

CASE COMMENT ON INDIAN YOUNG LAWYERS VS. STATE OF KERALA (SABRIMALA TEMPLE)

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INTRODUCTION

The Sabarimala temple dispute has been a sleeping scandal. “For decades there has been a low-level disagreement within Kerala regarding the ban’s parameters and validity, but the issue received relatively little traction in the public sphere.”ⁱ Finally on 28th September 2018, the Supreme Court struck down the rule which barred girls and women of the age of 10-50 years from entering into the Sabarimala temple situated in Pathanamthitta district of Kerala. “A five judge Constitution bench headed by Deepak Misra gave a 4-1 verdict said the temple rule violated their right to equality and right to worship”ⁱⁱ. The judgment allowing women access to the Sabarimala temple has held that the constitutional guarantees of dignity and equality scores over old customs and practices cutting across religionsⁱⁱⁱ.

EXPLANATION OF THE CASE

Facts- Indian Young Lawyers Vs Union of India^{iv} popularly known as the Sabarimala case emerged from a petition by young lawyers, which challenged the Constitutional validity of Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965, restricted entry of women into the temple. This rule was ultra vires of Section 3 of the Kerala Hindu Places of Public Worship Rules, 1965 of not permitting the entry of women of any age into the temple.

Procedural History-This issue had firstly arisen in front of the Kerala High Court in the year 1992, by a public interest litigation filed by S. Mahendran. The court held that the exclusion of

women between the ages of 10 and 50 from Sabarimala was in accordance with the usage prevalent from time immemorial and was, therefore, upheld^v.

This petition which attempted to lift the ban on entry of women in the temple was filed in the year 2006. In the year 2008, the matter was referred to a 3-judge Bench. However, the matter went into cold storage for 7 years. The hearing came up on January 11, 2016, while on October 1, 2017 a three-judge bench comprising of CJI Deepak Misra, Ashok Bhushan and R Bhanumathi referred the case to a constitutional bench.

In the verdict of 4:1 favouring the lifting of ban on the entry of woman, the rule 3 (b) of Kerala Hindu Places of Public Worship (Authorization of Entry) Act, 1965 was declared unconstitutional. The restriction on entry was held to be in violation of the fundamental right, Article 25(1), 25(2) (b) and 15(1).

The issues in the case were-

- Whether the complete exclusion of women of age between 10- 50 years is violate the fundamental right - guaranteed by article 25 of the constitution.
- Whether Section 3 and Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act, 1965 violation of their fundamental right under Article 25(1) and Article 15(1), and *ultra vires* the parent Act^{vi}.

The Law that the Judge applies-

- **Justice Deepak Misra & Justice Kanwilkar-** CJI Dipak Misra on his as well on behalf of Khanwilkar J observed that religion is a way of life intrinsically linked to the dignity of an individual and patriarchal practices based on exclusion of one gender in favor of another could not be allowed to infringe upon the fundamental freedom to practice and profess one's religion^{vii}.
- **Justice Chandrachud-** Justice D Y Chandrachud was of the opinion that exclusion was not an essential religious practice and held that the exclusion was contrary to constitutional morality.

- **Justice Malhotra-** She delivered a dissenting opinion. Justice Malhotra argued the principle of constitutional morality. 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”^{viii}.
- **Justice Nariman-** Justice Nariman gave a concurring judgment that the rules are in violation of Article 21 and “there is no protection under Article 26 for Ayyappa devotees and therefore the rules will not apply insofar as Sabarimala is concerned.”^{ix} The worshippers of Ayyappa are not a separate religious denomination. Thus, he held that the “Sabarimala Temple's denominational freedom under Article 26 is subject to the State's social reform mandate under Article 25(2) (b)”^x. He held that barring the entry of women from temple was violation of Article 25 (1) of the constitution and he also struck down and declared rule 3 (b) Kerala Hindu Places of Public Worship Act, 1965 unconstitutional.

Final Decision in the case-

The devotees of Ayyappa didn't constitute to be a religious denomination. The exclusion of women from the Sabarimala Temple was not considered an essential practice. The exclusion on the basis of menstruation, was a form of untouchability, which has no place in constitutional order. Hence, rule 3(b) was ultra vires off the 1965 Act, and women of the menstruating age were permitted entry into the premises of the Sabarimala Temple.

DISCURSIVE ARGUMENTS

The Supreme Court took a laudable step towards permitting the entry of women in the Sabarimala Temple, Kerala. The judgment was a recognition of women's right and a major step towards equal treatment.

The judgment tends to question the old beliefs that “exclude women based on notions of inferiority, patriarchy and ideologies of chastity and purity.”^{xi}

The court's affirmation that women's right to equality plays an integral part subject to constitutional morality as well as 'biological or physiological are invalid reasons to be accepted under freedom of faith guaranteed by the constitution and the basic structure.

The Supreme Court in the Sabarimala judgment took cognizance of religious texts rather than relying on statutory or constitutional provisions as well as refusal to test personal laws on the anvil of Fundamental rights.

Exclusion of women is an essential religious practice and the constitutional legality of rule 3 (b) of Kerala violation of Article 15 (1) of the Constitution

Even when texts expressly stated a practice as an essential practice of the relatively new religion, courts looked into whether the absence of the practice would make a fundamental change to the religion. "Thus, a distinction was drawn between 'the core of a religion' and 'mere embellishments'"^{xii}

"The practice which constitutes the essential part of a religion is to be ascertained with reference to the doctrines of that religion itself."^{xiii} In the Shirur Mutt case^{xiv}, the Supreme Court held that the term 'religion' in Article 25 covers all the aspects and dimensions involved with the rituals and practices that are integral to it. With the passage of time, 'an essential practice' test has been generated by the judiciary. Practices which are 'essential' to the religion are to be provided Constitutional protection. However, the application of this test is inconsistent, and has led to conflicting results. It is important to highlight that the rule of law is a stronger national impulse than the need to keep away menstruating women away from the temple.

In the present case, Justice Nariman held that exclusion of women from the Sabarimala temple didn't constitute to be an essential religious practice in the devotion of Lord Ayyappa. This reasoning was based on the test laid by Shirur Matt case, though the test is based on the discretion of the court and lacks uniformity. However, in the present scenario the rationale of the judge is appreciative and logical due to the valid reasoning.

"Religious practices which do not have the effect of either a complete ban on temple entry of certain persons, or otherwise not discriminatory, may pass muster under Article 26(b)."^{xv} In the present case there was absence of complete ban, this ban was on the women of menstruating

age. Moreover, women were not completely banned from worshipping the deity, Lord Ayyappa at other temples as contended by senior advocate Jaideep Gupta.

Justice Nariman didn't elaborately discuss the grounds for recognizing a practice to constitute an essential religious practice, though he held that the rule 3(b) of Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 excluding women from entry failed to fulfil the condition of an essential religious practice. It violated the fundamental right under Article 15(1) - guaranteeing that the state would not discriminate on the basis of sex as this practice failed to constitute under article 26, as well as the Sabarimala Temple failed to be a religious denomination. The practice also failed to constitute a custom because of the Section 3 of Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 which stated that all Hindu individuals are allowed to enter and worship in the temple. Hence, rule 3 (b) was in violation of Section 3 of Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965.

Similarly, in the cases of Shani Shignapur and Haj Ali Dargah case, the Bombay High ruled that the practice of prohibiting women to access the place of is contrary to the equality provisions guaranteed by the constitution^{xvi}.

“Such alterable parts aren't the 'core' of religion where the belief is based and religion is founded upon. It could only be treated as mere embellishments to the non-essential parts.”^{xvii}

Justice Nariman suggested that internal dissent about a practice, is “essential” character to the religion. However, the judgment failed to provide reasoning on the fact that whether the internal practices are oppressive. If these practices are oppressive, they will fail to avail protection under Article 25(1).

Religious denomination- Common Faith

The Sabarimala judgment observed three conditions to be fulfilled to constitute an entity into a religious denomination.

- Common faith
- Common Organization
- Distinct name

The majority was of the perspective that the first condition remains unfulfilled. It was of the view that the worshippers and devotees from all the religions worship the deity Lord Ayyappa, without ceasing to be a part of their own religion. Justice Nariman (para 26) stated that “*Hindus who worship Ayyappa as a part of the Hindu religious form of worship and not as denominational worshippers.*”

Though the reasoning is justified, the rationale failed to regard the other aspect of the religion. The rationale was based on an assumption that the Ayyappa devotees don't constitute a religious denomination due to the absence of a specific Ayyappa sect. There was failure on the part of considering of new denominations as reliance was solely based on pre- established denominations without acknowledging scope of development of new denominations. The Ayyappa community also follow the 'Vrat' system of Sabarimala, regulations consisting off do's and don'ts', which make it a distinct community and hence an eligible ground for consideration of religious denomination. Disregarding the status of Ayyappa devotees to be a religious denomination, on the basis of common belief, only on the pretext of that other communities worship the deity seems unjustified.^{xviii}

Acceptability

Biological differences are invalid grounds for exclusion of women from entry into the temple. The ban on women is not about menstruation alone - it is also in respect of keeping with the wish of the deity, who is believed to have laid down clear rules regarding this pilgrimage in order to seek his blessings.

According to the temple's mythology, the deity is an avowed bachelor, taken an oath of celibacy and hence, women of a certain age are not allowed into the temple.^{xix}

The state of Kerala is wracked with violence following Supreme Court ruling, after collision of the ancient tradition with the modern human rights. “Due to this the state of Kerala is

experiencing most violent periods of unrest in its history”.^{xx} Even though the ruling was in favor of women, they are being refused entry into the temple, which, is a threatening news towards the approach and acceptability of the Indian court’s decision.

The judgment though provided equality, abolished discrimination against women and also the practice of untouchability, and all obstacles in worshipping one’s faith. It also created a distinction between the religious beliefs and the superstitious beliefs. However, the judgment lacked the acceptance approach of the worshippers and the temple

“Protest against the entry of women,” purification rituals”—an act which violates India’s constitutional provision against untouchability”^{xxi} after the entry of women of the menstruating age depicts the displeasure and non-acceptance of the judgment by the public. The judgment stands in isolation; however, the repercussion is the non-acceptability of the decision. Not only men, and the temple but also women are protesting against this decision due to the customary religious practice of exclusion being carried out for years.

However, this non- acceptance doesn’t constitute that the judgment was faulty or it lacked proper reasoning. It was a much-awaited decision required to end the injustice and removal of obstacles from the path of women to achieve equality. Initiatives like “women’s wall”, where lakhs of women show their support by holding hands together in front of the 620 km long wall. Campaigns like “happy to bleed” portray acceptance of the judgment with open arms.

Thus, the tussle continues between the various religious institutions, the government and the court, however, a law is only successful when accepted by the majority. In the present case, though the protest continues to create hindrances, the judgment creates a solid foundation and set a distinctive precedent. However, the Supreme Court has received 50 petitions, urging the court to review its decision.

CONCLUSION

Lifting the ban on the entry of women into the Sabarimala temple was a much awaited and essential decision. It is one of the most celebrated judgments because it has a serious impact on the equality of gender aspect in the country of India. The arguments of Justice Nariman in constituting that exclusion of women of menstruating age are based on strong and powerful reasoning. However, the judgment lacked to consider a few aspects revolving in the scenario, for instance the acceptability of the Sabarimala Temple, the devotees, neglecting the newly developed “so-called” religious denominations and justification on clear distinction of what constitutes an essential practice.

Though the judgment lacked to cover these areas, the decision is accurate. There are blemishes in the judgment of Justice Nariman, however, these glitches aren't enough to truly dissolve his reasoning for arriving at the decision. Hence, I support Justice Nariman's decision but not his reasoning entirely.

SUMMARY

The Sabarimala judgment is a huge step towards breaking the gender discrimination barrier. It is a leap forward towards gender equality. It had a major impact on the individual dignity, liberty as well as equality. The fundamental rights of a section were also recognized for the development of the feeling of self-determination and fulfilment. Though the judgment is a marvellous contribution, protest in the state of Kerala and disallowing entry of women even after the Supreme Court's decision depict the displeasure and non-acceptance of the decision.

The Sabarimala verdict was much awaited, it attempted to bridge the gap of inequality. Failure on the part of the Court to provide a clear distinction or grounds for the interference of the courts in religious matters, still remains a blurred line. Due to which the ambiguity continues to be present in this aspect.

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