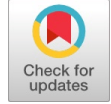


# Sabarimala Shrine Verdict: Dissensions & Repercussions



Riya Gulati

**Abstract:** *The concept of westernization, democratization and modernization has been arrogated by India superficially but when it comes to its real application, our rigid customs, suppositions, superstitious beliefs always supersede. India is a divine-vibrant land of mixed cantons, religions, cultures and traditions and hence it come becomes imperative to be prejudice-free in order to become a fairer society. The nation where both god and goddesses are equally venerated, it becomes unjust to deny the entry of an individual in the temple based on gender. This case note will provide an analysis of the Sabarimala verdict in legal and social context. It will also outline the subsequent ramification of the said decree. The present case examines the justification for disallowing pilgrimage to the women of menstruating age to the Sabarimala Ayyappa Temple and encapsulates in brief the rationale behind the judgment of the Supreme Court for allowing women to enter the shrine.*

**Key words:** *Sabarimala Verdict, Superstitious Beliefs, Social Taboo, Gender Discrimination, Menstruation, Celibacy, Right to Worship, Religious Practices, Constitutional Morality.*

## I. INTRODUCTION

In Hinduism, women are considered as equivalent as or even greater than men. But the attitudes arrogated around patriarchal expositions of religious dogmas have overlooked and disempowered women [1]. It is not just men are preferred to perform essential religious ceremonies or rituals. Apart from that, women have been discriminated on various fronts and pretexts with a sanction presumed to be gleaned from religion. Menstruating women are precluded from entering the inner chambers of the sanctum. Purification rites are conducted to purge the god from a woman's touch. A woman, when menstruating is regarded as befouled and impure and it is surmised that the existence of menstruating women would 'contaminate' the holy place [2]. The stigma associated with menstruation is deeply rooted in our society which modulates women's freedom of movement and right to worship [3]. Hence, many legal activists and feminists are objecting for the ubiquitous practices of menstrual taboos which curtail the rights of the women.

## II. OVERVIEW OF SABARIMALA VERDICT

The practice of barring the entry of female devotees

between the age group of 10 to 50 years to the Sabarimala Temple was held unconstitutional by the Supreme Court [4].

The Constitution Bench headed by Chief Justice Dipak Misra in a 4-1 verdict upheld that the centuries-old tradition infringed women's right to equality and right to worship. The lone women in the bench dissented on the ground that "the issues pertaining to religious sentiments should not be ordinarily intervened by the court" [5]. In this case, there was conflict between the doctrine of essential religious practices and the principle of constitutional morality [6]. The verdict of this case is highly controversial as it intervened with the religious practice of a religious institution as it provided religious freedom to the female devotees of menstruating age to enter the temple. The decision is being opposed on the ground that religious diversity is being killed in the name of countering gender discrimination [7].

### A. The Facts of the Case Are as Follows

A PIL was filed under Article 32 of the Indian Constitution where the petitioners prayed for the issuance of appropriate writ or direction ordaining the Government of Kerala, Devaswom Board of Travancore, Chief Thanthri of Sabarimala Temple and the District Magistrate of Pathanamthitta and their officers to assure the entry of female devotees in the group of 10 to 50 years to the Lord Ayyappa Temple at Sabarimala. Also, to pronounce Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 framed in exercise of the powers conferred by Section 4 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 as unconstitutional being violative of Articles 14, 15, 25 and 51A(e) of the Indian Constitution. And most importantly, to issue directions for the protection of women pilgrims [8].

### B. Issues Raised in the Case

The three- Judge Bench in Indian Young Lawyers Association and others v. State of Kerala and other formulated the following questions for the purpose of reference to the Constitution Bench [9]:

Firstly, whether the practice of excluding female gender based upon a biological factor- amounts to discrimination; violates the essence of Article 14, 15 and 17 and is not safeguarded by 'morality' as used under Article 25 and 26 of the Constitution?

Secondly, whether such exclusionary practice of banning the entry of women constitutes an "essential religious practice" under Article 25? Also, can a religious institution assert a claim under the umbrella of right to administer its own affairs in religious matters?

Thirdly, whether the Ayyappa Temple has a denominational character? If so, is it admissible on the part of a 'religious denomination' administered by a statutory

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board and financed out of the Consolidated Fund of Kerala and Tamil Nadu under Article 290-A of the Constitution to indulge in practices which violates the constitutional principles and morality embedded in Articles 14, 15(3), 39(1) and 51-A(e)?

Fourthly, whether the Rule 3 of “the 1965 Rules” authorizes ‘religious denomination’ to forbid the entry of female devotees between the ages of 10-50 years? If so, will it not defeat the very purpose of Article 14 and 15(3) of the Constitution by debarring the entry of women on the ground of gender?

Fifthly, whether the Rule 3(b) of “the 1965 Rules” is ultra vires “the 1965 Act”? If treated to be intra vires, whether it will be in contravention to the provisions of Part III of the Constitution?

It is pertinent to note the Division Bench of the Kerala High Court in *S. Mahendran v. The Secretary, Travancore Devaswom Board, Thiruvananthapuram and others* (wherein similar contentions were raised) upheld the practice of prohibiting the entry of female devotees belonging to the age group of 10 to 50 years during anytime of the year in the Sabarimala temple [10]. The High Court derives the following conclusions:

- (1) The restriction foisted on women after menarche up to menopause from trekking the holy hills of Sabarimala and worshipping at Sabarimala temple is in accordance with the usage prevalent from time immemorial.
- (2) The restrictions imposed on women by the Devaswom Board do not breach Articles 15, 25 and 26 of the Constitution.
- (3) Such restriction is not in contravention to the provisions of “the 1965 Act” as there is no restriction between any sections, classes or among Hindus in the matter of entry to a temple whereas the restriction is imposed on the women of a specific age group and not based on women as a class [11].

### C. Arguments Advanced by the Petitioners

The petitioners submitted that the Hindu religion accords a higher pedestal to women as compared to men and hence, imposing restriction on women’s entry to temples is totally anti-Hindu. The mere sight of women cannot affect one’s celibacy when one has taken vow for it.

According to intervenor’s submission, this exclusionary practice of restricting the entry of women between the age group of 10-15 years based on physiological factors (which is exclusively found in female gender) infringes Article 14 of the Constitution. Also, this exclusionary practice breaches Article 15(1) of the Constitution which amounts to discrimination based on gender as the physiological feature of menstruation is exclusive to women. This practice of excluding women has the impact of casting stigma to women of menstruating age as it considers them polluted and thereby has a huge psychological impact on them which consequently leads to the contravention of Article 17 which includes untouchability based on social factors and is broad enough to encompass menstrual discrimination against women. This exclusionary practice infringes the rights of Hindu women under Article 25 of the Constitution as they have the fundamental right to enter Hindu temples. The intervenor has further submitted that Rule 3(b) is ultra vires

the 1965 Act and is unconstitutional as it infringes Articles 14, 15, 17, 21 and 25 of the Constitution. Also, the Rule 3(b) is not crucial practice safeguarded under Article 26 of the Constitution for it is not a part of religion as the devotees of Lord Ayyappa are just Hindus and they do not compromise a distinct religious denomination under Article 26 of the Constitution.

By relying on the judgment of *Sri Venkatramana Devaru v. State of Mysore*, it has been submitted that the right to administer its own affairs as conferred upon a religious denomination under Article 26(b) is subject to be rights guaranteed to Hindu women under Article 25(2)(b) [12]. A harmonious construction of Article 25 and 26 of the Indian Constitution divulges that neither Article 26 authorizes the State to make law that excludes women from right to worship in any public temple nor does it protect any custom that discriminates women and, thus, such exclusion violates the rights of women to freely practice their religion as guaranteed under Article 25.

The applicant by emphasizing on *Vishakha v. State of Rajasthan* submitted that the international conventions must be followed when there is inconsistency in the national law [13]. As India is a party to the Convention on Elimination of all forms of Discrimination Against Women (CEDAW), it is state’s obligation to eliminate taboos pertaining to menstruation based on customs and traditions [14].

### III. ARGUMENTS ADVANCED BY THE RESPONDENTS

It has been submitted that Sabarimala is a temple of great antiquity which is dedicated to Lord Ayyappa. Although there are multitudinous Ayyappa Temples in India but the deity at Sabarimala is in the form of Naishtika Brahmacharya: his powers derive precisely from abstention from sexual activities and that is why young women are denied the entry.

To counter the statement of the petitioner that denial of entry of women amounted to gender discrimination, it has been submitted that only females between the ages of 10-50 years are debarred from entering the temple [30]. There is no absolute prohibition as women below the age of 10 years and above the age of 50 years are permitted to enter the temple [31]. Hence, there is no gender-based discrimination and the religious practice does not violate Articles 14 and 15 of the Constitution [32]. With regards to Article 17 of the Constitution, there is no exclusion of the whole class of women whereas it is solely an exclusion of women within a particular age group [15]. The custom and usage of restricting the entry of women aged between 10-50 years at the Sabarimala temple has its traces in the basic tenets of the establishment of the temple, the deification of Lord Ayyappa and his worship. The pilgrim separates himself from all family bonds for 41 days and during the said period either the woman leaves the home, or the man moves elsewhere in order to separate himself from all family ties. The rationale behind not permitting the women to observe the pilgrimage is because they cannot complete 41 days Vrutum as their periods would eventually fall within



that duration and there is a custom among all Hindus that women do not go to temples or perform religious activities during periods. The observance of 41 days Vruthum is a condition precedent for the pilgrimage which has been an age-old custom and anyone who cannot fulfil the said Vruthum cannot enter the temple, therefore, women who have not attained puberty and who are in menopause can undertake the pilgrimage at Sabarimala. The said stipulation of observance of 41 days Vruthum is not exclusively applicable to women. Even the men who cannot observe the 41 days Vruthum due to births and deaths in the family resulting in non-observance of Vruthum are not permitted to take the pilgrimage that year. It is also for the sake of pilgrims who practice celibacy, young women are disallowed in the Sabarimala. The prohibition is not a social discrimination rather it is a prerequisite for the observance of essential spiritual discipline in the pilgrimage.

#### A. Judgment

- The devotees of Lord Ayyappa do not constitute a separate religious denomination. They do not possess a common religious tenet distinctive to themselves which they regard as conducive to their spiritual well-being other than those which are common to Hindu religion.
- Article 25(1) provides that the freedom of conscience and right to freely profess, practice and propagate religion is available to every person including women (regardless of their age).
- The Rule 3(b) of the 1965 Rules formed under 1965 Act which excludes the women of age group of 10-50 years, clearly infringes the right of Hindu women to practice their religious beliefs which in result makes their fundamental right of religion under Article 25(1) a dead letter.
- The conception of public order, morality and health cannot be used as colourable device to limit the freedom to freely practice religion and discriminate against women of the age group of 10-50 years by refusing them their legal right to enter and offer worship at the Sabarimala shrine.
- Rule 3(b) is ultra vires Section 4 of the 1965 Act. The provision to Section 4(1) provides an exception to the effect that the rules made under Section 4(1) shall not discriminate, in any manner whatsoever, against any Hindu on the ground that he/she belongs to any particular section or class.

#### IV. SOCIAL DIMENSION

The social, cultural and religious system of our society is built upon patriarchal structure which accords comprehensively an inferior status to woman [16]. There are quite a few places of worship in India which denies the entry of women. This social issue has more to do with the custom of “ritual pollution” connected with menstruation [17]. There is an ongoing legal battle for permitting women to gain access to the inner sanctum of these temples.

It has been aptly said that “the creator do not differentiate between men and women, so why should there be discrimination in the premises of the shrine [18]. It was also being advocated that a celibate doesn’t imply that women should be shunned as if they are plague rather it is more

about humility and discipline [19]. The creator has not imposed any such restrictions on worshipping him but these are man-made rigid social traditions that are being carried forward from generations to generations. It has been beautifully enshrined in Shri Guru Granth Sahib that, “purity has nothing to do with menstruation as it is linked to the mind and not the body” [20]. Menstrual cycle is a God-given biological process which must be revered. The blood of a woman is essential for the creation of a new life [21]. Hence, menstruation should not be regarded as a social taboo [29].

The ruling of the Supreme Court is of considerable importance as it has safeguarded the constitutional right to equality [22] and prevention of untouchability [23] on the ground that biological (menstrual) cycle of a person is not the base to deny constitutional prerogatives” [24]. Instead of absolutely forbidding the entry of women in the Sabarimala temple, it is recommended to frame certain rules such as to dress appropriately and maintain decency in the premises of the temple, with the best interest of everyone.

#### V. CONCLUSION

Kerala is the only Indian state which has attained 100% literacy rate [25]. Despite of that, there are certain unjustified customary practices that are rigidly followed in the state till date which are discriminatory against the women. The proponents to Sabarimala verdict advocate that allowing women to enter the temple marks an end to gender discrimination [26]. Whereas the antagonists argue that the basis of prohibiting women from entering the temple is the celibate nature of the deity and not misogyny. The devotees who visit the temple are expected to observe celibacy and hence during the journey, the company of women must be avoided. The present case does not only involve a religious issue but also a social issue [27]. It is pertinent to note that there are few temples in India where men are not allowed to enter [28]. If it is justified to disallow men in certain temples then it is equally justified to prohibit the entry of women in a temple where the devotees come to observe celibacy. There is the need of the hour to put an end to such discriminatory practices that disallows the entry of a person based on the gender.

*“The nation where both god and goddesses are equally venerated, it becomes unjust to deny the entry of an individual in the temple based on gender.”*

#### DECLARATION STATEMENT

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