

## **ANALYSING THE SABRIMALA JUDGMENT BY JUSTICE**

**D.Y. CHANDRACHUD**

*Written by Shivanshi Gupta*

*2nd year B. COM LLB Student, Institute of Law, Nirma University*

---

### **ABSTRACT**

On 28<sup>th</sup> September 2018 Supreme Court of India pronounced a historic judgment of Indian Young Lawyers Association vs. State of Kerala<sup>1</sup>. It lifted the ban of entry of women aging 10-50 years in Sabrimala temple and held it unconstitutional. With progressive decision of the court by protecting women's right of equality and right to worship, it has also faced backlash from various sects of people as Supreme Court failed to consider the 'faith' of people associated with the tradition which they have been following for hundreds of year.

The judgment has spurred a clash between the fundamental right of equality and worship with the tradition of people having faith in such a custom since times immemorial. The present case comment would deal with the judgment pronounced by Justice D.Y. Chandrachud only, among the other four judges of the case.

The judgment by Justice D.Y. Chandrachud was among the majority view of the bench. He said that ban on entry of women should be unconstitutional as it was against the constitutional morality. The exclusion of women from temple does not constitute as the essential religious practice and thus it should be struck down. He also said that menstruation cannot be a valid reason for exclusion and doing such is a form of untouchability violating article 17 and also hampers the dignity of women.

## EXPLANATION OF THE CASE

### *Facts-*

The Sabrimala temple is one of the most famous temples in India located in Periyar tiger reserve in Kerala. The temple did not allow women to enter the temple from age 10 to 50. Stating that lord Ayyappana is an eternal celibate and presence of women might distract him and is a long going practice of the temple. The exclusion has been challenged before Kerala High court in S Mahendran vs. Secretary, Travancore Devaswom Board and ors case<sup>ii</sup>, where exclusion was justified. In 2006 Public interest litigation was filed by Indian Young Lawyers Association challenging the exclusion contending that the ban violated Article 14 and 25.

### *Procedural history-*

The case before Kerala high court of S Mahendran vs. Secretary, Travancore Devaswom Board and ors in the year 1991, Where S Mahendran filed a petition alleging that women visited the temple. The court held that the restriction was not violative of the fundamental rights and contended that it's not violative of the act as it does prohibit women as a class but prohibition is for women from 10 to 50 years.

This continued for many years, but in 2006, six women members of Indian Young Lawyers Association filed a petition in the Supreme Court that the ban on entry for women for age 10 to 50 is discriminatory in nature and the rule 3(b) of Kerala Hindu Places of Public Worship (Authorization of Entry) Rules act of 1965 to be struck down which laid down this ban.<sup>iii</sup>

Supreme Court in 5 judge constitutional bench with 4:1 majority on 28<sup>th</sup> September 2018 reversed the judgment of Kerala High court stating that any prohibition for women owing to their physiological nature is discriminatory in nature.<sup>iv</sup> The ban violates Right to worship of women. The bench consisted of Chief Justice Dipak Misra, Justice A.M. Khanwilkar, Justice R.F, Nariman, Justice D.Y .Chandrachud and Justice Indu Malhotra. While Justice Malhotra dissented.

### *Issues-*

- Whether the ban on basis of physiological process unique to women amounts to discrimination or not?

- Whether Sabrimala temple (Ayyappana) has religious denomination?
- Whether the practice of exclusion of women is essential religious practice or not as per Article 25?
- Whether rule 3(b) of Kerala Hindu places of public worship acts which allowed a religious denomination to exclude women violate of Article 14 and 15(3)?

#### ***Law-***

Article 14, 15, 19(1), 21 and 25(1) of Constitution of India were in play in the present case. It was contended that the exclusion violated the mentioned provisions of the constitution. Rule 3(b) of Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules act of 1965 contended that it violated the above provisions as it put up restriction on women to enter the temple.

#### ***Application of law to the facts-***

The rule 3(b) allowed Hindu denominations to ban women from public places of worship when the exclusion is based on a custom. Here this rule was applicable in Sabrimala temple, which barred women to enter in temple. By virtue of Article 14, 15, 19(1), 21 and 25(1), the said rule is held to be ultra vires and unconstitutional.

#### ***Final decision-***

The Supreme Court lifted the ban of entry of women protecting fundamental rights guaranteed by the constitution of India to women. Rule 3 (b) of the act gave permission to the Hindu denominations to exclude women from places of worship (temple) if such exclusion is based on a custom. It was held that rule 3 (b) was ultra vires and was struck down. It was held that ban was in violation of Article 25(clause 1) and Rule 3(b) of Kerala Hindu Places of worship. The ban on basis of physiological process exclusive to women (menstruation) amounts to discrimination on basis of sex, violating Article 15. Supreme Court stated that Ayyappana does not have religious denomination and are considered as Hindus only. Thus, they do not have autonomy to regulate their institutions affairs. The practice of excluding women out of temple of Sabrimala does is not essential religious practice as its not uniform in nature and does not goes to the core of the religion.

## DISCURSIVE ARGUMENTS

### *Exclusion Essential Practice or not -*

The task to determine which practice is essential and which practice is mere embellishment is decided by the court and not by the religious institutions. This was laid down in *Madras vs. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*<sup>v</sup> case where it was decided by the Supreme Court that essential practices shall be determined by courts and not religious institutions. The constitution cannot protect superstitious beliefs which have no backing of religious texts.

Justice D.Y Chandrachud also stated that the exclusion of women was not a uniform practice, women were allowed for monthly poojas but were prohibited for some seasons, this portrayed that exclusion is not an essential practice rather just a custom which is continuing from times immemorial and such acts cannot be given constitutional protection. The case gives us an important insight that restrictions imposed on entry are recent developments<sup>vi</sup> and the practice of exclusion is not an essential practice as there has been no continuity of the same.

Similarly in the case of triple talaq where the Supreme Court had to decide that whether triple talaq is an essential religious practice or not.<sup>vii</sup> The court held that the practice of triple talaq was not essential, it was just a custom which was followed by Muslims since a very long time and such flimsy ground cannot suffice the test of essential practice.

But this stands in contravention to the choice of people. Article 25 allows one to practice religion of their own choice but by letting the courts decide the essential practices might violate the spirit of the provision. The role of court is to not interfere with the religious beliefs but by deciding which customs are essential, courts might infringe the right to worship. But if religious institutions start deciding their essential practices, it can give rise to various discriminatory practices. Thus, to protect the ideals of the constitution, it is the duty of the court to decide the essential practices.

The two tests which decide whether the classification made is reasonable or not as per Article 1, helps the courts to decide the case. First test is that of intelligible differentia, which tells the characteristics due to which the classification is made and second test is that the former should have a rational nexus to the spirit of the legislation. Applying these two tests in *Sabrimala*, it can be clearly seen that as the 'differentia' here is menstruation which amounts to

discrimination on the basis of sex as only women can menstruate. Thus, the classification is not reasonable as per article 14 of constitution.

Justice D.Y Chandrachud also stated that Ayyappana is not a separate religious denomination and thus exclusion cannot be constitutionally protected as in Hinduism exclusion is not essential. Article 26 of constitution guarantees a religious denomination that they can manage their own affairs with full autonomy. But as in this case, Ayyappana is not a separate religious denomination and thus such exclusion cannot be constitutionally protected.

### ***Untouchability-***

One of the most important views of the judgment was of untouchability, which was provided by Justice Chandrachud where he stated that such exclusion of women on the basis of menstruation was a form of untouchability and such prohibition should be curtailed. Such classification creates discrimination on basis of class giving rise to caste system.<sup>viii</sup> Amicus of the case, Mr. Raju Ramchandran also told the bench that such exclusion amounts to untouchability, coming under ambit of Article 17. Justice Chandrachud also quoted views of eminent constitutional personalities like Dr B.R. Ambedkar, Jotiba Phule and Savitri Phule. Any form of untouchability is prohibited. He also said that to exclude women from worshipping and simultaneously allowing men to pray at same place, is treating women like subordinates and constitution should not become an instrument of patriarchy.<sup>ix</sup>

Justice Chandrachud pointed out that the constitution makers had let the definition of untouchability stays undefined, which was a conscious choice so that all forms can be included. India as they say is a developing country, but notions of caste system are still deep rooted in our society. The privileged higher castes and sects are reluctant to accept the marginalized sections as their supremacy in the society makes them inhuman towards the caste system. The same mindset can be seen in Sabrimala case thus the reasoning about the stands strong. Dignity of a person should be governed by equal entitlements<sup>x</sup>. Menstruation is a process with which women are blessed as it is a self-cleansing process, and using such physiological process for exclusion is form of untouchability as women are considered to be 'impure'.

Article 17 includes religion based and caste-based untouchability. Untouchability is a constitutional imperative to maintain social order in the society. Untouchability is regarded as

a symptom to the disease of caste system as mentioned in the interim report by Sardar Vallabhai Patel.

However Justice Chandrachud had not considered some aspects which might have tilted the argument in the opposite favor's the exclusion was not social exclusion but because of the deity, all kinds of exclusions cannot be put under the ambit of untouchability.<sup>xi</sup> The judicial scrutiny over religious practices is same as scrutinizing the beliefs and faith of people which poses a grave danger to the liberty and also in contravention of the constitutional rights.

Chandrachud stated that morality mentioned in article 25 and 26 is inclusive of constitutional morality too<sup>xii</sup>. Thus, exclusion was contrary to constitutional morality, dignity, liberty and autonomy. In the name of morality as in Article 25 and 26, it cannot breach the fundamental rights of people.

#### ***Acceptability of the judgment by the people-***

The tussle between the religious practices, faith, tradition and the rights guaranteed by the constitution of India is tested in this judgement in order to analyze what supersedes the other. There religious practices should be scrutinized as many of such beliefs are carried away by the superstitious beliefs and thus such traditions should not be protected by law in our country, thus there should be clear demarcation of the customs and traditions which should be respected by the law and the customs which are driven by superstitious beliefs violating fundamental rights should be declared unconstitutional and they cannot be given constitutional protection.

The agitation of some groups can be witnessed in form of 50 review petitions file, the 'Ready to wait' campaign by women which explains why women are ready to delay their entry in temple, as they argue that each temple has a unique custom which cannot be standardized. The judgment stands good in isolation but when it comes to society accepting this order, there has been a huge backlash by people. Women have also not accepted the decision whole heartedly as it violates the basic tenets of their custom, religion and faith and Supreme Court interfering with the same is not welcomed by some groups in the society.

It is true that courts should not interfere with faith of the people but the public exercise of the personal faith should not be given constitutional protection.<sup>xiii</sup> The court with does judgment has not forced any women to go to temple, rather it as allowed those women who are willing

to visit the temple, which our constitution guarantees. Thus the agitation and non-acceptability of judgments does not prove that the judgment is a faulty one, rather initiatives like 'women's wall' the 620 km long wall, lakhs of women holding hands together to showcase their support towards the judgment and campaign like 'happy to bleed' portray the majority opinion of people, and such small agitations should not come in the way of administering justice to women which is upheld by the constitution of India and the supreme court of India.

## CONCLUSION

The analysis of the case comment concludes that the judgment delivered by the Supreme Court has upheld to provide equality for women in the country. The customs and traditions continuing since ages should be respected and upheld only if they are backed up by religious texts and goes to the core of religion. When such customs turn out to be digressive to the society and violates the rights guaranteed by the law, such traditions and practices should be done away with. The reasoning of Justice D.Y.Chandrachud for untouchability and essential religious practice stands strong and accurate. As it is held that Sabrimala worshippers do not constitute a separate religious denomination the right to exclude cannot be claimed under Article 25(1) as it violates constitutional morality as per Justice Chandrachud.<sup>xiv</sup>

However, he forgot to consider 'faith' of people. And the demarcation between the essential and the non-essential practices can be cause injustice too as if a essential practice is put under the ambit of non-essential, it will violate the right to freedom of conscience guaranteed under article 25 (1). Thus, the judgment by Justice Chandrachud is correct, however, there should be more analysis of fact situation to reach a just decision for the people.

## SUMMARY

This case comment has captured the essence of the Sabrimala judgment and has provided a detailed analysis. The analysis would provide clarity as to the ground reality of the implication of the judgment. The impact of the judgment is huge. It is a huge step forward towards gender

equality. The taboo of menstruation is has now busted. Before this judgment people perceived menstruation as ‘impure’ but now perception of people has changed.

People in India are sensitive towards their practices of religion. India as a society takes time to adjust with the change and advancements. Majority of people in our country practices untouchability and discrimination in some or the other way. When Supreme Court snatches away that, it is difficult for people to accept the change. This eventually results in backlash by people, which saw in our country. More than 50 review petitions, campaign like ‘ready to wait’ and mobilizing of the crowd in the temple to restrict women to enter even after judgment. Such agitation is the minority view of the country. With the progress in time, customs which discriminate women on basis of sex should not be entertained.

## REFERENCES

<sup>i</sup> 2018 SCC OnLine SC 1690

<sup>ii</sup> AIR 1993 Ker 42

<sup>iii</sup> *SC lifts ban in Sabarimala temple; allows entry of women of all ages; activists hail verdict*, PRESS TRUST OF INDIA , [http://www.ptinews.com/news/10075323\\_SC-lifts-ban-in-Sabarimala-temple--allows-entry-of-women-of-all-ages--activists-hail-verdict](http://www.ptinews.com/news/10075323_SC-lifts-ban-in-Sabarimala-temple--allows-entry-of-women-of-all-ages--activists-hail-verdict)

<sup>iv</sup> Samya Chatterjee, *Sabarimala temple entry* , SUPREME COURT OBSERVER(sep 2018) <http://www.scover.in/court-case/sabarimala-temple-entry-case/day-6>

<sup>v</sup> Saumya Uma, *Women's Access to Places of Religious Worship in India: The Constitutional Conundrum of Gender Equality versus Freedom of Religion*, INT JOUR LAW HUM RIGHTS CONST STUD.(2017), <https://science.adrpublications.in/index.php/IntJ-Law-Humanrights-Consstudy/article/view/413>

<sup>vi</sup> Deepa Das Acevedo, *Pause for Supreme Court's Verdict on Sabarimala*, ECONOMIC & POLITICAL WEEKLY (Oct 27,2018), <https://www.epw.in/journal/2018/43/commentary/pause-thought.html>

<sup>vii</sup> Elizabeth Seshadri, *The Sabarimala Judgement: Reformative and disruptive*, THE HINDU ( Oct 05,2018,18:35) ,<https://www.thehinducentre.com/the-arena/current-issues/article25120778.ece>

<sup>viii</sup> Ashok Jha, *Exclusion of women from Sabarimala amounts to untouchability: Justice Chandrachud* ,FORWARD PRESS(Oct 15,2018) <https://www.forwardpress.in/2018/10/exclusion-of-women-from-sabarimala-amounts-to-untouchability-justice-chandrachud/>

<sup>ix</sup> Samanwaya Rautray, *women of all ages can enter Sabarimala temple, rules supreme court*, THE ECONOMIC TIMES(Sep 29,2018,07:01) <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-allows-women-to-enter-sabarimala-temple/articleshow/65989807.cms?from=mdr>

<sup>x</sup> *Id.*

<sup>xi</sup> Haripriya Suresh, *Justice Indu Malhotra's dissenting judgment in Sabarimala case:Key takeaways*, THE NEWS MINUTE,(Sep 29,2018,15:35) <https://www.thenewsminute.com/article/justice-indu-malhotra-s-dissenting-judgement-sabarimala-case-key-takeaways-89174>

<sup>xii</sup> INDIAN YOUNG LAWYERS ASSOCIATION Vs. STATE OF KERALA,2018 SCC OnLine SC 1690

<sup>xiii</sup> Jewel Chanda, *Justice defined in Sabarimala case*, THE STATESMAN,(Oct 18,2018,2:49 am) <https://www.thestatesman.com/supplements/law/justice-defined-sabarimala-case-1502697821.html>

<sup>xiv</sup> Gautam Bhatia, *The Sabarimala judgment-I :An overview*, INDCONLAWPHIL,(Sep 28 ,2018) <https://indconlawphil.wordpress.com/2018/09/28/the-sabarimala-judgment-i-an-overview/>