

Rethinking the Sabarimala Judgment

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ABSTRACT

The Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors. (Sabarimala Temple Entry case) presents the three-quarters-old conflict of religious freedom and fundamental rights. In this case, the custom of prohibiting women aged 10 to 50 from entering the temple premises in Sabarimala Temple was challenged by the Indian Young Lawyers Association. This case commentary explores this conflict of rights in modern India. For this, primarily doctrinal and analytical methodology is employed.

The 5-judge constitutional bench of the Supreme Court declared the custom and other related laws as unconstitutional and violative of the Right to Equality with a 4:1 majority. However, the judgment of this case raises questions regarding the applicability of Article 32, and Rights of Religious Denominations, but declares that menstruation cannot be considered as impure. The minority opinion took these overreaches into account, but it upheld the custom of exclusion based on a biological factor as essential to religion.

However, it raises a new question regarding the menstrual taboo. The respondent actively presented facts and religious scriptures that regard a menstruating woman as impure. It clearly shows the deeply ingrained evil in society, which is solely based on biological factors, violating women's Right to Equality. Now this judgment is under review of 9 judge constitutional bench. It puts a constitutional duty on the judiciary to carefully reconcile the principles of religious freedom with the guarantees of equality, dignity, and non-discrimination.

This commentary contextualises the ruling within the larger constitutional principles and precedents and points to the dynamic character of Indian constitutional jurisprudence, emphasising the ongoing tension between protecting religious traditions and safeguarding individual rights.

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INTRODUCTION

In India, the customs of a religion hold immense importance and spirituality as they provide a sense of identity, strengthen community bonds, and offer individuals guidance and meaning in their lives. However, a conflict of Religious Rights was witnessed in the *Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors.*².

This case is famously known as the Sabarimala Temple Entry Case. The Sabarimala Temple is in the Pathanamthitta district of Kerala and is dedicated to the Hindu deity Ayyappan. The custom at the Sabarimala Temple prohibits women aged 10 to 50 from entering the temple premises.

The Supreme Court of India struck down this practice in 2018, stressing that women have the right to live with dignity, to be equal under the law, and to exercise freedom of religion. However, this ruling may raise issues regarding the rights of different religious groups and their practices. The current case comment discusses the Sabarimala Temple Entry Judgment.

AN OVERVIEW: A FACTUAL PRESENTATION OF THE SABARIMALA JUDGMENT

Facts of the Case

In the Sabarimala Temple Entry case, gender rights activists of the State of Punjab, namely, the Indian Young Lawyers Association, filed a public interest litigation before the Hon'ble Supreme Court of India in 2006. They argued that this custom violates the Right to Equality³ and Right to Freedom of Religion⁴ of women. Furthermore, they argued that the exclusionary practise is violative of Article 17⁵ as it is a direct form of "Untouchability". Additionally, the Sabarimala Temple is not a religious denomination.

Moreover, they also challenged the Constitutional validity of Rule 3(b)⁶ of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 (hereinafter referred to as "the 1965 Rules"), which restricts the entry of women into the Sabarimala Temple as being ultra

² Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors, AIR 2018 SC (SUPP) 1650.

³ INDIA CONST. art. 14.

⁴ INDIA CONST. art. 25, 26.

⁵ INDIA CONST. art. 17.

⁶ Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, r. 3(b) (India).

vires Section 3⁷ of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 (hereinafter referred to as “the 1965 Act”).

The respondent argued that the temple is a religious denomination. It has the right to decide its rules and regulations. Ayyappan is known as a Naishtika Brahmachari, a designation that signifies his commitment to celibacy. The pilgrimage to the Sabarimala Temple entails undertaking a 41-day ‘Vratham’. Women cannot undertake this pilgrimage due to their menstruation. However, women as a class are not restricted from entering the temple, so this does not violate their Right to Equality or their Right to Freedom of Religion. Additionally, it argued that the 1965 Rules are not violative of the 1965 Act, as it allows for certain exceptions.

Issues Framed

1. Does the custom violate the Right against discrimination and the abolition of untouchability?
2. Are devotees of Lord Ayyappa a separate religious denomination?
3. Is exclusion of women an ‘essential religious practice’?
4. Does Rule 3 allow a ‘religious denomination’ to prohibit the entry of women aged between 10 and 50 years?
5. Do the Public Worship Rules violate their parent legislation?

Judgment

On September 28, 2018, the 5-judge constitutional Bench delivered the judgment in favour of the petitioner with a 4:1 majority. The Bench consists of Justice Deepak Mishra, Justice A. M. Khanwilkar, Justice R. Nariman, Justice D. Y. Chandrachud (majority) and Justice Indu Malhotra (minority). The judgments of the case are presented briefly-

All majority judges agreed that the 1965 Rules are violative of the 1965 Act and the 1965 Rules allowing the exclusion of women are unconstitutional. The issues over which they have different opinions are subject of the judgment. Justice Deepak Mishra (for himself and for Justice A. M. Khanwilkar) opined that devotees of Lord Ayyappa are not a religious denomination under Article 26⁸ of the Constitution and custom is not an essential religious practice. The nature of Hinduism will remain unchanged even if the custom is not observed.

⁷ Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, § 3 (India).

⁸ INDIA CONST. art. 26.

Justice R. Nariman held that the devotees of Lord Ayyappa are not a religious denomination under Article 26 because devotees do not have a distinctive name, common faith or common organisation and Section 3 of the 1965 Act made the temple accessible to all classes of Hindus, in line with Article 25(2)(b) of the Constitution, so women must be allowed even if the exclusion is an Essential Religious Practice.

Justice D. Y. Chandrachud presented that the devotees of Lord Ayyappa are not a religious denomination under Article 26 because all persons are allowed to worship Ayyappa regardless of religious faith. Moreover, he assented that custom is not an essential religious practice because there is evidence of women entering the temple in the past and custom violates the right against discrimination under Article 15⁹ of the Constitution. Additionally, the dignity of women is a part of Article 15 and cannot be separated from women being able to exercise religious freedom. Constitution framers deliberately did not define untouchability so that it may be extended to protect all victims of discrimination, social exclusion and prejudice. Therefore, the custom violates the prohibition of untouchability in Article 17.

Justice Indu Malhotra (Minority Judgment) held that the Public Interest Litigation (PIL) is not maintainable because it is filed by non-devotees of the Sabarimala Temple and the 1965 Rules are not violative of the 1965 Act. The Public Worship Rules allowing the exclusion of women are not unconstitutional. Devotees of Lord Ayyappa may be a 'religious denomination' under Article 26. This question must be decided by the Civil Court after examination of the evidence. Furthermore, the custom is an essential religious practice because the religious group itself determines what constitutes an essential practice and custom does not violate the Right to Equality under Article 14 because women of all ages are allowed entry into other Ayyappa Temples. It is only in this temple that women are excluded to preserve the deity's character. Lastly, she opined that temple is not a 'place of public resort' under Article 15, as places of worship are not included in this category, as per the Constituent Assembly Debates and untouchability in Article 17 specifically refers to untouchability as a caste prejudice. It does not apply to women.

One year later, on November 14, 2019, the Bench issued a ruling by a slim 3:2 margin, deciding to keep the review petitions in abeyance. Anticipating that other cases related to freedom of religion might challenge the conclusions drawn in the 2018 Sabarimala Judgment, they

⁹ INDIA CONST. art. 15.

submitted specific constitutional questions to be examined by a larger 9-Judge Bench. These overarching issues relate to women's right to access public religious institutions.

AN ANALYTICAL REVIEW OF THE JUDGEMENT

The judgment is indeed a landmark one in the constitutional history of India. The judgment is bound to be controversial and has received both acclaim and condemnation. At its gateway, the PIL was filed by an association of lawyers, who have invoked the writ jurisdiction of the Court under Article 32¹⁰ to review certain practises being followed by the Sabarimala Temple. The Petitioners do not claim to be devotees of the Sabarimala Temple.

In *Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta & Ors.*,¹¹ the Court held that a person can impugn a particular law under Article 32 only if he is aggrieved by it. Furthermore, in *Durgah Committee, Ajmer & Anr. v. Syed Hussain Ali & Ors.*¹² The petitioner felt that the laws related to the Durgah Committee were discriminatory towards them. However, in this case, the petitioner themselves is not aggrieved by the exclusion practised by the respondents.

Based on the precedents of law, it appears that the admission of such a case is a cause for concern. It is because, in admitting this particular petitioner's plea for relief, the Court may have deviated from the principles that form the basis of a writ jurisdiction under Article 32.

Looking ahead, the Court's judgment that Rule 3(b) of the 1965 Rules conflicts with the Parent Act demonstrates the Court's proactive approach. The ruling that women can be said to belong to the same category ensures that in future, the laws will have to be interpreted in such a way as to provide all citizens with harmonious rights.

Furthermore, the majority holds that the Sabarimala Temple is not a religious denomination under Article 26 of the Constitution. In *S.P. Mittal v. Union of India and Ors.*¹³ The Court laid down three tests for determining whether a temple constituted a religious denomination. The finding that the Sabarimala Temple does not constitute a religious denomination can be

¹⁰ INDIA CONST. art. 32.

¹¹ *Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta & Ors.*, AIR 1955 SC 367.

¹² *Durgah Committee, Ajmer & Anr. v. Syed Hussain Ali & Ors.*, AIR 1961 SC 1402.

¹³ *S.P. Mittal v. Union of India and Ors* (1983) 1 SCC 51.

examined more effectively by a civil court. In this, both parties are opportunity to present evidence to establish their case. It cannot be appropriately determined in writ proceedings.¹⁴

The Court decided that the custom of excluding women from entering the temple is not a necessary religious ritual. The discrimination against women due to menstruation practised by the Sabarimala Temple reflects the social stigma prevailing deep within society. It was considered to be violative of Article 17 by Justice Chandrachud.

The biological phenomenon of menstruation is viewed as impurity and pollution for most Indian women even today. The respondent also represented this orthodox fact before the Court. However, untouchability was never understood to apply to women as a class. This judgment, although under review, raised a new legal issue regarding the societal perception of menstruation as impure. It violates their right to live with dignity.¹⁵

The majority judgment sets a good point in its reasoning. As recognised in the Durgah Committee case, practices arising from superstition or lacking a rational foundation are merely extraneous accretions and not essential to religion. The notion of menstrual impurity similarly lacks any logical or scientific basis and is rooted in social prejudice rather than genuine religious doctrine. Therefore, such exclusionary beliefs must be treated as superstitious practices and cannot claim protection as essential religious practices under a constitutional framework.

Finally, Justice Indu Malhotra's dissenting judgment reflects yet another perspective that balances judicial restraint and religious freedom. Judicial restraint means that judicial intervention into matters with a religious component should always take place with an understanding that the judge's role should be very limited in matters of religion. However, judicial restraint is a good concept, but it has been criticised for focusing on the importance of religious ceremony rather than personal fundamental rights.

Justice Indu Malhotra was right when she argued that the petitioners must establish locus standi to file a case under Article 32 of the Indian Constitution. One needs to remember that there must always be something worth complaining about. However, the minority reasoning regarding why the exclusion is not discriminatory, since the women can pray in other temples, ignores the essence of the issue. This reasoning supports the idea that women who menstruate

¹⁴ Arya Vyasa Sabha & Ors. v. Commissioner of Hindu Charitable and Religious Institutions & Endowments, Hyderabad & Ors., (1976) 1 SCC 292.

¹⁵ Maneka Gandhi v Union of India, (1978) 1 SCC 248.

should be excluded from participating in certain activities, making the difference in biological functions relevant to the practice.

CONCLUSION

The judgment of the *Indian Young Lawyers Association v. State of Kerala* represents a crucial moment in the evolution of constitutional jurisprudence, balancing competing claims of religious freedom and individual rights.

While the majority focuses on equality, dignity, and constitutional morality by rejecting exclusionary practices, the minority emphasises judicial restraint and religious autonomy. Ultimately, the judgment reflects an ongoing tension within the Supreme Court of India in reconciling tradition with transformative constitutional values in a diverse society.

It is a progressive move in modern India. However, some critics argue that it is judicial overreach into religious matters. The Court went beyond its constitutional role by entering deeply into theological questions. The view that courts should not evaluate whether religious practices are progressive or regressive¹⁶ highlights concerns of judicial overreach in matters of faith. It is argued that religion and personal law must be understood as accepted by their followers, without external scrutiny.

However, the judgment is under scrutiny of a 9-judge constitutional bench. The court must ensure that reconcile the principles of religious freedom with the guarantees of equality, dignity, and non-discrimination. The judgment of the bench will also raise a question regarding the legitimacy of menstrual taboos that are central to the custom followed at Sabarimala Temple.

There is no doubt that a religion is a matter of faith. However, if the judgment declares the custom followed at the Sabarimala Temple as essential to religion, it will indirectly support and legitimise the view that a woman during menstruation is impure. It will be very regressive and will have very wide implications for every woman, while attempts are being made to generalise menstruation. The court must take a cautious approach in this regard because now the question is not only around the religion but also the right to live with Dignity of a woman.

¹⁶ Shayara Bano v. Union of India & Ors. (2017) 9 SCC 1.