



**A COMPARATIVE STUDY OF
SABARIMALA ISSUE VIS-A-VIS THE
ROLE OF JUDICIARY FOR THE
PROTECTION OF RIGHTS OF
WOMEN**

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ABSTRACT:

Gender inequality has been a phenomenon in India. Women have primarily suffered and are still suffering various socio-legal inequalities. The women of the age group between 10 to 50 years were not allowed to enter the temple of Lord Ayyapan because of their biological process of menstruation. It signifies that they have failed to seek equality in every extent for so long before the Sabarimala verdict. The Supreme Court's judgment has made the storm and has been a sensitive matter. However, the Judiciary has to regulate and resolve the problems relating to every aspect of religious affairs. Nevertheless, sometimes it is not easy for the Judiciary to manage the conflict between religious matters and laws. Moreover, the judgments of the Honorable Supreme Court are binding on every person. The conflict escalated between religion and law. The people of Kerala and other states have been protesting as the judgment is against their long-term religious practice that was being followed by the people of Kerala, as any drastic change in society is not acceptable and is susceptible to the opposition. By the very judgment of Sabarimala, the Supreme Court of India have brought about a shift in religious matters and a change which was need of the hour.

This paper overviews the conflict between religious affairs and laws with regards to the Sabarimala verdict. The paper contains the history and beginning of the ethics and ethos that is being followed in Sabarimala temple. Further, it discusses the brief facts and Judgement pronounced by the Honorable Supreme Court. Also, it deals with the rights of the women and their position in the country with regards to religion and laws. The paper also provides suggestions for the enhancement of women's status in Indian society.

INTRODUCTION:

Polymath has widely recognised that in secular states, the intervention of Judiciary in religious matters is commonplace. Judiciary is regarded as the third organ of the government, and it is considered to be very important in a democracy because the Constitution alone cannot secure fundamental rights. For the enforcement of fundamental rights, judicial review is indispensable. Freedom of religion is secured by Article 25 and 26 of the Constitution of India, but it is subjected to judicial review on the grounds of morality, health and public order. Judicial review is regarded as the most lethal weapon in the hands of Judiciary that is used to challenge the arbitrary action by any entity. Supreme court is regarded as the highest Court of appeal in India. Article 13 of the Constitution of India authorise the apex court to use the power of judicial review for administrative, legislative and judicial actions itself. Apex court is regarded as the protector of the fundamental right of the citizens of India. It is seen that that are certain rights which are conferred by the Constitution, but that cannot be Infringed,



waived or abrogated. The preamble of the Constitution ensures the liberty of thought, expression, belief, faith and worship. It is a fundamental right of a person to profess and practise any religion they like. The state shall not interfere in the matter of religion except when it is convenient to do so. It is a fact that the Supreme Court of India has intervened in the religious matter at the right time.

One of the recent examples of judicial intervention in a religious matter in India is the Sabarimala case. Here in the case of the young lawyer's association, the ban on entry of women in the Sabarimala temple was challenged.

BACKGROUND OF LORD AYYAPPA AND SABARIMALA TEMPLE:

Lord Ayyappa is considered to be a Hindu deity who is worshipped in south India. Lord Ayyappa was born through the association of Lord Shiva and the Vishnu avatar Mohini. Later, King of Pandalam in, i.e. king Rajashekhara found the baby and accepted him as a celestial blessing.

Sabarimala temple is the place where Lord Ayyappa meditated and became one with the divine. It is located in the district of Pattanamthitta, Kerala.

RIGHT OF WOMEN & POSITION IN THE COUNTRY VIS-A-VIS RELIGION & LAW:

There are several statutes in India enacted for the protection of right and liabilities of women. However, the implementation of statutes remains in question. It can be seen in the case of Sabarimala that Hon'ble Supreme

Court has favoured the Judgement on behalf of women, but the implementation of the Judgement is still in question, one of the primary reasons is the stagnant culture and custom of the people and their susceptibility to accept any change. If we compare the Sabarimala issue to the contemporary world, the issue can be regarded as unintelligible. Because of the reason that modern women are empowered due to realisation of self-independence.

Pre-historic shreds of evidence suggest that women were subjected to various limitations. Though in recent time, the status of women has drastically improved. The status of women's enhanced in various field such as education, professions, etc. Women are provided with various rights which are protected by the statutes. Despite the enhancement in the status of women, still, now some part of society lacks to acknowledge women's position concerning religion. Religion is a set of a belief system that someone has faith upon. All religion is based on some ancient menu script. These menu scripts were written in the era where the status of women was incredibly inferior to the men; the women were merely considered as a property. India is a place of religious diversity; the majority of Indians follow the concept Hinduism. The menu script which regulates the Hinduism provides very inferior status to women because of which the people who follow Hinduism tend to ignore the status to women.

The dynamic nature of society has helped in the rise of the status of women. Along with that, the realisation of law & the Judiciary, through various verdict has dramatically helped in shaping the status of women. Women structure a large portion of the



populace in this contemporary world. Law much helped in reducing female infanticide. Law is directly related to the need of society, and it takes shape according to the need of society.

Even though after such realisation, the only domain where the law is unable to access is religion. But if such a matter affects the rights of a person the Judiciary by exercising its power, intervene in such matter. However, when it is not able to do the same, it creates a disequilibrium in society as it encourages others to do the same.

To deal with this matter, awareness about the matter is essential. Despite being in the modern era if the mindset of people is mediaeval, then the progress of our country would be hampered. We, the people of India indirectly, are responsible for the problem of religious affairs. The concept of God varies with every community, but one unique point is that God is one. We require to have an extensive understanding and should welcome any change, which is for good.

CASE ANALYSIS ON INDIAN YOUNG LAWYERS ASSOCIATION & ORS. VS THE STATE OF KERALA & ORS.:

FACTS OF THE CASE:

Hindu Temple devoted to Ayyappan named Sabarimala Shrine is located in the State of Kerala. The most famous temple Sabarimala Shrine in Kerala had restricted women (of menstruating age) to entry. The women tried to enter the Sabarimala Temple but could not because of the intimidations of physical assault against them. A women's advocate group of five members had moved the PIL to the Supreme Court challenging the judgment

of the Kerala High Court which upheld the centuries-old restriction and ruled that only the "Tantric (Priest)" was authorised to decide on customary practices.

ISSUES BEFORE THE COURT:

The Issues raised before the Honorable Supreme Court are:

- The custom that was practised in the Shrine was challenged as it violated Article 14 and 15(3) of the Constitution on the ground of Gender.
- Does the custom was an essential religious custom under article 25?
- Does the Religious institution could uphold its claim and manage its own religious affairs?
- Does the exclusion of women entry lead to gender discrimination?
- Does the character of Shrine is denominational?

VERDICT:

The Hon'ble Supreme Court of India on 28 Sep. 2018, delivered the verdict in this case by 4:1 majority. The Supreme Court held that the customary practice of excluding women in the Sabarimala temple is unconstitutional, the practices violated the fundamental right of equality, liberty & freedom of religion under Article 14,15,19(1),21&25(1). The Court declared rule 3(b) of the Kerala Hindu Places of public worship act as unconstitutional. The rule 3(b) allowed the Hindu denomination to exclude only women from the commonplaces of worship if the ban was based on custom the Former Chief Justice Deepak Mishra, Justice A.M. Khanwilkar, Justice Nariman and Justice Chanrachud formed the majority stated that



"Women is not lesser but inferior to men. Patriarchy of religion cannot be permitted to trump our faith. Biological or physiological reasons cannot be accepted in freedom for faith. Religion is a way of life.

However, the certain practice creates incongruities". The only dissenting opinion was of Justice Indu Malhotra. Former CJI Deepak Mishra said that faith is a manner of existence intrinsically connected with the dignity of a person and the patriarchal practices primarily based at the exclusion of one Gender in want of the other, this cannot be allowed as this violate the essential freedom of religion. It turned into similarly ruled that the exclusion of females of age in between the age institution of 10 to 30 years, which become practised in Sabarimala temple denuded the women in their freedom of worship, which is guaranteed below article 25(1).

It was further held that the devotees of Ayyappa had not passed the Constitutional test to be declared as a separate religious identity. He further stated that if Ayyappans are Hindus, then the exercise of excluding females cannot be held to be an essential religious practice¹.

CASE COMMENT:

From time immemorial women have struggled for there right and position in society. It is not about the representation, but the matter is about an ideological fight with the stagnant custom and practices in a

patriarchal society as per which women are subordinate. This case is about the fight against the patriarchal philosophy of the religious practices which ban the entry of women inside the Shrine. When the rights of a person are inferred, their Judiciary has to intervein. Hence the verdict of the case in favour of women is justified here.

LEGITIMACY OF SABARIMALA TEMPLE:

The democratic framework of India works within the Constitution of India. Constitution of India provide us with six fundamental rights which cannot be rendered away without any reasonable explanation, but in the case of Sabarimala temple, the stagnant customs in the disguise of religion have emerged to be discriminatory.

The only dissenting opinion of justice Malhotra raised a question regarding the filing of PIL in religious affairs. However, this statement is itself flawed, as PIL is regarded as something in which the public, i.e. the community at large, has few pecuniary interests, or some interest by using which their felony rights or liabilities are affected. It does no longer mean anything so slim as a mere curiosity, or as hobbies of a particular locality, which can be tormented by the subjects in a query. Interest shared via citizens generally in affairs of local, state or country's government². In the case of Sabarimala, the question was not merely about the religious affair, but it was more of

¹ Ms Natasha Jain, case comment on Indian young lawyers association & Ors. vs the state of Kerala & Ors. , (Jan.22 2020), <https://www.lawaudience.com/indian-young-lawyers-association-v-the-state-of-kerala-ors/>

² State of Uttaranchal vs Balwant Singh Chaufal & Ors, AIR 2010 SC 2550.



the fundamental rights of women. Hence, the submitting of PIL is justified.

DENIAL OF FUNDAMENTAL RIGHTS OF WOMEN:

Sabarimala is a greater difficulty of gender equality than of non-secular freedom. Those who oppose the entry of females, do not have the backing of custom because the ban on females of a particular age inside the temple only goes back to the High Court judgment of 1992, or even after that there is enough proof to show that young ladies have entered the temple with the full know-how of the 'Thantri', the chief priest. The practices, if at all exists, militates towards the gender equality guaranteed by the Constitution and subsequently desires to be discontinued³. From antiquity, it is seen that women of childbearing age never endeavored into the Sabri forest to disturb the everlasting meditation of the lord Ayyappa and this point out the respect for the deity in them. However, devotees chaperoned along with women before they attained puberty and older women in the circle of relatives in their annual pilgrimage to the Shrine⁴. Further, it was the condition of that time because of which women didn't enter the temple, but now that condition is converted into restriction for them.

In a legal context, we can state that the rights of the women are denied under the Constitution of India. However, the

restriction can be based on intelligible differentia, but, this condition is not met in the Sabarimala case. Restriction based on biological and physiological features of human is discriminatory. Nevertheless, the apparent truth is that classification on the basis of menstruation will turn out to be being a default classification on the foundation of sex⁵. It is, however, to be understood that the age-old notion of considering menstruation as impure should be abolished in this modern era of technology.

In addition to the above, the matter of menstruation also violates the right to privacy as the women have to disclose such personal matters in front of all.

Another point to consider is that Justice Malhotra wanted the cases which involved "oppression in the name of religious practices" and the matters of "social evils" to be entertained. Here, there was a need on her part to justify as to what part shall be a social evil and how banning the admission of women of menstruating age by inflicting harsh conditions is not a social evil. She gave an example of the long-banned exercise of Sati and defined what is troublesome, however, ended up getting the last inception for the leisure of petitioner under Article 32 inside the matters of spiritual faith. One cannot make a distinction when it comes oppressiveness and the courts ought to manage all of the crises of discrimination with due seriousness menstruation is a

³ K Satchidanandan, Sabarimala is more an issue of gender equality than of religious freedom, News Click, (Jan.22 2020) <https://www.newsclick.in/sabarimala-more-issue-gender-equality-religious-freedom>.

⁴ George Augustine, Sabarimala: A debate between modernity and age-old practices, Hindu Human

Right, (Jan.28, 2020)

<http://www.hinduhumanrights.info/sabarimala-the-debate-between-modernity-and-age-oldpractices/>.

⁵ Satya Prasoorn, The Sabarimala Case has the Potential to be a constitutional watershed, The Wire (Jan.28, 2020), <https://thewire.in/law/sabarimala-temple-case-constitutional-watershed>.



biological phenomenon and discrimination on this ground is in our opinion oppression of rights and freedom of women⁶.

RIGHT TO RELIGION CANNOT OVERPOWER EQUALITY:

Secularism is considered as a fundamental feature of the Constitution. Secularism represents religion born out of rational schools, and it permits to look the imperative necessities for human progress in all aspect⁷.

The Court should not ordinarily infer the issues of deep religious sentiment. The Sabarimala temple and the deity are protected by Article 25 of the Constitution of India, and the religious customs cannot be solely tested based on Article 14.

From the past, Court has previously intervened in a religious affair of Shani Shringnapur and Haji Ali Dargah where women were denied entry after the voice by Bhumata Brigade. For Ayyappas the primary essential practice is being celibate which does not have any relation with a restriction on women entry in Sabarimala; instead, this provision is against the Constitutional morality because it restricts half of the population from accessing any public place.

If we take a look into the Constitution, religion can be defined as a collection of individuals classed together under the same name or a religious sect or a body having a

common belief and organisation and characterised by a peculiar name⁸. Furthermore, the Ayyappans are not a separate religious; they are part and parcel of Hinduism as Lord Ayyappa was the son of Hindu deity Shiva and Vishnu.

Moreover, if the Hindu religion is to be their religion, then it must become a religion of social equality. Therefore, if non-entry of women is their religious tenant, then it cannot be presumed that its regulation will fundamentally and irreversibly challenge the very existence of sect and its core belief.

FAILURE OF STATE IN IMPLEMENTING JUDGEMENT OF THE SUPREME COURT:

It is a shame for a country's political framework if it cannot implement the Judgement pronounce by the apex court. If a judgement is passed and that is not followed, then it may create disharmony in the society as it may instigate other sects to ignore the Judgement. If this condition persists, then it may lead to a violation of the rule of law. If the rule of law is not followed, then it can be stated that there lies arbitrariness in behalf of the state. Then the sole purpose of the Constitution of India will be challenged.

The failure of the state to implement the Judgement can be due to the reason of political reasons, reasons to do with the scale of the reforms required, practical reasons relating to internal legislative procedures,

⁶ Ankitesh Ojha, #Sabarimala dissent from the dissent of Justice Indu Malhotra: New Boundaries for Article 14? The Leaflet (Jan.28, 2020), <https://theleaflet.in/sabarimala-dissent-from-the-dissent-of-justice-indu-malhotra-new-boundaries-for-article-14/>.

⁷ Santosh Kumar v. Secy. Ministry of Human Resources Development, AIR 1995 SC 293.

⁸ S.P. Mittal Etc. v. Union of India And Others, 1983 SCR (1) 729.



budgetary reasons, reasons to do with public opinion, casuistically or unclear judgments of the Court and reasons relating to interference with obligations deriving from other institutions.

To overcome such failure by the state should implement the following suggestions:

The state should provide safety mechanisms that are necessary for the implementation of such Judgement, the state should spread awareness about such Judgement, the state should provide punishment for the violation of the Judgement, the state should form a committee that can keep track of such implementation of Judgement and provide a review about the same, the state can provide legal aid about fundamental rights and duties in elementary education, and Media should spread positive awareness about the Judgement.

CONCLUSION:

India being conspicuously patriarchal for a long time, women hardly experience fairness and equal rights endorsed by the Constitution of India. After the Supreme Court's decision, the issue of Sabarimala temple is still not resolved entirely. The verdict of permitting women to enter the temple is still not acceptable by the devotees but, the opportunity has arrived to understand the issue with diligence and think of a solution. Presently, the perfect opportunity for the individuals to transcend the negligible sentiment of fundamentalism and unite together. Sabarimala it isn't just about right to affirm religion but about the women who were separated with no sensible reason and were viewed as sullied because of their natural menstruating cycle. Although the Supreme court allowed women to enter

Sabarimala temple which was in favour of Constitution one major problem is still not resolved that there is no guideline or instructions made to safeguard women's, that they can safely enter into the temple. It is still a dream of women to enter Sabarimala temple, till now they have been permitted to enter the sanctuary on a paper only which overthrows the aim of the decision of Supreme Court.

As indicated by us, it is the issue where exacting government intervention is needed. It is the built-up reality that official need to enforce the decision of the Supreme Court. Women must not be looked like a mediocre piece of the general public. At present, India is caught in the swarm of male-centric society which ought to be abrogated. Creators are not in support of female predominance likewise; rather we need a society where exists a harmony between both the sexual orientation and this parity must be made by changing the biased mindset of individuals in our nation.
