

Sabrimala Temple Case: A Rift between Religion and Equality

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Abstract

The Sabarimala Sree Dharma Sashta Temple, dedicated to Lord Ayyappa, is a well-known temple in Kerala. In the year 1990, a ban was proposed on women of menstrual age that was between 10 and 50 years, who wanted to enter the Temple. In the ruling of S. Mahendran vs. The Secretary Travancore, the High Court of Kerala came to a conclusion of prohibiting their entry in the Temple on the grounds that the said exclusion was very much constitutional and reasonable in nature as it was a custom prevailing amongst the people of Kerala from time immemorial. In retaliation of the past judgment, a public interest petition was filed in 2006 which challenged the constitutional validity of Rule 3(b) of the Kerala Hindu Places of Public Worship Rules, 1965 which restricted the entry of womenfolk into the Temple. The case was known as Indian Young Lawyers Association vs The State of Kerala on 28 September, 2018. The Association said in its arguments, that the custom led to a gross violation of the right to equality under Article 14 to women and freedom of religion under Article 25. Sabarimala Temple case is one the catalyst that led to conflict between tradition, custom and equality of women.

Keywords: Sabrimala temple, menstruating women, equality, religion, custom and tradition

INTRODUCTION

Since people of Kerala think that Lord Ayyappan is revered as a 'Naishtika Bramhachari,' or a celibate for life, it is widespread belief and habit in the state not to enter the temple between the ages of 10 and 50, which appears to be a time of child bearing and impurity for a woman. Women of menstrual age are not permitted to visit the temple, according to a notification by the Devaswom Board, which maintains the temple, and devotees are expected to complete a Vratam (41-day austerity period) prior to the pilgrimage, which is biologically impossible for women. It is a matter of their faith, custom, and tradition.

The Supreme Court of India, in a momentous decision in September 2018, overturned the Kerala High Court's decision and permitted women of all ages to attend the temple [1–6]. It stated that such

an exclusionary practise violates the right of women to attend and enter a temple to express her love to Lord Ayyappa, and apply her right to religion under the Indian Constitution. Women's right to worship is substantially harmed when this right is denied to them.

In a 4:1 decision, which was a five-judge Constitution Bench led by Chief Justice Dipak Misra and Justice A M Khanwilkar found that barring women from praying in temple doesn't come under "essential religious practise." The judges cited section 3 of the Kerala Hindu Places

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of Public Worship (Authorisation of Entry) Act, which stated that places of public worship shall be open to all parts and classes of Hindus, indifferent of custom or practise. They underlined that prohibiting women from entering the shrine in violation of Rule 3(b) was gender discrimination, and hence the practise was in direct violation of the section. The same judgement, which was also signed by Justices R F Nariman, stated that article 25 secured the right of menstruation women (aged 10 to 50). (1). He also agreed with the other two judges that Rule 3(b) violated Article 15(1) of the Constitution. Furthermore, the term "morality" is used in Articles 25 and 26 of the Indian Constitution to refer to constitutional morality, which focuses on the values of liberty, justice, equality, and fraternity." He also claimed that denying menstruation women access to the temple was a breach of article 17. Because the concept of 'untouchability' is based on the concepts of 'purity and defilement,' the same reason underpins the exclusion of menstruation women from sacred sites. Justice Indu Malhotra, the sole female judge who dissented, In most cases, the courts should not be involved in disputes involving deeply religious beliefs. The Sabarimala Shrine is protected by Article 25 of the Indian Constitution, hence the deity and article 14 cannot be judged simply on religious practises. It is not possible to invoke rationality in matters of faith. The religious community, not the courts, decides what constitutes vital religious activity. Everyone should be able to practise, spread, and express their ideas under constitutional morality [2, 3].

Chief Justice Dipak Misra noted in the decision that "relationship with the Creator is a transcending one." In this, strict societal physiological and biological stereotypes are not considered.' The Court stated that the attribute of devotion to divinity cannot be subjected to the rigidity and stereotypes of gender. The religious dichotomy of celebrating and venerating women as goddesses on the one hand, and enforcing strict punishments in matters of devotion on the other, must be abandoned. Women are treated with indignity and their standing is degraded as a result of such a dualistic attitude and ingrained worldview. The ruling further stated that while it is a universal fact that faith and religion do not condone discrimination, religious activities are frequently perceived as sustaining patriarchy, so undermining the fundamental precepts of faith as well as gender equality and rights. Likewise, cultural attitudes are centred and revolve around a patriarchal mindset, degrading women's standing in the social and religious context. The spirit of constitutional morality should be based of human liberty, equality, fraternity, and dignity. 'Women are neither lower or inferior to men,' Justice D.Y. Chandrachud argued. Religion's patriarchy cannot take precedence over faith. Religious freedom cannot be justified by biological or physiological considerations. Religion is essentially a way of life, yet certain acts are incongruent.' The supposed incapacity of women to observe the 41-day penance due to impurity, according to Justice Nariman, is a patriarchal idea. While the three members of the Division Bench were enthusiastic about allowing women of all ages to participate, Justice Indu Malhotra, the Supreme Court's lone female member, expressed her displeasure, arguing that judicial review of religious practises should not be undertaken because the Court cannot impose its morality and rationality on a deity's form of worship. She stated that "courts cannot invoke conceptions of logic in questions of religion." Furthermore, 'Religious customs and practises cannot be simply judged on the basis of Article 14 and the rationality principles enshrined therein.' The Supreme Court's Bench, which includes Chief Justice Dipak Misra and other Supreme Court judges such as Rohinton Fali Nariman, A. M. Khanwilkar, D. Y. Chandrachud, and Indu Malhotra, In 2006, when the Indian Young Lawyers Association filed a PIL, it also appealed a Kerala High Court Division Bench's decision from April 5, 1991 which upheld the ban on women devotees of a certain age group offering worship at the shrine. It was determined that the restriction has been in effect from the beginning of time and that it is not discriminatory under the Constitution. The Travancore Devaswom Board's restriction does not violate Articles 15, 25, or 26 of the Constitution, according to a High Court bench led by Justices K. Paripoornan and K. B. Marar. It also did not contravene the Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, because the prohibition only applied to women of a specific age category, not all women [4–6].

Due to patriarchal gender relations in religious activities, religious and traditional traditions discriminate against women and girls. Menstruation is regarded as a taboo in most faiths, rather than a

necessary element of the reproductive cycle for the human race's material survival. As a result, women are not permitted to enter public venues or read sacred books during this time. Due to the topic of impurity, the female body is frequently a source of controversy. The prohibition on women entering temples is defended by evoking traditional beliefs based on the physical phenomena of menstrual impurity. Women are filthy during menstruation, and there are no sanitation facilities in the dense forest. The temple is tainted by women as 'polluting objects. Women's modesty, as well as their right to equality, are called into question by this approach. Furthermore, feminist scholars have criticised and rejected religious traditions as infringing on women's reproductive rights. In a social framework governed by values and standards, a biological phenomenon received negative attention. It is frequently construed as a sin by societal ideals. In fact, the cultural construction of the body as dirty poisoned interpersonal relationships, denying women access to religious institutions. Because it subjugates women's bodies, menstruation is seen as a stigmatic condition. The process of menstruation, feminists contend, socially established women's position in society. Women's impurity is linked to the patriarchal culture's interpretation of women's uniqueness. Due to their biological natures, patriarchy creates an idea that men are superior and women are inferior.

Denying access to religious sites dilutes the concept of citizenship, which has consequences for democracy. The modern state's job is to preserve women's rights and to modify traditional discriminatory behaviours. Religious principles should foster public reason, while rational principles should challenge religious beliefs. The public deliberation of religious practises has positive democratic consequences. Excessive beliefs often take away human reasoning, and religious tradition, which washes across modernity, dispels public reason. Women's rights and involvement in the public sphere are denied by religious traditions, which dehumanise them. Religion-based customs and practises are intrinsically antithetical to natural justice and equality. Women have the same spiritual rights as males, and supporting their equality in faiths is consistent with this. The unequal and oppressive treatment of women is justified by societal religious practises and traditions. Holy leaders frequently use 'God-given prescriptions' to justify prohibiting women from entering religious buildings.

The Supreme Court of Kerala threw down Rule 3(b) of the Kerala Hindu Places of Public Worship Rules 1965 stating that Section 3 is a non-discriminatory rule that states that all classes and sections of Hindus, including women, are welcome in all places of public worship, regardless of any custom or tradition to the contrary. Furthermore, the proviso to Section 4(1) has an exception, stating that the regulations imposed under Section 4(1) shall not discriminate in any way against any Hindu based on the belief that he or she belongs to a specific section or class. The Supreme Court ruled that the text of both articles indicates that tradition and usage must extend to the rights of Hindus of all sections and classes to make wishes at places of public worship. Any interpretation to the contrary would negate the intent of the 1965 Act, as well as the fundamental freedom to exercise religion under Section 25(1) of the Indian Constitution. The court determined that women's prohibition isn't a necessary aspect of Hinduism, and that the courts can act in such a case. Even in religious contexts, the ruling affirms the concept that individual freedom trumps professed collective rights. The ruling re-examines the stigmatisation of female devotees based on a mediaeval belief that menstruation represents impurity and filth. It interprets that exclusion based on impurity may be a form of stigma that gives rise to untouchability [7, 8].

This case calls into question the court's adjudicatory role in defining religious boundaries in order to justify women's exclusion from public temples and their quest for equality, liberty, and dignity. To support its decision, the Court has interpreted both domestic laws and international conventions. It was stated that CEDAW places a strong emphasis on eradicating taboos surrounding menstruation that are based on customs or traditions. It has also instructed states to avoid from using such a custom or practise as a defence. If there are inconsistencies in the rules, international treaties must be followed when interpreting domestic legislation. The court has emphasised that a religious denomination's "religious practise" must be assessed against the backdrop of constitutional norms [9, 10].

According to Article 14, a law's justifiable classification, alleged to be discriminatory, must be based on intelligible differentia and have a rational nexus with the goal sought to be achieved. The goal in the case of Sabarimala Temple is to keep the god from being contaminated by the menstrual cycle. This "exclusionary practise" based on physiological characteristics is plainly arbitrary and so unjustifiable, as it goes against the constitutional purpose of establishing justice, equality, and fraternity. Women are stigmatised and stereotyped as weak and inferior human beings as a result of the practise known as "Vruthum," which necessitates abstinence from sex. Part III of the Constitution's fundamental rights are not watertight compartments, but rather open textured material, fluid in character, where freedoms shade and blend with one another. The law that takes away one's life or liberty must be rational and not arbitrary. Egalitarianism and arbitrariness are diametrically opposed. A person's personality is made up of a variety of freedoms. A single act is the culmination of a variety of choices and liberties that coexist. As a result, the freedom of religious denominations guaranteed by Article 26 must coexist and be linked to the protection of women's liberties and dignity guaranteed by Articles 15 and 21. Compulsory disclosure of a woman's menstruation status is a violation of her right to privacy under Article 21 and thus unjustifiable.

Exclusionary practises based on the physiological feature of menstruation are based on sex discrimination and violate Article 15(1) and (2)16. Furthermore, relying on the "impact test," it is obvious that the discrimination is based only on a biological aspect of menstruation that is unique to one sex. Under Article 25, total exclusion of a class or section from worshipping in a temple at all times is a violation of their right to religion. Religious faiths may limit a class's participation in particular ceremonies solely. The right to darshan, worship, and admittance to a public temple is a legal right, not a permissive right based on temple officials' activities. Women's right to worship is taken away when they are refused entry to a Hindu temple. The anti-exclusion principle is deeply entrenched in the transformative vision enshrined in the Constitution's clause. Exclusion is a form of discrimination that denies people equal citizenship and substantive equality.

Individuals have the right to freedom of conscience under Article 25. It may establish a code of ethics for its adherents or regulate rituals, observances, ceremonies, and styles of worship that are considered vital to its existence. A person's religious convictions cannot be questioned by the state, and the state cannot be held responsible for the veracity of those beliefs. However, he does not have an absolute right to exercise his religious rights. Religious practises are governed by legal criminal laws that prohibit and regulate harmful religious rituals such as Sati Pratha.

RESEARCH METHOD

The research done in the paper is Qualitative and Secondary in Nature.

RESEARCH QUESTION

- Is barring females from entering Sabarimala Temple Unconstitutional or if done otherwise, it infringes people's religious sentiments?
- Are there any social norms which affect the fundamental right of females to worship in temples?

CONCLUSION

Sabarimala is a matter of gender equality more than religious liberty. Those who oppose women entering the temple do not have the support of tradition, as the ban on women of a certain age entering the temple dates only from a 1992 High Court judgement, and even after that, there is enough evidence to show that young women have entered the temple with the full knowledge of the Thantri, the chief priest. The custom, if it exists at all, is incompatible with the Constitution's guarantee of gender equality and hence must be abolished. There are many who desire to go backwards from the beautiful constitutional values enshrined in the right to liberty and freedom of worship. The question is whether people, and thus institutions, give in to pressure or stick to their values. Individual rights must be respected in order for the best public benefit to exist.

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