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Sabarimala Temple Issue vis-à-vis violation of Fundamental Rights: A critical Analysis

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Abstract

The purpose of writing this article is to shed light on the journey of the Sabarimala Temple issue concerning inequality and equality. This whole issue shows Gender Discrimination concerning entry into the Sabarimala Temple. The Travancore Devaswom Board took the ancient logic in the wrong direction i.e., impurity and tried to ban the entry of women into the Sabarimala Temple. Concerning these restrictions, the Kerala High Court also pronounced the Judgment in favour of the board and restricted the entry of women during menstruating age. This judgment gave birth to the violation of the Fundamental Rights of women. But, in 2006, with courage, 6 women filed a case in the Supreme Court regarding such restrictions and hopefully, they get permission from the 4:1 majority of the bench that women can visit the temple during the menstruating age. Menstruation is not impure but is a physiological process.

Keywords: *Sabarimala Temple, Lord Ayyappa, Kerala High Court, Supreme Court Verdict, Protest on Verdict.*

ABOUT SABARIMALA TEMPLE

Sabarimala: It is the centre of Hindu pilgrimage in the Periyar Tiger Reserve in the Western Ghats of the Pathanamthitta district. This is an essential Hindu pilgrimage, especially in

southern India. It is one of the largest annual pilgrimages in the world and is visited by an estimated 45-50 million followers each year.

Shrine: Sabarimala is home to an old Ayyappan temple known as Sasta or Dharmasasta. Manikandan, a Pandalam dynasty ruler, pondered in Sabarimala temple in the 12th century and attained union with the divine. Ayyappan manifested himself as Manikandan.

Deity: One of Kerala's most well-known temples is devoted to Lord Ayyappa. The temple is administered by the Travancore Devaswom Board (TDB). They said that only women of a specific age are prohibited from visiting the temple and that it is okay to wait until 50 to visit the heavenly temple.

WHY WAS IT IN CONTROVERSY?

Even two centuries ago, women of menstrual age were forbidden admission to the Sabarimala temple, according to the Memoir of the Survey of the Travancore and Cochin States, published in two volumes by the Madras government in the 19th century. Even though Madras Infantry lieutenants Benjamin Swain Ward and Peter Eyre Conner finished the survey in late 1820 after nearly five years of inquiry, it was only published in two volumes in 1893 and 1901.

"Old women and young girls may approach the temple, but those who have attained the age of puberty and to a certain time in life are forbidden to approach as all sexual intercourse in that vicinity is averse to this deity (Lord Ayyappa)," the report said.¹

Young actresses Jayashree, Sudha Chandran, Anu, Vadivukkarasi, and Manorama were fined Rs. 1000 each in 1986 for dancing near the deity at the pathinettam padi (18 steps) for the Tamil film Nambinar Keduvathillai. The Devaswom Board, which is responsible for the temple's and grounds' preservation, was also fined Rs. 7500 for allowing the director to film in Sabarimala. Former Karnataka minister Jayamala has also claimed to have visited Sabarimala in 1986 when he was 27 years old and touched the idol. In 1990, the granddaughter of a previous Devaswom commissioner had her rice-feeding ritual in Sabarimala, which was attended by female relatives. Due to this event, a case had been filed in the Kerala High Court regarding the ban on the entry of women into the temple during menstruating age.

¹ https://www.owlapps.net/owlapps_apps/articles?id=58832227&lang=en

KERALA HIGH COURT'S VERDICT

- **1991 SCENARIO:** S Mahendran filed a court complaint in 1990, saying that Sabarimala was being visited by young ladies. Justices K. Paripoornan and K. Balanarayana Marar of the Kerala High Court² Ruled in 1991 that women between the ages of 10 and 50 may not pray at Sabarimala, citing long-standing norms. In addition, the High Court ordered the Kerala government to enforce the restriction on women entering the shrine by using the police force. The final decision of the court was as follows:

“Such restriction (restriction of women entry) 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 the 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

- **Violation of women’s fundamental rights by the Kerala High Court’s judgment:**
The Kerala High Court pronounced the judgment in the favour of the Travancore Devaswom Board which is a violation of women’s fundamental rights i.e., Articles 14, 15 and 26.
 1. **Article 14:** As per Article 14, the State should maintain equality but the judgment of the Kerala High Court denied equality and tried to give birth to inequality. The Board of Temples put a ban on the entry of women whereas they allow men to worship, don’t you think it is inequality with women? How can the judiciary treat women unequally?

Article 14 of the Indian Constitution reads,

² S. Mahendran vs The Secretary, Travancore, AIR 1993 Ker 42

³ Id. at 4.

“Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India ”⁴

2. **Article 15:** As per Article 15, no one can do discrimination based on sex, caste, race, birth or place and religion. When our Indian Constitution prohibits discrimination then, how can a temple board put restrictions on the entry of women? How can the High Court give such a discriminatory judgment? Don't you think that such restriction and judgment of the High Court did Gender Discrimination?

Article 15 of the Indian Constitution reads,

“15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition about

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes.”⁵

3. **Article 25:** It guarantees religious freedom to everyone in India. It states that all Indian citizens, subject to public order, morals, health, and other requirements, have the same right to freedom of conscience and to freely profess, practise, and propagate

⁴ INDIA CONST. art 14.

⁵ INDIA CONST. art 15

religion. It further states that this article will not conflict with any existing law and will not preclude the state from enacting legislation related to:

- Any commercial, financial, political, or secular action related to religious practice is regulated or restricted.
- Providing social services and reforming the system.
- The establishment of public Hindu religious institutions for all Hindu grades and groups.

When every person has a right to profess, propagate, and practice their own religion then, why don't women have the same rights? Women are also citizens and come under the definition of person which is stated by the constitutional maker in the Indian Constitution. Then, why is the Sabarimala temple board restricting them from professing and practising their religion as per their choice?

Article 25 of the Indian Constitution reads as,

“25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub-clause (b) of clause reference to Hindus shall be construed as including a reference to persons

professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”⁶

PETITION FILED IN SUPREME COURT

- **2006 SCENARIO:** Six women from the Indian Young Lawyers' Association petitioned the Supreme Court of India in 2006 to abolish the restriction on women aged 10 to 50 attending the Sabarimala shrine. They claimed that the practice was a breach of their constitutional rights, and that provisions in the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules Act of 1965 that backed it were invalid.

SUPREME COURT’S VERDICT

- **2018 SCENARIO:** The Supreme Court of India declared in September 2018 that women of all ages can visit the Sabarimala shrine. The court ruled thus:

“We have no hesitation in saying that such an exclusionary practise violates the right of women to visit and enter a temple to freely practise the Hindu religion and to exhibit their devotion towards Lord Ayyappa. The denial of this right to women significantly denudes them of their right to worship.”⁷

Justices A. M. Khanwilkar, R. F. Nariman, and D. Y. Chandrachud voted in favour of admitting women to the temple, but Justice Indu Malhotra dissented. According to Indu Malhotra, everyone should be free to follow their faith, regardless of whether it is reasonable or logical. The infringement of Article 25 (Clause 1) and Rule 3(b) of Kerala Hindu Places of Worship was the basis for the Supreme Court's ruling.

DISSENTING OPINION OF JUSTICE INDU MALHOTRA

The petition does not deserve to be heard, according to Justice Malhotra, the lone woman on the panel. She believed that courts should not decide which religious rituals should be prohibited, save in cases of social ill such as ‘Sati’. *“Issues of strong religious sensitivities should not be generally dealt with by the court,”*. She added, that emphasizing the subject is crucial to many religions. Article 25 of the Indian

⁶ INDIA CONST. art 25

⁷ Indian Young Lawyers Association & Ors. v. State of Kerala & Ors., (2019) 11 SCC 1.

Constitution protects the Sabarimala temple and the god, and religious acts cannot be judged entirely on the grounds of Article 14.

“Notions of rationality cannot be invoked in matters of religion,” said Justice Malhotra, adding: “What constitutes essential religious practice is for the religious community to decide, not for the court.”⁸

REVIEW PETITION OF 2018 JUDGMENT

- **2019 SCENARIO:** The Supreme Court Constitution Bench referred the review and writ petitions to a bigger bench of at least seven justices, to be appointed by the Honourable Chief Justice of India, on November 14, 2019. Similar situations have been discussed on larger benches, including Muslim women entering mosques, Parsi women married to a non-Parsi entering an Agyar's holy fireplace, and the practise of female genital mutilation in the Dawoodi Bohra community. Chief Justice Ranjan Gogoi Justices Ajay Manikrao Khanwilkar and Indu Malhotra backed the judgement to refer the applications. Dissension was expressed by Justices Rohinton Fali Nariman and Dhananjaya Y. Chandrachud.

PROTEST AGAINST THE SUPREME COURT VERDICT

Various Hindu organisations organised seven hartals in Kerala in the aftermath of the Supreme Court decision under the banner of the Sabarimala Karma Samithi. The following are some of them:

1. *On October 7, 2018, the Pathanamthitta district held its first hartal. This hartal was ordered by the BJP in reaction to an alleged police assault against Prakash Babu, the state head of the Bharatiya Janata Yuva Morcha, during a protest march on October 6, 2018.*⁹
2. *The second hartal took place on October 18, 2018. Malayalam actor and BJP member Kollam Thulasi remarked in the run-up to the hartal that women who visit the Sabarimala shrine should be torn in half. He was charged with "deliberate and*

⁸ Express Web Desk, Sabarimala verdict: Here's what Justice Indu Malhotra said in her dissenting opinion, The Indian Express (September 28, 2018 8:33:42 pm), <https://indianexpress.com/article/india/sabarimala-verdict-what-justice-indu-malhotra-said-dissenting-opinion-5377812/>

⁹ Scroll Staff, Sabarimala row: Temple gates open to devotees amid protests against women entering premises (Oct 17, 2018), <https://scroll.in/latest/898573/sabarimala-row-protests-erupt-as-temple-set-to-open-for-monthly-rituals>

intentional conduct, intended to insult religious emotions of any class," according to a First Information Report.¹⁰

3. *On November 2, 2018, the third hartal took place. The death of Sivadasan, a lottery ticket vendor, is thought to be the cause. The lottery salesman travelled to Sabarimala for the pilgrimage, and his body was discovered near Laha. Even though authorities verified that he died in a road traffic accident, protesters in Pathanamthitta district blamed police action in Pamba for his death.¹¹*
4. *On November 17, 2018, the Bharatiya Janata Party (BJP) in Kerala called for its fourth hartal. The arrest of K P Sasikala was used as justification for the hartal. A statewide strike was called.¹²*
5. *On December 11, 2018, the sixth hartal was held. In Kerala's Thiruvananthapuram District, the Bharatiya Janata Party called for a hartal. It was in retaliation for alleged police action against a Bharatiya Janata Yuva Morcha march on December 10, 2018.¹³*
6. *On December 13, 2018, a 49-year-old man committed suicide in front of a BJP protest site, prompting the party to call for another nationwide hartal. It was the BJP's sixth Sabarimala-related hartal since the start of the Mandalam Makaravilakku pilgrim season at Sabarimala.¹⁴*
7. *On January 3rd, 2019, the seventh hartal was held. Kerala's Sabarimala Karma Samithi is a nationwide hartal. Bindu Ammini and Kanakadurga, two women who successfully entered the Sabarimala shrine, sparked the hartal. When CPI(M) members started hurling stones, one of the demonstrators, Chandran Unnithan, a Sabarimala Karma Samiti member, was hurt and died soon after from serious head injuries.¹⁵*

CONCLUSION

¹⁰ Rip Women Entering Sabarimala in Half, Says Actor Kollam Thulasi At BJP-Led Rally (13/OCT/2018), <https://thewire.in/women/sabarimala-temple-kollam-thulasi>

¹¹ https://en.wikipedia.org/wiki/Entry_of_women_to_Sabarimala

¹² Express News Service, Sabarimala row: BJP protest KP Sasikala's arrest; Terms it outrageous, The new Indian Express (17th November 2018 12:05 PM), <https://www.newindianexpress.com/states/kerala/2018/nov/17/sabarimala-row-bjp-protest-kp-sasikalas-arrest-terms-it-outrageous-1899450.html>

¹³ India Today Web Desk, BJP calls for 12-hour strike in Kerala's Pathanamthitta today, The India Today (November 2, 2018), <https://www.indiatoday.in/india/story/bjp-calls-for-12-hour-strike-in-kerala-s-pathanamthitta-today-1380845-2018-11-02>

¹⁴ Express Web Desk, Kerala: BJP calls for hartal after 'Ayyappa devotee' immolates self, The Indian Express (December 13, 2018), <https://indianexpress.com/article/india/sabarimala-temple-kerala-bjp-calls-for-hartal-after-ayyappa-devotee-immolates-self-5492475/>

¹⁵ Kerala police demand prohibitory orders as Sabarimala opens today, News Live Daily (February 12, 2019), <http://newslivedaily.com/?cat=20&paged=2>

The above point clears the whole journey of the Sabarimala Temple controversy. The Travancore Devaswom Board wants to ban the entry of women into the temple because of their conservative thinking. According to them, menstruation is impure and the women who are of menstruating age are also impure so they should not be allowed in the Sabarimala temple otherwise the holy and pure temple becomes impure. **But**, menstruation is not impure but it is a physiological process that every woman faces in their life. The claim of impurity of women during menstruating age shows their conservative thinking. Such claims are related to gender discrimination that is illogical as well as inconsistent with the Fundamental Rights of women. As per Article 14, they also have the right to be treated equally as men have been treated by society.

“In olden times women could not go to the temple because at that time the temple was far away from their home and women already had to face body pain during periods due to which it was very difficult to travel for hours. This was the Logic. But, in the present day, people misnamed this logic i.e., an impurity that is vague and bogus.”

As per Article 25 of the Indian Constitution, women have the fundamental right i.e., freedom of religion. They can freely enjoy, profess, and propagate their religion. But, claiming such a ban is inconsistent with the Fundamental Rights or violative of Article 25. As per Article 13, any laws or rules which are inconsistent with the Fundamental Rights are not enforceable. Therefore, the restriction put by the Travancore Devaswom Board and the judgment of the Kerala High Court were inconsistent with the Fundamental Right of Women i.e., Article 25.

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