

**CASE COMMENT: INDIAN YOUNG LAWYERS ASSOCIATION &
ORS vs. STATE OF KERALA**

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SYNOPSIS

This case is popularly known as Sabarimala case which has a great impact in our Indian Society. There had been a nation-wide chaos after the Judgement. This is a very famous case about the violation of fundamental articles under constitution. This case is a PIL filed by Indian young lawyers association in 2006 stating that the custom followed by the temple affect the fundamental rights of citizens especially women citizens. In this case there is a temple in state of Kerala namely Sabarimala temple which restricts the women of menstruating age. It is a custom followed for decades. The PIL was filed by saying that this restriction is unconstitutional because it violates the fundamental rights like right to freedom, freedom of religion etc. In this case the petitioner made their case to be one of general discrimination in this patriarchal society.

BACKGROUND

Sabarimala Shri Dharmasastha temple is a Hindu shrine which is the largest annual pilgrimage in the world with upto 50 million visitors every year. It is located inside the Periyar Tiger Reserve in 'Pathanamthitta' district of Kerala. As per the custom followed in Sabarimala shrine the women in menstruating age is restricted to enter the temple; even some women's try to enter the temple, but they can't be able to make it because of the physical assault against them. The reason why they are not allowing the menstrual age women because the god namely Ayyapa in the Sabarimala temple in in form of Naisthik Bramachari so they believed that the presence of young women should not affect the asceticism and solemnity. There are some certain customs to be followed by the devotee before he appears to worship the god; the customs like the devotee also must be in state of celibacy for 41 days before him going to sabarimala temple.

He needs to wear black or blue dress; they did not allow shaving or cutting their hairs; they had to stop drinking alcohol for those days and they need to eat only vegetarian foods. The

temple will only open for worship during mandala pooja [Nov 15- Dec 26], Makara Sankranti and Maha Vishuva Sankranti and first five days of each Malayalam month.¹ Section 3 of the Kerala Hindu places of Worship (Authorisation of entry Act) required that places of public worship be open to all sections and classes of Hindus subject to special rules of denominations. Rule 3(b) provided for the exclusion of “women at such time during which they are not allowed by custom to enter such place of public worship”. The petitioner argued that the provision of legislations is unconstitutional to Article 14 (Right to Equality), Article 25(1) (Freedom of worship), Article 26 (freedom of religious denominations to regulate their own practices) whereas the defendant Devasthanam board argued that entering the women into the temple will also affect their religious right under Article 25 distinct to their religious denominations.

FACTS

Sabarimala temple situated in Kerala managed by the Travancore Devasthanam located in Periyar Tiger Reserve in ‘Pathanamthitta’ district Kerala had a custom like restriction of women during their menstruating ages i.e. (10-50) due to their customary practice which is legally valid under Sec 3(b) of Kerala Hindu places of Worship (Authorisation of entry act). In 1990 the first petition was filed. In 1991 Justice of Kerala High Court K. Paripooranam and K. Balanarayana Marar held that the restriction of women entry is a long-lasting customary practice and became an established norm, the High Court directed the Devasthanam board or priest to decide on traditions. In 2006 the Indian Young Lawyers association filed a PIL by challenging that this customary practice is unconstitutional; this case was referred to the 5 Judge benches. In 2018 the apex court at 4:1 majority held that the restriction on women entry in Sabarimala temple is unconstitutional as it violates the Article 14, Article 25 etc and allow all age Women’s can enter the temple and they can worship.

ISSUE

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Three main issues were framed before the court and argued to find whether the restriction of women entry in unconstitutional.

- (i) Whether the restriction of particular gender (women) entry into the temple amount to discrimination and it is violative of Article 14, 15, 17, 25 & 26.

¹ <https://www.scobserver.in>

- (ii) Whether the Kerala Hindu Places of Public Worship Act permits the restriction of women?
- (iii) Whether the Ayyappa temple has a denominational character and whether it is permissible on the part of a religious denomination?

ARGUMENTS

Arguments by petitioner:

Petitioner argued that we cannot claim women as impure based on the menstruation which amounts to gender discrimination. Petitioner argued that the entry to the temple is neither the ritual nor the ceremony associated with Hindu religion and restriction to enter is nowhere mentioned in the custom. They also argued that the customary practice which is mentioned in the Rule (3) of the Kerala Hindu places worship act violates the Article 14 and individual religious right or follow any religion². Senior advocate Indira Jaising argued that restriction of women not to enter the temple offends the concept of gender equality or gender justice which will affect their social interactions as well as interactions with family members. “The sole basis of restriction is menstruation of women as seen as polluted”. She pointed that the restriction amounts to Untouchability is abolished and its practice in any form is forbidden.

The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law³. She also argued that devotees of Ayyappa is not considered as religious denomination as they are Hindus if so, they were assuming such practice cannot restrict the women Hindus to enter the temple; if they are considered as devotees of Ayyappa then their rights should move from Article 26(b) to Article 25(2)(b)⁴. Petitioner mentioned the impact test in *Bennet Coleman & Co & Ors vs Union of India & Ors*⁵ which says discrimination is only based on the sex because biological feature of menstruation emanates from the characteristics of particular sex as it is completely based on sex it violates Article 15.⁶

² Article 25 of Indian Constitution

³ Article 17 of Indian Constitution

⁴ Sri Venkata Ramana Devaru & Ors vs Mysore & Ors 1958 AIR 255 1958 SCR 895

⁵ 1973 AIR 106, 1973 SCR (2) 757.

⁶ <https://www.scconline.com>

Petitioner argued that right to worship and religion is both for men and women under Article 25. Senior advocate Mr. Raja Ramachandran who is amicus curiae in this matter argued that under article 25(2) women have the right to enter the temple and restriction of women's entry is meddling with women's right to privacy. Petitioner argued that after 1950 Act no Devasthanam board can act differently both in religious and administrative matters as they lost their distinctive character and Sabarimala no more remained a temple of any religious denomination after the takeover of its management. Petitioner by citing a judgement argued that if any accretion added for any historical reason has become of the said religious denomination the same shall not protect under Article 26(b) if it is so and it is against the basic concept of constitution. Petitioner also argued that the mere sight of women cannot affect the one's celibacy if one must take oath; they stated that devotees did not go to Sabarimala for celibacy's oath but for lord Ayyappa blessing.

Arguments by respondent:

Respondents argue that it is a religious practice followed as old tradition to respect God. Respondent argued that this customary practice is immemorial without any disturbances, so it became custom and as per sec 13(3) laws allow custom. As per Sec 25(2) (b) there should be no discrimination; they argued that this article has no importance here since there is no total ban for all aged girls only for a limited age group that is based on customary practice. Respondent mentioned the fact that girls below the age group 10 and above age 50 have the rights to enter the temple and worship as per their wish. Respondent argued that as per Sabarimala pilgrimage it is important to maintain 41 days Vratham and it needs to be followed to attain spiritual refinement for entering the temple. This vratham is not only for girls and for boys; in these 41 days the devotee must separate himself from the family and if anyone breaks the vratham cannot enter the temple.

As per scientific Ayurveda women get their periods every 30 days for rest of their body and a period of uncleanness of their body from which they had many discomforts; so, they can't make vratham and observance of intense spiritual discipline for 41 days is not possible. Respondent argued that lord Ayyappa is the character of deity as Naishtik Brahmachari and right to possess religion can only be protected if the character of deity is protected. They also mentioned that women can enter the other temples of Ayyappa so their claim as not to worship will not be valid and they also mentioned that in some temple like Bagavathi temple Kerala where men also restricted to enter and there is more temple. Respondents argue that

devotees of Ayyapa constitute a religious denomination as they follow Ayyappa Dharma which is already observing by the Kerala High Court⁷. Men devotees are called as Ayyappans and eligible female devotees called as Malikapurams. Respondents give the answer to the question of untouchability that main object of Article 17 is to protect untouchability which is not practiced in the temple.

FINDINGS

1. The issue submitted before the court is related to gender inequality/ discrimination of female gender respective to worship and right to freedom of worship i.e., a particular age group of females were restricted to enter the temple which affects their rights under article 25, 26, 27.
2. By the evidence provided before the court, court observed that devotees of Ayyappa did not constitute a religious denomination because there is a need of methodology for religious denomination which lacks here. Court stated that certain practices from time immemorial do not make it as distinct religion.
3. Court denied accepting the exclusionary practice as an essentiality of religion as there is no textual evidence and made opinion that allowing women into the temple will not change any fundamental concept of the religion.
4. Court also observed that as per article 25 a person has rights to provide right to religion irrespective of their age and if any customary practice forbids them to worship at temple, they have a right to freely worship their Hindu religion.
5. Court held that plain reading of rule 3(b) of 1965 rules shows that it is ultra vires to sec 3 and 4 of the same act.

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REASONING

The verdict was passed on 28 September 2018. The verdict was delivered in 4:1 majority as women are liable to enter the temple; the customary practice there violated the fundamental rights like right to equality, right to freedom etc. This case is a mix of law and fact and it should decide by the competent court of jurisdiction. By the words of Hon'ble chief Justice

⁷ S. Mahendran v The Secretary, Travancore Devaswom board & Ors

and other justice it is upheld that the religious matters, faiths, beliefs, and practices in India are bound to the constitution. It declares Rule 3(b) of Kerala Hindu Places of Public Worship Act was unconstitutional. Justice Malhotra hold different opinion that devotees of Ayyappa have religious denomination, so they entitled to protect under Article 26 and observed that restriction is partially based and not fully restricted.

DISPOSITION

This verdict had suppressed all the beliefs and faiths of customary practices related to this of different tradition of different religions. The verdict itself passed in 4:1 opinion was four of them accepts the evidence to enter and the other judge were not ready to accept that law overcome the custom which may set difficult precedent for future references do not respect to this kind of issue. The bench nullified the claim for essential practice of religion by stating that for the essential practice it should need the new methodology where the practice like this is common for all religions. As per opinion of Justice Indu Malhotra Rule 3(b) is not ultra vires since it protects religious denomination and she also observed that equality of doctrine shrine does not overrule the right under Article 26. As of now all women can enter the temple during the period of worship as per the judgement. Public opposes this and PIL was filed.

CRITICAL ANALYSIS

As we all know that religious practice is predominant in nature and have certain customs or practices which define the nature of the religion. As for the concern of Hindu religion it has several rituals and practices which they follow for time immemorial for particular reasons. Law should be fair for the reasons provided. The myth we all know that Hindu religion has countless deities in different temple and different practices across the world and each is bound to the nature and belief of each devotees. It is important to note that court had ignored the particular nature of deity. Banning of entry of women into temple is not an essential religious practice whereas it is subjected to right to enter the temple. As stated, above women has right to enter all other Ayyappa temple and worship there; there is not fully restrictions of women.

The only reason for not allowing into Sabarimala is the nature of Deity Ayyappa is different from compared to other temples. Here the deity is in form of Naishtik Brahmachari so the certain age of women was not allowed here whereas in other temple of Ayyappa all women can enter as there is different deity of Ayyappa. The reason given by the court for denominational character is uncommon for non-followers or tourists where they visit temples

did not mean that their faith did not have religious denomination. The humble opinion of the author is banning of women entry is not based on gender issue or sex and it is only for the celibacy of the deity since the nature of deity in Sabarimala is unique in nature and as the women have the right to worship at all other Ayyappa temple from which there is no violation of fundamental rights.

Even in many temples men were also not allowed to worship in the temple is not because of gender biasness rather it may have some certain custom or practice which follow by the nature of the deity and belief of devotees.

CONCLUSION

In this case the apex court tries to make a bridge between constitutional rights and social reality where there is a distinction between them. The judgement was given in 4:1 majority which supports the entry of women into the temple, but it is also important to protect the heritage of the temple. It is true that women are discriminated in many ways with respected age, sex etc but in concern of this case women can enter other Ayyappa temples which did not affect their fundamental rights and the reason for ban the entry is to protect the particular nature of deity presented in Ayyappa.

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