



## LAW AND RELIGION: SABARIMALA TEMPLE

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### Abstract:

The right to freedom of religion of both individuals and groups is an intrinsic feature of a liberal democracy. The Constitution of India recognizes this freedom under Articles 25 and 26. Article 25 gives the citizens the right to freely practice, profess and propagate any religion subject to common exceptions of public order, morality and health, and also, crucially to, to the guarantee of other fundamental rights. Article 25(2)(b) creates a further exception to this right as it accords the state the power to make a legislation in the interests of social welfare and reform, throwing open all Hindu religious institutions to all classes and sections of Hindus. On the other hand, Article 26 accords to every religious denomination the right to establish and maintain institutions for religious and charitable purposes subject to similar exceptions as mentioned above. But here, in *Indian Lawyers Association V. State of Kerala* which focuses on Sabarimala Temple's prohibition of women aged 10-50 years from entering the shrine claiming that allowing young women to enter the temple would affect their idol's "celibacy" and "austerity" witnesses a series of conflicting claims involving the temple's right to decide for how its religious affairs ought to be managed, the rights of the community of devotees who feel that the ban on women is a religious custom which should be practiced and moreover, the

rights of those women seeking to assert their freedom to pray and above all being treated as equals under the Constitution.

### Introduction:

In our society for centuries women have had to struggle for an equal representation in public spaces. The struggle has not only been about representation but an ideological battle with the profound rooted norms and customs in patriarchal society that view women in a place of subordination. Whether it is the Shah Bano case, a case that invalidated the practice of instant triple talaq and laid the ground for protection of rights of Muslim women, or the entry of women inside Haji Ali Dargah in Mumbai, we have seen that the struggle has been an ongoing one and reformatory in its approach<sup>1</sup>. The recent hearing by the constitution bench of the Supreme Court on July 27, 2018 on the entry of women to the Sabarimala Temple in Kerala is another long standing fight against the patriarchal dogma of the religious order which does not allow the entry of women into the temple.

The Ayyappa temple in Sabarimala region in Kerala has been in the news for its controversial provision of denying entry to women of menstruating age (ten to fifty years). **Sabarimala Sree Dharma Sastha Temple** is one of the most famous Hindu temples in India, located in the Pathanamthitta district of Kerala. The temple is managed by the Travancore Devaswom Board. Main stakeholders of Sabarimala Temple are Travancore Devaswom Board, Tantri (head priest) family, Pandalam Royal Family, Ayyappa Seva Sangam etc. The

<sup>1</sup> <https://www.youthkiawaaz.com/2018/09/when-gods-denied-in-gods-own-country-sabarimala-temple-entry-case/>



shrine at Sabarimala is an ancient temple of [Ayyappan](#) also known as Sasta and Dharmasasta. Unlike other Hindu temples in the state, 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. It is considered as one of the biggest pilgrimages in the world, with millions of people offering prayers at the temple chiefly from the five south Indian states. Most of the pilgrims arrive at the temple during the busy ‘mandalam’ and ‘makaravilakku’ festivals, after they undertake a rigorous 41-day vratham, or a vow of abstinence. During this 41-day period, devotees are required to wear only black or deep blue attire, address each other as ‘swami’, perform daily pujas, abstain from non-vegetarian food, liquor and sex and not wear footwear. However, it is not mandatory for everyone to observe the ‘vratham’ to offer prayers at the temple. The prohibition to temple entry for women can be traced in the legend that the deity of the temple Lord Ayyappa was a ‘Naishtika Brahmachari’ (who followed celibacy), and as per the supporters of the temple ban, women of menstruating age are regarded as “not pure” to enter the temple as that would disturb the celibacy of the deity. In the past three decades, this issue has drawn resistance and protests from diverse sections of society and has given rise to a legal dispute. The chronology of the long-standing petition in the Supreme Court on the ban of women entering temple can be traced back to 1991.

#### Background:

In 1991, this ban to temple entry for women was challenged before the Kerala High Court

in *S. Mahendran Vs The Secretary, Travancore*. Kerala High court ruled in favor of the prohibition of women entering the temple and claimed that these restrictions have existed since time immemorial and not discriminatory to the Constitution. This order of the High Court was implemented and followed for the next 15 years. In 2006, the ban was challenged by the Public Interest Litigation filed by the Young Lawyers Association with the Supreme Court, claiming that rule 3(b) of Kerala Hindu places of Public worship (Authorisation of entry) Rules 1965 that states, “women who are not by custom and usage allowed to enter a place of public worship shall not be entitled to enter or offer worship in any place of public worship” is violation of constitutional ideals of equality, non-discrimination and religious freedom. On April 25 2016, the representative advocate of the Devaswom, K.K Venugopal said: “There is a reasonable classification by which certain classes of women are excluded”. The Supreme Court asserted if the statement was implying that menstruation was associated with purity of women. The case was then referred to the Constitution Bench by the Supreme Court.

#### The Supreme Court Verdict:

[The Supreme Court](#) verdict on September 28, 2018, paved the way for the entry of women of all ages into the Ayyappa temple at Sabarimala in Kerala. The five-judge constitution bench headed by Chief Justice Dipak Misra, in its 4:1 verdict, said banning the entry of women into the shrine is **gender discrimination** and the practice **violates the rights of Hindu women**. It said religion is a way of life basically to link life with divinity. The court observed that it can’t be oblivious to the fact of the case that a class of women



is disallowed due to physiological reasons (menstruation).

The CJI said devotion cannot be subjected to discrimination and patriarchal notion cannot be allowed to trump equality in devotion. While Justices R F Nariman and D Y Chandrachud concurred with the CJI and Justice A M Khanwilkar, Justice Indu Malhotra gave a dissenting verdict.

Ironically, in the 4-1 verdict on *Indian Young Lawyers Association & Others vs The State of Kerala & Others*, the only dissenting vote was of the sole woman judge on the bench: Justice Indu Malhotra.

Justice Malhotra, in her dissenting judgement, said that issues which have deep religious connotation should not be tinkered with to maintain a secular atmosphere in the country.

However, the Supreme Court verdict – that the Sabarimala temple must be thrown open to women of all ages – should be seen as another victory for the cause of gender equality.

Justice DY Chandrachud termed the custom as a form of “untouchability” which cannot be allowed under the Constitution. “Article 17 certainly applies to untouchability practices in relation to lower castes, but it will also apply to the systemic humiliation, exclusion and subjugation faced by women.”<sup>2</sup>

“Prejudice against women based on notions of impurity and pollution associated with menstruation is a symbol of exclusion. The

social exclusion of women based on menstrual status is a form of untouchability which is an anathema to constitutional values.”

Views supporting the entry of women:

- Preventing women from entering the places of worship goes against [Articles 14, 15, 19, and 25 of the Indian constitution](#), which deal with the right to equality, the right against discrimination based on gender, freedom of movement and freedom of religion.
- The excluded women claim that barring them access to the shrine violated their fundamental right under Article 25(1) to freely practice their religion.
- Right to manage its own religious affairs under Article 26(1) cannot “override the right to practice religion itself”, as Article 26 cannot be seen to overrule the right to practice one’s religion as guaranteed under the [Constitution of India](#).
- Restricting the entry of women into places of worship is one of the ways of imposing patriarchy. Often the restrictions are based on patriarchy and not religion.
- Banning entry to the temple is discriminatory since it subverts the idea of everyone being equal to God.
- In April 2016, the Shani Shingnapur temple, which had prohibited women from entering its core area for over 400 years, allowed women to pray

<sup>2</sup>

<https://economictimes.indiatimes.com/news/politic>

<s-and-nation/supreme-court-allows-women-to-enter-sabarimala-temple/articleshow/65989807.cms>



inside the temple following the court's orders.

first time since the Supreme Court verdict came.

Views of those opposing the entry of women:

- Women are banned from entering the temples to preserve 'purity'. The reason cited in Sabarimala case is that women during their menstruation period are not supposed to enter places of worship.
- Referring to the presiding deity Lord Ayyappa as a Naishtika Bramhachari, many point out that it is the celibate nature of the deity that forms the basis of the practice and not misogyny.
- Sabarimala was a [separate religious cult with its own rules](#).
- Article 15 of the Constitution does not apply to religious institutions. Article 15(2) provides citizens with the right to access to places such as hotels, shops and so on but nowhere does it mention public temples.
- Some of those who oppose women entry argue that their actions are protected by Article 25(1).
- Article 25(2) pertains to only secular aspects and it is only pertaining to social issues, not gender or religious-based issues.

Even though some women of menstruating age tried to enter the temple they were sent back by Police after the protests turned violent.

Many women journalists were assaulted by the protestors and Police had to resort to lathi-charge to disperse them.

Sabarimala Karma Samithi, a relatively obscure organisation called for a state-wide Harthal. BJP-led NDA Kerala Unit and Shiv Sena Kerala Unit supported the Harthal.

Pandalam Palace directed the temple high priest (Tantri) to close the sanctum if any young women enter temple premises. The Tantri concurs with this view.

Kerala government must quickly find the golden mean between law and belief. Creating history, two women – Bindu (42) and Kanakadurga (44) – dressed in black Pattire entered Sabarimala early morning on 02-01-2019. They reached Sannidhanam under the protection of police officers, a few of them in mufti.

**Conclusion:**

In a country like India, society and religion are inseparable from each other. The Sabarimala case has brought this idea to the fore, with a controversy between religion Vs Fundamental Rights. The legal intricacies involved in the case are complex and multi-layered. The petitioners before the Supreme Court have argued that these reasons are discriminatory against women and go against the text and spirit of the Constitution. The defenders retorted back saying that the constitution grants to every religious denomination the right to determine its own

Protests after the Sabrimala verdict:

The [dialectical materialism](#) propounded by the Marxist-led Government of Kerala doesn't seem to cut the ice with the die-hard spiritualism of the women devotees, or at least a sizable chunk of them. Many started campaigns like '[Ready to wait](#)'.

The SC verdict led to protests on 17 October 2018 when the temple was opened for the



rules. The debate here lies in the fact that what it means to be a secular state is to grant autonomy and freedom to the denominations, from state interference.

While, on the other side, the same religion is seen as a public matter which strictly determines an individual's social and moral standing in the community. This critical domain cannot be left untouched by constitutional ideals. If we look at our history, the Dalit movements for civil rights in the 20th century had the issue of temple entry at its centre. This gained massive prominence since in a religious society, temple bans for "untouchables" were not solely about denying them the right to worship but it was a matter of subordination and exclusion. It was thus, crucial to address it to acquire equality and membership of the community. As BR Ambedkar said, "the issue is not entry but equality". Decades later the issue of equality remains central to our society. We are still living in those times where women are discriminated against by rules and customs. The attempt to get the entry for women inside the temple is a struggle not so much about putting down the religious faith or to disturb the celibacy vow of Lord Ayyappa, but it is a struggle to ensure that we do not continue to deny equal membership to women by associating ideas of purity and pollution.

We live in a country that calls itself independent; we aspire for increasing the GDP. However, where we still fail as a society, as a nation, is in eradicating the deep-rooted patriarchy in the minds of its citizens. The result of such an ideology continues to exist in all spheres of our life affecting women specifically. Even today women are discriminated on grounds of gender, sex and

in the recent case they have been discriminated on grounds of purity and pollution. The feminist movement and other schools of thought that support human rights have come a long way in achieving representation of women across public spaces. However, the psychological and patriarchal mindset continues to rule the majority of the population and it will take continuous reforms and development to achieve a just and equitable society. When we talk of reforms, law is the ultimate authority which derives its validity from the constitution of India; hence constitutional reforms are essential in societal reforms. In this context, the judgment is radical in its approach to rationalize religious practices prevailing in Indian society. It also ensures individual liberty and protects women's rights in public places.

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