



**INDIAN LAWYER ASSOCIATION
&ORS V THE STATE OF KERALA &
ORS**

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Introduction:

It is the international accepted certainty that the denomination and divinity do not mug discrimination but religious practices are sometimes seen as eternalize thereby nullify the basic holder of denomination and of gender justice. The socio cultural attitudes are recognized as too revolving around the devoted patriarchal mindset thereby diminishing the status quo of women in the social and religious context. Religion is basically a step of life to realize ones identity with the divinity. Nevertheless, certain percepts and privileged practices and rituals have resulted in inconsistency between the true essence of denomination or divinity and its practices that has come to be permeated with devoted patriarchal impairment. Sometimes, in the name of essential and integral facet of the faith, such practices are zealously cultivated.

FACTS:

1. The speedy writ petition would rather have under Article 32 of the Constitution seeks issuance of directions against the Government of Kerala Devaswom and Board of Travancore.
2. Chief Thanthri of Sabrimala Temple and the District Magistrate of Pathanamthitta to set the restriction on entry of female devotees between the age group of 10 to 50 years to the Lord Ayyappa Temp-le at Sabrimala which

has been denied to them on the basis of certain custom and usage.

3. Rule 3 [b] of the Kerala Hindu Places of Public Worship [Authorization of Entry] Rules, 1965 framed in exercise of the powers conferred by Section 4 of the Kerala Hindu Place of Public Worship [Authorization of Entry] Act, 1965 as unconstitutional being violative of Article 14, 15, 25 and 51A [e] of the Constitution of India and further to pass directions for the safety of women pilgrims.

ISSUE:

1. With reference to the reciprocity between the “Freedom of religion” under Article 25 and 26 of the Constitution and other provisions in Part 3, particularly Article 14.
2. The expression “morality” or “constitutional morality” has not been defined in the Constitution. Is it overarching morality in reference to preamble or limited to religious beliefs or faith.
3. Whether Ayyappa Temple has a denominational character and, if so, is it permissible on the part of a “religious denomination” managed by statutory board and financed under Article 290-A of the Constitution of India.

Arguments:

➤ **Petitioner:**

- Sabrimala pilgrimage was to be undertaken (41 Days ceremony) and all the customs and rituals must be full filed.
- Naishtik brahmchari.
- There is no violation of Article 14, 15, 25 and 26 of the Indian Constitution as the restriction is only in respect of women of a particular age group and not women as a class. If the practice of restriction to the entry of women is made for women as a class, then only it will



violate the above-mentioned Articles of the Indian Constitution.¹

➤ **Respondent:**

Petitioners in their arguments stated that menstruation is not impure, and the women should have equal rights to enter into a sabrimala temple. In a Devaru case, it has been submitted that a religious denomination cannot completely exclude or prohibit any class or section for all times. All that a religious denomination may do is to restrict the entry of a particular class or section in certain rituals.²

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):

It is adopted in 1979 by the UN General Assembly, is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination and India is also part of this convention.

The international conventions must follow when there is a void in the domestic law or when there is any inconsistency in the norms for constructing the domestic law.³

Judgement-

1. The restriction imposed on women aged between 10 to 50 from entering into Sabrimala temple and offering worship in the temple. It is in accordance with the usage prevalent from time immemorial. Such

restriction is only in respect of women of a particular age group and not women as a class. If the practice of restriction to the entry of women is made for women as a class, then only it will violate the Articles of the Indian Constitution. (Held by 9 Judges Bench of Supreme Court).

2. **Review petition:**

It was held that the women aged between 10 to 50 years were also to offer worship. Constitution says 'all people' are 'equally' entitled irrespective of their caste, colour, religion, gender, etc. constitution of India is given more importance to the fundamental rights of a person other than the customs and usages. Hence, it was held that Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 is violative of Article 25(1) of the Constitution of India and ultra vires Section 3 of the 1965 Act.⁴

CRITICAL ANALYSIS:

Article 25[1], by employing the expression 'all persons' demonstrate that the freedom of conscience and the right to freely profess, practice, and propagate religion is available, though subject to the restrictions delineated in Article 25[1] itself, to every person including women. The exclusionary practice being followed at the sabrimala temple by virtue of Rule 3[b] of the 1965 Rules violates the right of Hindu women to freely practice their religion and exhibit their devotion towards Lord Ayyappa and stipulates exclusion of entry of women of the age group of 10 to 50 years, is a clear violation of the

¹ S. Mahendra V. The Secretary, Travancore Devaswom Board, Thiruvananthapuram and others (AIR 1993 Kerala 42)

² Sri Venkatramana Devaru V. State of Mysore (1958) SCR 895 : 1958 AIR 55

³ Vishaka and others V. State of Rajasthan and Others (1997) 6 SCC 241

⁴ Doctrine of severability.



right of Hindu women to practice their religious beliefs which is consequence, makes their fundamental right of religion under Article 25[1] a dead letter.

De Jure, the judgement should be within the lines of the Constitution must not the intention to harm. [Animus Nocendi] and what is needed to be changed has to be changed [Mutalis Mutandis] as said by the Constitution of India.

