevailing in the Lord Ayyapan temple in Sabarimala by newspaper stories<sup>xiv</sup>. The relief available under Article 32 is primarily for persons whose fundamental rights have been infringed. Since, the petitioners did not share any kind of faith towards Lord Ayyapan, the said relief is not available to them for none of their fundamental rights was violated. Differential treatment does not per se amount to violation of Art. 14<sup>xv</sup>. The restriction of women aged between 10 to 50 years which is sanctioned by Sec. 3(b) of the Places of Public Worship (Authorization of Entry) Act, 1965 is owing to the Nishtika Brahmachari nature of Lord Ayyapan. Therefore, the intelligible differentia has a reasonable nexus with the object it purports to achieve.

Furthermore, the petitioners have also contended that there are other temples of Lord Ayyapan in which women of the above-mentioned age group are allowed to enter. This contention cannot be the basis for striking down an age-old custom because the “Nishtika Brahmachari” nature of the Lord is found at the temple of Sabarimala alone. The most learned Dr. D.Y. Chandrachud, J., has appended the concepts of purity and pollution on this restriction. It is most respectfully submitted that the legislative intent of the Constitution makers when drafting Art. 17 of the present Constitution was to prohibit untouchability based on caste system<sup>xvi</sup>. The analogy sought to be drawn by comparing the rights of Dalit with reference to entry to temples and women is wholly misconceived and unsustainable.

It was pointed out in the Majority opinion<sup>xvii</sup> that the exclusionary practice is not a part of the basic tenets of Hinduism. It is humbly submitted that there are no basic tenets for Hinduism on the whole. The Hindu religion is a melting pot of various cultures and communities. The tenets of various communities are absorbed into and forms a sacred part of the Hindu religion. Therefore, the restriction of women of the said age group adhering to the fundamental nature of the deity should be considered as an essential religious practice. Additionally, their Lordships through the Majority and Concurring opinions have affirmed the validity of the religious denomination test established in the S.P.Mittal<sup>xviii</sup> case. They have gone on to decide that the devotees of Lord Ayyapan do not form a separate religious denomination as they don't possess a distinctive name. It is humbly submitted that their Lordships have failed to consider the views of Chinnapa Reddy, J., in the Mittal case. He has clearly remarked that it is not palpably possible for any religious denomination to have a distinctive name and such a prerequisite should not be attached much importance. Therefore, it is respectfully submitted that the followers of Lord Ayyapan constitute a separate religious denomination.

When delivering the Majority opinion, their Lordships have pronounced<sup>xix</sup> that the notions of “public order, morality and health” should not be used as an instrument to restrict the religious freedom. It is with all respects submitted that the notions of public order, morality and health stand as a wall of protection against the unrestricted exercise of the religious freedom. It is further humbly submitted that by this very pronouncement, the Hon'ble Supreme Court of India has went beyond interpreting the constitution to assuming the role of arbiters of faith disregarding any disorder or chaos that might arise in the future.

## **BEYOND SABARIMALA**

The Apex Court of India has- through a course of judicial interpretations- acquired an extensive jurisdiction to deal with matters of religion. The line between rationality and faith has become exceedingly thin. Almost invisible. The Courts all over India have failed to consider the fact that faith is a metaphysical speculation of human mind. The incessant subjection of conscience to rationality has narrowed the scope of Article 25. All that can be done is having faith in the Supreme Court to protect our faith. Only God knows what can come of our future. Maybe God. Maybe the Hon'ble Supreme Court of India.

## **REFERENCES**

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<sup>ii</sup> State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 S.C.C. 534 (India).  
<sup>iii</sup> Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, A.I.R. 1962 S.C. 853 (India).  
<sup>iv</sup> Indian Young Lawyers Association and Ors v. The State of Kerala and Ors., (2018) S.C.C. Online S.C. 1690 (India).  
<sup>v</sup> B.N Kirpal, Ashok H Desai, et.al. (eds.), Supreme but Not Infallible Essays in Honour of the Supreme Court of India 260 (Oxford University Press, New Delhi, 2000).  
<sup>vi</sup> Sri VenkataramanaDevaru v. State of Mysore, (1958) S.C.R. 895 (India).  
<sup>vii</sup> Commr., H.R.E. v. Sri LakshmindraThirthaSwamiar of Sri Shirur Mutt, A.I.R. (1954) S.C. 282 (India).  
<sup>viii</sup> Sri VenkataramanaDevaru v. State of Mysore, (1958) S.C.R. 895 (India).  
<sup>ix</sup> Durgah Committee v. Syed Hussain Ali, (1962) 1 S.C.R. 383 (India).  
<sup>x</sup> K.S.Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).  
<sup>xi</sup> Lily Thomas v. Union of India, (2000) 6 S.C.C. 224 (India).  
<sup>xii</sup> Shironmani Gurudwara Prabandak Committee v. Som Nath Dass, A.I.R. 2000 S.C. 1421 (India).  
<sup>xiii</sup> Supra note 4.  
<sup>xiv</sup> Supra note 4. Para.297.  
<sup>xv</sup> Rajasthan v. Shankar Lal Parmar, A.I.R. 2012 S.C. 1913 (India).  
<sup>xvi</sup> Statement by H.J.Khandekar, Constituent Assembly Debates, Vol. 11, #11.161.65, (November 22,1949), Drafting Committee of the Constituent Assembly of India.  
<sup>xvii</sup> Supra note 4. Para.123.  
<sup>xviii</sup> S.P.Mittal v. Union of India and Ors., (1983) 1 S.C.C. 51 (India).  
<sup>xix</sup> Supra note 4. Para.111.