



SABARIMALA ISSUE: ALL MEN AND WOMEN HAVE EQUAL RIGHT TO WORSHIP

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ABSTRACT

Theoretically speaking, Right to equality is guaranteed under Indian Constitution, but practically it is not a case. Notwithstanding any efforts made by the Indian court, Indian legislature and Indian government, the practice of hurting humanity on the basis of certain point of views continue to operate. Since time immemorial, people have been searching for justification of such perceptions. Especially, a section of Woman is treated with inequality on the basis of such perceptions. It seems that, man is gifted with all the rights to do whatever they want. There is not at all equal protection in respect of even spirituality and divinity. Just on the basis of gender, it is assumed that a woman is not capable of doing that thing. On the one hand, Women are glorified as goddesses and on the other hand strict restrictions are imposed on such women. Such a dualistic mindset results in indignity to women and making them venerable. Only for the sake of purity and chastity of women, the rights of such women are fully infringed. Society is using biological and physiological factor of women as a weapon to target their rights. Sometimes, most of the rituals and practices are fully patriarchal in nature. However, the religion is basically a way of life to realize one identity with the divinity. But in reality there is discrimination on the basis of gender to achieve the way of divinity too.

Therefore, this paper tries to evaluate the issue of Sabarimala temple where entry of women of certain age group is prohibited on the basis of physiological factor and the analysis of current judgment of Supreme Court of India with respect to this issue.

Keywords – Right to equality, spirituality and divinity, Sabarimala temple, biological and physiological factor.

I. INTRODUCTION

About sabarimala temple

Sabarimala is a Hindu pilgrimage centre located at the Periyar Tiger Reserve in the Western Ghat mountain ranges of Pathanamthitta District, Perunad grama panchayat in Kerala. It is surrounded by 18 hills in the Periyar Tiger Reserve. It is believed that Lord Ayyappa was born out of the union between Lord Shiva and the mythical Mohini, who is also regarded as an avatar of Lord Vishnu.

According to legend, it is believed that Lord Ayyappa, the presiding deity of Sabarimala had his human sojourn at Pandalam as the son of the King of Pandalam, known by the name of Manikandan, who found him as a radiant faced infant on the banks of the river Pampa, wearing a bead (mani) around his neck. Manikandan's feats and achievements convinced the King and others of his divine origin.

The Lord told the King that he could construct a temple at Sabarimala, north of the holy river Pampa, and install the deity there. The King duly constructed the temple at Sabarimala and dedicated it to Lord



Ayyappa. The deity of Lord Ayyappa in Sabarimala Temple was installed in the form of a Naishtik Brahmachari i.e. an eternal celibate. Lord Ayyappa is believed to have explained the manner in which the pilgrimage to the Sabarimala Temple is to be undertaken, after observing a 41-day Vratham. It is believed that Lord Ayyappa himself undertook the 41-day Vratham before he went to Sabarimala Temple to merge with the deity. The whole process of the pilgrimage undertaken by a pilgrim is to replicate the journey of Lord Ayyappa. The mode and manner of worship at this Temple as revealed by the Lord himself is chronicled in the Sthal Purana i.e. the Bhuthanatha Geetha.¹

It is one of the largest annual pilgrimages in the world. Sabarimala Sree Dharma Sastha temple is not open the year-round. It opens for devotees to offer prayers for the first five days of every month in the Malayalam calendar, as well as during the annual 'mandalam' and 'makaravilakku' festivals between mid-November to mid-January.

Thazhamon Madom" is the traditional priest family who has powers over the matters to be decided in Sabarimala Temple. Tantri is the highest priest and is the head of the temple. It's the privilege of the family to decide on matters relating to Sabarimala shrine. Tantris are to be present in all ceremonial poojas and functions to be held at temple premises and functions associated with temple. The installation of idols of the

temple was also done by Tantri of this family.

Sabarimala Beliefs and Traditions

"When it comes to temple, each has its own set of beliefs and traditions that have been followed over the years.

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So, the whole process of the pilgrimage including the vratham, undertaken by a pilgrim is to replicate the journey of Lord Ayyappa. The 41 day Vratham is a centuries old custom and practise undertaken by the pilgrims referred to as Ayyappans. Before embarking on the pilgrimage to this shrine, a key essential of the Vratham is observance of a Sathvic lifestyle and Brahmacharya so as to keep the body and mind pure.

A basic requirement of the Vratham is to withdraw from the materialistic world and step onto the spiritual path. During the period of vratham, strict celibacy should be followed. The person has to separate himself from all family ties. The person is advised to

¹ Story of Sabarimala, Available at: <https://www.ndtv.com/kerala-news/the-story-of-sabarimala-origin-beliefs-and-controversy-on-women-entry-1933477> (Visited on November 27, 2003).



take bath twice a day, to take only vegetarian food, to refrain from sensual pleasure. Mind should be full of devotion and prayers. If one can refrain from using footwear, it shows immense devotion. The person who is going first time, should wear black shirt and Mundu (Dhoti) while on his later visits, he can wear clothes of other colours. He Should visit the nearby temple or should perform pooja at home to Lord Ayyappa, while observing vratham.

II. ENTRY OF WOMEN IN THE SABARIMALA

The practice of not allowing women between the age of 10 to 50 years has not a support of valid custom as this practice has not been continuously followed. It is necessary for a valid custom to be followed over a long period of time without any break in between. It has been observed that earlier the women irrespective of their age, were permitted to enter the sabarimala for the first rice feeding ceremony of their children. But, in October 1955 and 1956, two notifications were passed by the Travancore Devaswom Board which controls the administration of Sabarimala that barred women between the age of 10 to 50 years from entry to places of worship. The restriction with respect to entry of women of a certain age group was subsequently also imposed by Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965 in pursuance of the 1965 Act. Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965 which prohibits women from entering or worshipping in a place of public worship based on the existing customs and usages of that particular place. This rule was framed to give legal support to the practice of debarring women of

particular age group from entering into the sabarimala temple.

PAST COURT VERDICT ON SABARIMALA ISSUE

The practice of not allowing the women to exercise their right was challenged in the year 1991 in S Mahendran vs The Secretary, Travancore case. ²

The following questions were presented before The High Court:

(1) Whether woman of the age group 10 to 50 can be permitted to enter the Sabarimala temple at any period of the year or during any of the festivals or poojas conducted in the temple.

(2) Whether the denial of entry of that class of woman amounts to discrimination and violative of Articles 15, 25 and 26 of the Constitution of India?

(3) Whether directions can be issued by this Court to the Devaswom Board and the Government of Kerala to restrict the entry of such woman to the temple?

The High Court, observed thus:

The deity in Sabarimala temple is in the form of a Yogi or a Bramchari according to the Thanthri of the temple. Since the deity is in the form of a Naisthik Brahmachari, it is therefore believed that young women should not offer worship in the temple so that even the slightest deviation from celibacy and austerity observed by the deity is not caused by the presence of such women.” “We are therefore of the opinion that the usage of woman of the age group 10 to 50 not being

² AIR 1993 Ker 42.



permitted to enter the temple and its precincts had been made applicable throughout the year and there is no reason why they should be permitted to offer worship during specified days when they are not in a position to observe penance for 41 days due to physiological reasons. In short, woman after menarche up to menopause are not entitled to enter the temple and offer prayers there at any time of the year.” The restriction imposed on women aged above 10 and below 50 from trekking the holy hills of Sabarimala and offering worship at Sabarimala Shrine is in accordance with the usage prevalent from time immemorial. Such restriction imposed by the Devaswom Board is not violative of Articles 15, 25 and 26 of the Constitution of India. Such restriction is also not violative of the provisions of Hindu Place of Public Worship (Authorisation of Entry) Act, 1965 since there is no restriction between one section and another section or between one class and another class among the Hindus in the matter of entry to a temple whereas the prohibition is only in respect of women of a particular age group and not women as a class.”³

This Judgment was not challenged for 4-5 years. Then it was found that in 2006, Indian Young Lawyers Association filed PIL in the Supreme Court to preserve the rights of women by allowing their entry in the temple as it violates their rights to equality under Article 14 and freedom of religion of female worshippers under Article 25 of The Constitution of India. It was also observed that there were so many cases in the past where women were allowed to enter into the

temple either because of film shooting purpose or because of other purposes. So, In this way it was unfair and unjust for those women who were not allowed to enter into the temple merely by saying it as an essential practice. On the other hand this practice has not been continued consistently. After receiving the PIL, The Supreme Court issued notices to the parties. Then, this matter was referred to a three-judge Bench. It came up for hearing seven years later, on 2016. On 20th February 2017, the Court observed that this matter involves a question as to interpretation of constitution and must be heard by Constitution Bench. Finally, on 28th September 2018, the Constitution Bench delivered its judgment.⁴

III. ANALYSIS OF PRESENT VERDICT OF SUPREME COURT

In the series of the controversy over the Sabarimala temple, the latest petition was filed by the Indian young Lawyers Association under article 32 of The Constitution of India against the Government of Kerala, Devaswom Board of Travancore, Chief Thantri of Sabarimala Temple and the District magistrate of Pathanamthitta to ensure entry of female devotees between the age group of 10 to 50 years to the Lord Ayyappa Temple at Sabarimala which is done on the name of custom and also to declare rule 3(b) of Kerala Hindu Places of Public Worship rules, 1965 framed in exercise of the powers conferred by section 4 of Kerala Hindu Places of Public Worship Act, 1965 unconstitutional as being violative of

³ Indian Young Lawyers Association vs The State Of Kerala on 28 September, 2018.

⁴ Sabarimala temple entry case, available at: <https://scobserver.clpr.org.in/court-case/sabarimala-temple-entry-case> (Visited on November 27, 2003).



Articles 14,15,25 and 51A(e) of The Constitution of India.

Now the bench of 5 judges delivered its judgment on the present case where 4 of the judges who were male were of the opinion that all women must be allowed to enter the temple whereas Justice Indu Malhotra in her dissenting opinion was in the favour that the current practice is a custom which can be followed.

The whole discussion in the present case was mainly focused on the fact that whether the worshippers of Lord Ayyappa and the Sabrimala temple constitute to be a religious denomination as mentioned under Article 26 of The Constitution of India or not. And if yes then whether the present custom or tradition of not allowing the women of a particular age group to enter the temple constitute an essential religious practice or not. Further whether this custom or tradition is a violation of several other fundamental rights present under part III of The constitution of India such as right to equality⁵, freedom of conscience and free profession, practice and propagation of religion⁶, abolition of untouchability⁷ etc. the petition filed also challenged rule 3(b) of Kerala Hindu Places of Public Worship rules,1965 framed in exercise of the powers conferred by section 4 of Kerala Hindu Places of Public Worship Act,1965 and it was discussed whether these two are compatible to each other or not.

Another aspect which comes into light is that if the custom is abolished then whether or not it would violate the Fundamental

Right of Freedom to manage religious affairs.⁸

Religious Denomination

The expression “religious denomination” as interpreted in *Commissioner, Hindu Religious Endowments, Madras v. Sri LakshmindraThirthaSwamiar of Sri Shirur Mutt*⁹ was “a collection of individuals classed together under the same name : a religious sect or body having a common faith and organisation and designated by a distinctive name”

The Court held that each of the sects or subjects of the Hindu religion could be called a religious denomination, as such sects or subjects, have a distinctive name. In *S.P. Mittal v. Union of India &Ors.*¹⁰, while relying upon the judgment in *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra SwamiarThirthaSwamiar of Shirur Mutt*, held that the words ‘religious denomination’ in Article 26 of the Constitution must take their colour from the word ‘religion’, and if this be so, the expression ‘religious denomination’ must satisfy three conditions:

- (1) It must be a collection of individuals who have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, that is, a common faith;
- (2) common organisation; and
- (3) designation by a distinctive name

Now if we see at the majority judges opinion, they agree on the point that the

⁵ Article 14 of The Constitution of India.

⁶ Article 25 of The Constitution of India.

⁷ Article 17 of The Constitution of India.

⁸ Article 27 of The Constitution of India.

⁹1954 AIR 282, 1954 SCR 1005.

¹⁰1983 AIR, 1 1983 SCR (1) 729.



worshippers of Lord Ayyappa doesn't constitute religious denomination whereas Justice Indu Malhotra disagrees with the same.

The Chief Justice Deepak Mishra in his judgment clearly stated why the worshippers of Lord Ayyappa and the Sabrimala doesn't constitute a religious denomination status as it doesn't coincides with two of the conditions earlier laid down by Supreme Court in aforementioned cases.

First and the most important condition for a religious denomination, i.e., the collection of individuals ought to have a system of beliefs or doctrines which they regard as conducive to their spiritual well-being, there is nothing on record to show that the devotees of Lord Ayyappa have any common religious tenets peculiar to themselves, which they regard as conducive to their spiritual well-being, other than those which are common to the Hindu religion. Therefore, the devotees of Lord Ayyappa are just Hindus and do not constitute a separate religious denomination. For a religious denomination, there must be new methodology provided for a religion. Mere observance of certain practices, even though from a long time, does not make it a distinct religion on that account.

As for the third condition Chief justice Deepak Mishra says the pilgrims coming to visit the Sabarimala temple being devotees of Lord Ayyappa are addressed as Ayyappans and, therefore, the third condition for a religious denomination stands satisfied, is unacceptable. There is no identified group called Ayyappans. Every Hindu devotee can go to the temple. We have also been apprised that there are other temples for Lord Ayyappa and there is no

such prohibition. Therefore, there is no identified sect.

Hence it is not a religious denomination whereas on the contrary in her dissenting opinion Justice Indu Malhotra says that it is a religious denomination as The meaning ascribed to religious denomination by this Court in Commissioner, Hindu Religious Endowments case, and subsequent cases is not a strait-jacket formula, but a working formula. It provides guidance to ascertain whether a group would fall within a religious denomination or not.

It is further stated in her judgment that the conditions as they were put forward in the earlier cases. As it was contested that since the visitors to the temple are not only from the Hindu religion, but also from other religions, the worshippers of this Temple would not constitute a separate religious sect. On this in her judgment she states that this argument does not hold water since it is not uncommon for persons from different religious faiths to visit shrines of other religions. This by itself would not take away the right of the worshippers of this Temple who may constitute a religious denomination, or sect thereof. Also she agreed that there are different names for the worshippers of Lord Ayyappa and hence since the conditions also gets followed the worshippers of Lord Ayyappa and the Sabrimala Temple does constitutes a religious denomination.

Essential Practice

It was further a challenge before the court that whether the practice of 41-days vratham was an essential religious practice or not. In his assenting opinion Justice D. Y.



Chandchud disagreed with the respondents and said that it is not an essential practice. In determining the essentiality of a practice, it is crucial to consider whether the practice is prescribed to be of an obligatory nature within that religion. If a practice is optional, it has been held that it cannot be said to be 'essential' to a religion. A practice claimed to be essential must be such that the nature of the religion would be altered in the absence of that practice. If there is a fundamental change in the character of the religion, only then can such a practice be claimed to be an 'essential' part of that religion.

The texts and tenets on which the Respondents placed reliance do not indicate that the practice of excluding women is an essential part of religion required or sanctioned by these religious documents. At best, these documents indicate the celibate nature of Lord Ayyappa at the Sabarimala temple. The connection between this and the exclusion of women is not established on the material itself.

Whereas in the dissenting opinion Justice Indu Malhotra said that yes it was an essential practice. She took support of the long legend which exists that the Lord Ayyappa before merging with the idol professed the 41-day vratham. The idol which was installed in the temple was in the form of Naisthik Brahmachari i.e. an eternal cliabate. The whole practice of the vratham and pilgrimage is observed with an objective to replicate the journey of Lord Ayyappa. During the vratham there is a lot of practices which are done by the Ayyappan such as refraining from all the social ties, cooking own food, being alone, eating food only once a day, offering prayer twice a day and

maintain absolute cleanliness, walking barefoot and many more of which can not be practiced by women who has to observe naturally occurring phenomenon of mensuration which will definitely fall at least twice in the time of 41-day vratham and hence it is not physiologically difficult for them to practice the same. Therefore to save the women from such hardships the custom was prevailed since the inception of the temple and is followed there since.

In her judgment Justice Indu Malhotra said that the only possible way to determine the essential practices test would be with reference to the practices followed since time in memorial, which may have been scripted in the religious texts of this temple. If any practice in a particular temple can be traced to antiquity, and is integral to the temple, it must be taken to be an essential religious practice of that temple.

Hence for Justice Indu Malhotra the practice is an essential religious practice as the whole objective of the practice is to replicate the journey of Lord Ayyapa and also it is not Physiologically possible for women to observe 41-days vratham.

Also according to her The question whether Sabarimala is a denomination or not is irrelevant for the reason that even if it is concluded that Sabarimala is a denomination, it can claim protection of only essential practices under Article 26(b) and denial of entry to women between the age of 10 to 50 years cannot be said to be an essential aspect of the Hindu religion. Therefore, the practice can be continued as it is safeguarded by the Constitution itself.

In contravention of fundamental rights



According to Article 26 of The Constitution Of India

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law

Since the 4 judges of the bench refused to accept the Ayyappans and the Sabrimala Temple to be a religious denomination they said that the custom and usage since it is also not an essential religious practice is subjected to other provisions of the Constitution of India which includes fundamental rights also. Women of a particular age group can not freely profess their right to equality, is fully discriminatory as men can go and females of other age group can also go. Differentiating women on the basis of physiological factor and not allowing them to enter into the temple clearly affects their freedom of freely professing any religion and hence are being subjected to inequality and gives a clear sense of untouchability which is al opposite to provisions of The Constitution of India and hence must be stopped at once.

But for Justice Indu Malhotra the sect is a religious denomination and hence other provisions of the Constitutions doesn't get applied to it as it is not mentioned in article

26 of The Constitution Of India. In article 26 of the Constitution of India the only conditions to which the article 26 is subjected are public order, morality and health and these are not the case in present petition. Even if these are subjected to fundamental rights they are not violated. In case of Right to equality not all the women are not allowed to enter temple but only a particular group of women are not allowed as per custom and only to a particular temple of Lord Ayyappa i.e. Sabrimala Temple as the idol is in the form of NaisthikBrahmchari. Hence this is not inequality. If we see it as untouchability then also it is not as the untouchability provision was incorporated in the Constitution as Dalits were not allowed in temple and were subjected to untouchability but not allowing women of particular age due to a religious belief doesn't fulfill the requirements of considering the present case of untouchability and hence the custom and practice can be continued.

Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 is ultra vires the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965

The petition filed also challenged declare rule 3(b) of Kerala Hindu Places of Public Worship rules,1965 framed in exercise of the powers conferred by section 4 of Kerala Hindu Places of Public Worship Act,1965 unconstitutional as being violative of Articles 14,15,25 and 51A(e) of The Constitution of India.

In the assenting judgment authored by CJI Deepak Mishra, the religious denomination of the worshipers and the Sabrimala temple



is not accepted and hence the rule 3(b) of Kerala Hindu Places of Public Worship rules, 1965 framed in exercise of the powers conferred by section 4 of Kerala Hindu Places of Public Worship Act, 1965 which is only subjected to one condition that is of religious denomination becomes ultra vires and hence unconstitutional but in the dissenting Judgment Justice Indu Malhotra accepted the religious denomination status and hence it is not ultravires in nature.

Since the majority of judges were of same opinion and in light of above discussion, by the ratio of 4:1 it was held that all women regardless of their age group or a physiological factor must be allowed to enter into the Sabarimala temple of Lord Ayyappa. And also the provisions of Kerala Hindu Places of Public Worship rules, 1965 framed in exercise of the powers conferred by section 4 of Kerala Hindu Places of Public Worship Act, 1965 is ultravires in nature and also unconstitutional.

Although the dissenting judgment of Justice Indu Malhotra must be also taken in consideration as it contains very reasonable points in relation with issues of the petition filed.

IV. CONCLUSION

In a country like India, where the basic foundation of a country are the ideals of freedom, equality, secularism and liberty, many so the practices are followed which ruins the basic foundation on which our nation stands. Even when the preamble of our constitution incorporates values such as equality, liberty of thought, expression, faith and belief, still issues such as gender discrimination roar on regular basis.

In the present case of Sabarimala temple, the same question was raised as the restriction was imposed on women of particular age group i.e. 10 to 50 years because of certain physiological factors specifically attributable to women to not to enter into a temple. This restriction was challenged by the petition in the supreme court of India and the majority of the judges, in order to preserve the spirit of constitution as well as the nation, upheld the challenge and held that there is a right of Hindu women regardless of age or physiological factors such as mensuration to freely practise their religion and exhibit their devotion towards Lord Ayyappa particularly in Sabarimala Temple. By this, Indian Judiciary again enshrines the basic feature of the Constitution and protect the rights of women. Whereas, the dissenting judgment of Justice Indu Malhotra must also be taken into consideration which held that such a restriction is in accordance with the tenets of their religion irrespective of whether the practise is rational or logical. This dissenting opinion widely opens to interpretation as to another aspect which comes into light is that if the practice is abolished then whether, it would violate the Fundamental Right of Freedom to practice, profess and propagate religion or not. To conclude, the quote of *J Krishnamurthi*, can be taken into consideration which states-

“To ask the ‘right’ question is far more important than to receive the answer. The solution of a problem lies in the understanding of the problem; the answer is not outside the problem, it is in the problem.”
