

## CASE COMMENT ON INDIAN YOUNG LAWYERS ASSOCIATION V. THE STATE OF KERALA

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### ABSTRACT

*The Sabarimala Temple, considered the abode of Lord Ayyappa, is located in the Periyar Tiger Reserve in the Western Ghat mountain ranges of Pathanamthitta District, Kerala. It prohibits the entry of women in their 'menstruating years' (between the ages of 10 to 50), on the grounds that it is a place of worship.*

*In 2006, Indian Young Lawyers Association filed a public interest litigation petition before the Supreme Court challenging the Sabarimala Temple's custom of excluding women. The Association argued that the custom violates the rights to equality under Article 14 and freedom of religion under Article 25 of female worshippers. The author, through this research work tried to comprehend the Court's decision regarding the same.*

### INTRODUCTION

*"Freedom cannot be achieved unless the women have been emancipated from all forms of oppression<sup>i</sup>."*

*-Nelson Mandela*

Sabarimala is a Hindu shrine dedicated to **Lord Ayyappa<sup>ii</sup>**. The temple is located in Periyar Tiger Reserve in the Western Ghats of Kerala. This is one of the largest Hindu temple which receives largest annual pilgrimage in the world and is managed by a statutory body namely Travancore Deraswom Board. In 1991, the Kerala High Court banned the entry of women

above the age of 10 and below the age of 50 from entering the Sabarimala shrine. The reasoning given by the court was that The ban on the entry of women existed since the time immemorial and only the Tantri (priest) was empowered to decide on traditions.

However, this ban was challenged through the public interest litigation filed by Indian Young Lawyers Association. This case was later referred to a five judge constitution bench led by Chief Justice of India Dipak Misra.

The bench on September 28,2018 lifted the ban and ruled that women of all age groups can enter Sabarimala temple in Kerala, marking an end to the age old tradition. With 4:1 majority<sup>iii</sup>, the bench in its verdict said that this practice of the temple violates the rights of Hindu women and banning entry of women in the shrine is regarded as gender discrimination. The bench said that the provision in the **Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965<sup>iv</sup>**, which authorized the restriction, violated the rights of Hindu women to practice religion. It was also said that patriarchy in religion cannot be allowed to trump the right to pray. While Justice Indu Malhotra, who penned a dissenting verdict, said that the petition does not deserve to be entertained.

## **BACKGROUND**

Sabarimala<sup>v</sup> is a temple of great antiquity dedicated to Lord Ayyappa , a deity depicting “ a higher masculine god born out of union of two male gods, Shiva and Mohini, where Mohini is Vishnu in female form. This is a hindu pilgrimage center located in Western Ghats mountain ranges of Pathanamthitta district, Perunad gram panchayat in Kerala. This temple is situated on a hilltop at an altitude of 1260 meters above mean sea level and is surrounded by mountains and dense forests in Kerala. The deity is worshiped as Ayyapan and as Dharmasasta. This temple is managed by Travancore Dewaswom Board and the main stakeholders of the temple are Travancore Dewaswom Board, Tantri (head priest), Pandalam royal family, Ayyappan Seva Sangram etc. The issue of restrictions on the entry of women between **10 to 50 years of age** in Sabarimala temple has been a topic of national debate for quite some time now. With the Supreme Court verdict, this issue has attained national attention once again. Some scholars

believe that Ayyappa is Nilakantha Avalokiteswara depicted in Buddhist Puranas. This was mentioned by M. Sreekala Nair in her chapter of 'Introduction to Kerala Studies'. Another uniqueness of the temple is the presence of Vavar (a Muslim deity) in its premises. Some of the Christian influence is also identified as the Sabarimala pilgrims visit Arthunkal church, where they return their 'malas'. From this heterogenous identity, the Sabarimala space witnesses a transformation into the Brahmanic fold of Hinduism, especially in the 20th century.

Sabarimala is supposed to depict "Naishtika Brahamcharya" which is a perennial brahamcharya and a celibate student; which forms great powers deriving specially from his ascetic endeavours in particular from abstention from sexual activities, a practice before and doing pilgrimage to Sabarimala. Therefore, as per a notification by the Board that manages the temple, women belonging to menstruating age are not permitted to enter the temple.

When in 2006, **Indian Young Lawyers Association** filed a public interest litigation before supreme court challenging the Sabarimala temple's custom of excluding women. The association argued that the custom violates the right guaranteed under article 14 and 25 of Indian Constitution. In which the state contended that the final legal authority lies with the temple's priest and the board to manage the temple's administration.

## **JUDGMENT & ANALYSIS**

The judgement of case propounded through 4:1 ratio, held that the exclusion of women from the Sabarimala shrine is unconstitutional and the section 3(b) of the Kerala Hindu Places of Worship (Authorization of Entry) Act 1965<sup>vi</sup> is unconstitutional.

The above-mentioned section states as follows:

*"The classes of persons mentioned here under shall not be entitled to offer worship in any place of public worship or bath in or use of water of any sacred tank, well, spring or water course appurtenant to a place of public worship whether situated within or outside precincts*

*thereof, or any sacred place including a hill or hill lock, or a road, street or pathways which is requisite of obtaining access to place of public worship:*

*(b) Women at such time during which they are not by custom and usage allowed to enter a place of public worship”*

This rule is hit by **Article 15(1)<sup>vii</sup>** and **Article 25(1)<sup>viii</sup>** of Constitution of India as it discriminates against women on the basis of their sex only. This kind of discrimination on the basis of sex violates the fundamentals of Constitution.

The four founding principles of the Constitution **namely liberty, equality, fraternity and justice** are expressly stated in the Preamble of the Constitution describing it as the basic features of the same.

Speaking of equality in the context of the present issue, it has importance both in terms of status and opportunity. **Article 15** reads as:

*“Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:*

- *The state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.”*

Equality should be made available to all persons irrespective of caste, sex and other discriminatory grounds. The exclusion of women from the shrine on the basis of sex is against the morality of the people and these grounds were challenged in the court of law for appropriate judgement.

The above-mentioned exclusion is also violative of the liberties encompassed to the citizens in the form of belief, faith and worship. **Article 21** of the Indian Constitution<sup>ix</sup> elaborates the meaning of liberty as mentioned in the Preamble. It is read as:

*“Protection of life and personal liberty- No person shall be deprived of his life and personal liberty except according to the procedure established by the law”. Every human being should have personal liberty meaning liberty to faith, belief and worship.*

This exclusion is also violative of the article 25 of the Indian Constitution as this article protects the equal entitlement of all persons to a freedom of conscience and to freely profess, protect and propagate religion. By this the Constitution exactly means that every individual in society without distinction or discrimination of any type is entitled to the rights laid down, by placing each individual on even platform.

The excluded women claim that barring them access to inner sanctum of the shrine violated their **fundamental right under Article 25(1)** to freely practice their religion. Moreover, restricting the entry of women into the place of worship is considered as one of the ways of imposing patriarchy. These kind of restrictions are often based on patriarchy and not religion.

The devotees of lord Ayyappa claim themselves to have a religious denomination under article 26 of Indian Constitution and on this perspective claim to have certain rules and regulations of their own.

**Article 26** of Indian constitution reads as follows:

*“Freedom to manage religious affairs subject to public order, morality and health, every religious denomination or any section thereof shall have the right*

- *To establish and maintain institutions for religious and charitable purposes;*
- *To manage its own affairs in matters of religion;*
- *To own and acquire movable and immovable property; and*
- *To administer such property in accordance with law.”*

The claim forecasted by the devotees is incorrect as the Ayyappans cannot be called as a religious denomination as it does not fulfil the criterion. The fundamental right of Article 26 is not granted to individuals but to **religious denominations** or sections thereof. These denominations are to be determined on the basis of persons having common faith, a common organization, and designated by a distinct name as a section thereof. Believers of a particular religion are to be distinguished from the denominational worshippers. But the devotees of the Sabarimala temple do not classify to the above mentioned philosophies and the tests does not show any findings of the denominational status as people from all backgrounds worship Lord

Ayyapan, be it Hindus, Muslims and Christians. Hence Sabarimala is not a denominational temple and hence Article 26 does not comply.

This usage and custom is also a **manifestation of untouchability** and hence, violative of **Article 17** of the Constitution. Untouchability is not defined as such and the social exclusions mentioned herein is refers to the social exclusion based on the **notions of “purity and pollution”**. This acknowledgement is the inalienable dignity of every individual as facet of Article 21 of the Constitution.

The caste system has been empowered by specific forms of subjugation of women. The notion of “purity and pollution” mentioned here stigmatizes the menstruation of women in Indian society. In some ancient religious texts and customs, menstruating women have been considered as polluting the environment. But in some recent and modern religion as like Sikhism have more pragmatic views on menstruation making clear that no ritualistic impurity is involved. Even Sri Guru Granth Sahib deems menstruation as a natural process which is free from impurity and essential for procreation

Irrespective of the status of women, menstruation have been compared to impurity and this idea of impurity is further used to justify the social exclusion of women. Regarding women as polluting or impure is against the dignity of the women guaranteed by the Constitution under Article 21. These menstrual taboos limit the ability of women to achieve the freedom of movement, right to entry places of worship and even the right to education.

Some of the contentions in the hearing also urged that the presiding deity that is Lord Ayyappa, is the bearer of constitutional rights under Part III of the Constitution. It was contended that the right to preserve the celibacy of the deity is protected in the Articles 25(1) and 26 of the Constitution and held as a **fundamental right of the deity**. It was also said that any alteration in the practice will have adverse effect on the fundamental rights. The right with deity to preserve the celibacy of the deity is protected by constitutional rights and extends to excluding women from entering and praying in the temple. The law recognizes an idol or deity as a juristic person which can own property and can sue and be sued in the court. It was basically held in *Pramatha Nath Mullick v. Pradyuman Kumar Mullick*<sup>x</sup> which dealt with the nature and services due to the idol. It was held that;

“A Hindu idol is, according to long established authority, founded upon religious customs of Hindus, and the recognition thereof by courts of law, a “juristic entity”. It has a judicial status with the power of suing and being sued.”

***In Yogendra Nath Naskar v. Commissioner of income-tax, Calcutta<sup>xi</sup>***, symbolized the deity and idol as a legal person. This does not mean that the deity has all necessary rights. Merely, because deity has been granted limited and original rights as a juristic person under statutory law does not mean that the deity necessarily has constitutional rights. The rights guaranteed under part III of the constitution are geared towards the recognition of the individual as a basic unit. The deity is just a legal fiction which cannot be led to the gamut of fundamental rights.

All these rights get formulated to give morality to the issue and help women in attaining basic fundamental rights with due honour and respect.

## **CONCLUSION**

The social exclusion of women from entering the Sabarimala shrine is violative of several dimensions. This violates gender equality and discriminates mostly on the basis of sex. Just by exclaiming that Lord Ayyappa belonged to Brahamcharya cult does not mean that this will hamper the rights of women. There are thousands of Ayyapan temples where women are not denied entry, then why in this temple only?

Another argument to this question is the existence of other bramacharya gods and their temples all over India. For example- Lord Hanuman was also a Brahamchari but entry is not denied to women in the temples of Hanuman.

Liberty in matters of belief, faith and worship, must produce a compassionate and passionate and humane society marked by the equality of status among all its citizens. The freedom to believe, to be a person of faith to be a human being in prayer has to be fulfilled in the context of a society which does not discriminate between its citizens. Combined together, individual liberty, equality and fraternity among citizens is indispensable to a social and political ordering in which the dignity of the individual is realized.



Mankind since the time immemorial, has been searching for the justification for a point of view that hurts humanity. Basically, the theoretical human values always remain on paper and from the time immemorial the status of women is the same as before and treated with inequality and other dogmatic notions of biological and physiological factors affecting their lives adversely. It is always seen that women are treated unequal on the path of approach to understand the divinity.

**“In the theatre of life, it seems, man has put the autograph and there is no space for women to even put her signature”.**

## **REFERENCES**

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<sup>i</sup> Quotes on women upliftment, available at; <https://www.magzter.com/articles/4> , last seen on 29/09/2019

<sup>ii</sup> Lord Ayyappa, The Pandya dynasty, info available at; <https://timesofindia.indiatimes.com/s>, last seen on 29/09/2019

<sup>iii</sup> Ratio of the case, available at; <https://www.scconline.com/>, last seen on 30/09/2019

<sup>v</sup> Facts of the case, available at; <https://sci.gov.in/supremecourt/f>, last seen on 2/10/2019

<sup>vi</sup> The Act is available at; <https://indiacode.nic.in/handle/6>, last seen on 3/10/2019

<sup>vii</sup> The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them; **Article 15(1)**

<sup>viii</sup> Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion; **Article 25(1)**

<sup>ix</sup> Provisions of Indian Constitution, available at; <https://www.india.gov.in/f>, last seen on 4/10/2019

<sup>x</sup> (1925) 27 BOMLR 1064

<sup>xi</sup> 1969 AIR 1089, 1969 SCR (3) 742