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"HARMONIZING TRADITION AND EQUALITY: NAVIGATING GENDER RIGHTS WITHIN THE REALM OF RELIGIOUS FREEDOM - THE SABARIMALA CASE"

Introduction

According to Justice P. N. Bhagwati, India needed social changes to escape anti-social practices, obscurantism, blind superstition, and medievalism. The Indian Constitution had to grant the state the authority to impede religious freedom; yet, the right to practice one's faith and its modes of worship must coexist in harmony. Courts defend the freedom to practice one's own religion and the right to worship as a civil right; however, such practice must be sincere and not interfere with the rights of others. The essentiality test has denied people of different religions the chance to become someone they never were.

The concepts of gender equality may, however, occasionally clash with the exercise of religious freedom. Examples of such conflicts include constraints on women's autonomy, restrictions on their ability to have children, and the denial of equal access to jobs and education inside religious organizations. The rights and freedoms of every person must be carefully considered to negotiate the conflict between gender equality and religious freedom. Civil discourse and the creation of spaces where people can exercise their faith without violating the rights of others are also crucial.

The complex and controversial topic of the relationship between gender equality and religious freedom highlights the conflict between the preservation of religious practices and beliefs and the quest for equal rights and opportunities for all genders. Gender equality advocates aim to eliminate discriminatory practices and systems, such as unequal access to decision-making roles, employment opportunities, and education, that sustain gender-based inequality. They

place a strong emphasis on questioning prevailing gender roles and conventions that limit people's options and possibilities due to their gender identity.

Background on the Sabarimala Temple

The Sabarimala Temple, which is believed to be the residence of Lord Ayyappa, is situated in Kerala's Pathanamthitta District's Periyar Tiger Reserve, which is part of the Western Ghat mountain range. The temple is well-known for its unusual religious rituals; before entering, followers must perform a 41-day penance and give up all material pleasures. Devotees regard Lord Ayyappa as a celibate divinity. To preserve celibacy, it was customary to forbid women in their "menstruating years" (roughly between the ages of 10 and 50) from attending the temple.

The Kerala High Court was the first to hear a challenge to the exclusion of women. In *S. Mahendran v. The Secretary, Travancore*¹, decided in 1991, the Kerala High Court ruled that the exclusion was both constitutional and reasonable because it was a long-standing habit.

The Supreme Court received a public interest litigation petition from the Indian Young Lawyers Association in 2006 contesting the Sabarimala Temple's ban on women entering the premises. The Association said that because the custom is "derogatory to the dignity of women," it violates Article 14²'s right to equality. "All persons are equally entitled to freedom of conscience and the right freely to profess, practice, and propagate religion," according to Article 25³ on freedom of religion. That right is violated when female devotees are excluded.

The management of the Sabarimala Temple is overseen by the Travancore Devaswom Board, an independent organization established by the Travancore Cochin Hindu Religious Institutions Act, of 1950. They maintained that excluding women was a fundamental aspect of their religion. Moreover, they contended that the exclusion only applied to women between the ages of 10 and 50. This omission seemed sense, given the deity's chaste nature. They emphasized that, as a religious sect, the Sabarimala was safeguarded by Article 26⁴ of the

¹ AIR 1993 KERALA 42

² Equality before law

³ Freedom of conscience and free profession, practice and propagation of religion

⁴ Freedom to manage religious affairs

Constitution. A religious denomination's autonomy over internal religious matters is protected by Article 26⁵ of the Constitution.

Furthermore, Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 (Public Worship Rules) safeguarded the Sabarimala custom.⁶ Women at such times when they were not by custom and usage allowed to enter a place were included in the class of people not entitled to worship in a public place. If a woman's exclusion from a public place of worship was motivated by "custom," the rule permitted it. In contrast, restrictions that "discriminate in any manner whatsoever, against any Hindu on the ground that he belongs to a particular section or class" are prohibited, according to section 4 of the parent Act, which is the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965⁷.

The State of Kerala originally agreed with the exclusion, but they later had second thoughts. They argued that women should be able to enter the temple because age-based restrictions (for women between the ages of 10 and 50) may not apply to them for the rest of their lives because there is no assurance that they will survive to be 50 or 55. They argued that customary practices can be struck down by the court for fundamental rights violations.

On August 18th, 2006, the Supreme Court issued notices to the parties. On March 7th, 2008, the matter was referred to a 3-Judge Bench⁸. The matter was next heard seven years later, on January 11th, 2016. On February 20th, 2017, the Court expressed its inclination to refer the case to a Constitution Bench. Finally, on October 13th, 2017, the three-judge Bench composed of Chief Justice Dipak Misra, Justices R. Banumathi, and Ashok Bhushan ordered a 5-Judge Constitution Bench to pass Judgement on the case⁹.

Key Issues

⁵ Ibid

⁶ <https://www.scobserver.in/reports/sabarimala-temple-entry-indian-young-lawyers-association-kerala-judgment-in-plain-english/>

⁷ <https://www.indiacode.nic.in/bitstream/123456789/12386/1/7.pdf>

⁸ <https://www.legalserviceindia.com/legal/article-10746-summary-of-sabarimala-temple-case.html>

⁹ <https://www.scobserver.in/cases/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-background/>

1. Does the prohibition on menstruating women's entry into the Sabarimala Temple violate the Right to Equality the Right against discrimination and the abolition of untouchability?¹⁰
2. Are Lord Ayyappa's devotees a separate religious denomination, hence bearing the right to manage the administration of their affairs in matters of religion?¹¹
3. Is women's exclusion an 'essential religious practice' under Article 25?
4. Does Rule 3 of Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules permit a 'religious denomination' to ban the entry of women between the ages of 10 and 50 years?
5. Do the Public Worship Rules allowing the custom goes against the parent legislation, which disallowed discriminatory practices?

Constitutional Provisions Involved

The issue concerned the interpretation of the Constitution's Articles 14, 15¹², 17¹³, 25 and 26. Equal protection under the law and equality before the law are guaranteed by¹⁴ Article 14. Discrimination based on religion, ethnicity, caste, sex, or place of birth is forbidden by Article 15. Subject to public order, morals, and health, Article 25(1)¹⁵ allows freedom of conscience as well as the right to profess, practice, and promote religion. Religious denominations are allowed to handle their affairs in matters of faith under Article 26. Untouchability and its practice are outlawed in Article 17.

The petitioners claimed that prohibiting women from entering the temple breaches both Article 25 guarantee of the right to practice one's religion and Article 15(1)¹⁶ prohibition on discrimination.

¹⁰ Ibid

¹¹ Ibid

¹² Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth

¹³ Abolition of untouchability

¹⁴ <https://www.legalserviceindia.com/legal/article-14214-same-sex-marriage-the-ongoing-struggle-for-equality-.html/>

¹⁵ Subject to public order, morality, and health and the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice, and propagate religion.

¹⁶ The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them.

The devotees contended that the practice is essential to the Sabarimala temple's religious beliefs and protected under¹⁷ Article 26. The Court had to balance these competing claims and examine whether the practice qualifies as an 'essential religious practice'.

The Essential Religious Practice Test

India's secularism is a complex and multifaceted concept that takes into account the country's diverse religious traditions and socio-religious identity. It is not a Western tradition, but rather a response to the opium of the masses religion and a movement to destroy the idea of religion altogether. The Indian Constitution guarantees religious freedom, but with limitations if religious beliefs conflict with morals, public health, or public order. The state can also impose restrictions on religious organizations or activities related to religious practices in economic, political, financial, and secular activities.

The Supreme Court of India established a fundamental principle regarding the connection between religion and the Constitution, which states that if a particular practice holds significance for a specific religion, the government is not allowed to monitor or restrict it. This principle has evolved into the essential test of religious practice, with the courts having two options: the religion itself determines what constitutes an essential practice based on its sacred texts and inscriptions, or the courts acting as cultural critics, distinguishing between religious aspects of life in India and temporal ones.

In conclusion, India's secularism is a complex and multifaceted approach that takes into account the unique socio-religious identity of its people and the intricate details of its diverse religious traditions.

The Supreme Court's ruling in *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*¹⁸ gave rise to the "essential religious practice test." In this case, the Court decided that, for Article 26, "religion" will include acts that the community considers to be essential components of religion. To pass this test, the Court must decide if a certain practice is necessary to adhere to that religion.

¹⁷<https://lawfoyer.in/the-sabarimala-case-gender-equality-vs-religious-freedom/#:~:text=The%20devotees%20contended%20that%20the,an%20'essential%20religious%20practice'>.

¹⁸ *Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282

Over the years, the test has been administered indifferently. In certain instances, the Court has submitted to the community's opinions rather than making religious judgments¹⁹. In other cases, it has been determined that the exam violates religious freedom by empowering judges to decide how a religion should be interpreted²⁰.

The majority in Sabarimala concluded that the exclusion of women was not a necessary practice after looking at the beliefs of the devotees and the texts governing the temple. In her dissent, Justice Indu Malhotra criticized this line of thinking and cautioned against the Court's logical examination of religious convictions. She believed that it should be up to the worshippers to decide what defines a necessary religious practice.

Constitutional Morality vs Religious Beliefs

The majority decision held that actions that are discriminatory towards women are against the principles entrenched in the Constitution by invoking the theory of "constitutional morality"²¹. The dissent issued a warning, arguing that under Article 25, the freedom to follow one's religion cannot be superseded by constitutional morality.

The Court has frequently struggled to strike a balance between defending religious liberty and outlawing discrimination that is justifiably based on religious tradition. It has condemned actions that violate the equality and dignity guaranteed by the constitution, such as triple talaq²² and the admittance of Dalits²³ into temples. Opponents claim that in doing so, the Court is imposing progressive norms on religious diversity.²⁴

This critique of the essential practices test being used to invalidate customs in conflict with constitutional morality is echoed in the opposition in Sabarimala. Proponents respond, however, that the Constitution envisions the Court taking on a transformational role in addition

¹⁹ Sardar Syedna Taher Saifuddin Saheb v State of Bombay, AIR 1962 SC 853.

²⁰ Ratilal Panachand Gandhi v State of Bombay, AIR 1954 SC 388.

²¹ Indian Young Lawyers Association v State of Kerala (n 1)

²² Shayara Bano v Union of India, (2017) 9 SCC 1

²³ Sri Venkataramana Devaru v State of Mysore, AIR 1958 SC 255

²⁴ Ronojoy Sen, Articles of faith: Religion, secularism, and the Indian Supreme Court (Oxford University Press 2010).

to upholding tradition²⁵. One aspect of this mission of transformation is preventing the marginalization of women based on ideas of medieval patriarchy.

Notions of Untouchability and Exclusion

The ruling also looked at whether, by Article 17, the ban constitutes "untouchability." The majority bases its argument that conceptions of impurity and filth associated with menstruation women create a type of untouchability on the wording "in any form" in Article 17²⁶.

According to Justice Chandrachud's concurring opinion, denying women entrance because of their physical characteristics violates Article 17 since it links women with inferiority and equates to their exclusion from places of worship. Critics contend that the practice's association with untouchability trivializes the historical stigma that Dalits have endured. Advocates, however, defend interpreting Article 17 broadly to include more recent instances of exclusion and subordination.

According to the dissent, Article 17 must have a restricted interpretation that only covers untouchability based on caste. Justice Malhotra also issues a warning against interpreting the law too broadly, as this could endanger pluralism and religious freedom²⁷. The argument over the parameters of "untouchability" highlights how difficult it is to draw distinctions between religious liberty and social change.

JUDGMENT

On September 28th, 2018, the Supreme Court, through a 5-judge Bench, issued its ruling on the Sabarimala Temple Entry case. With a 4:1 majority, the court declared the temple's practice of barring women as unconstitutional, asserting that it infringed upon the fundamental right to freedom of religion as enshrined in Article 25(1)²⁸ for female worshippers. Specifically, the

²⁵ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperCollins 2019)

²⁶ *Indian Young Lawyers Association v State of Kerala* (n 1)

²⁷ Pratap Bhanu Mehta, 'Sabarimala, women's rights and the idea of ritual purity' *The Indian Express* (New Delhi, 30 October 2018)

²⁸ 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.

Bench invalidated Rule 3(b) of the Kerala Hindu Places of Public Worship Rules, 1965, which permitted the exclusion of women based on tradition, deeming it unconstitutional.

The opinions of the court were presented separately by Chief Justice Misra, Justice Nariman, Justice Chandrachud, and Justice Malhotra. Justices Nariman and Chandrachud aligned with Chief Justice Misra's viewpoint. However, Justice Indu Malhotra dissented from the majority opinion.

Chief Justice Misra's Opinion

CJI Dipak Misra, representing himself and Justice Khanwilkar, emphasized that religion is intricately tied to an individual's dignity and way of life. He argued that gender-based exclusion within religious practices violates the fundamental freedom to practice one's religion, as guaranteed under Article 25(1). Specifically addressing the exclusion of women aged 10-50 by the Sabarimala Temple, he asserted that this practice deprived women of their right to worship freely.

Furthermore, he rejected the notion that devotees of Lord Ayyappa constitute a separate religious identity, categorizing them as Hindus. He explained that while temples have the right to manage their internal affairs under Article 26(b), this right is subject to the State's authority to enact social reform measures under Article 25(2)(b)²⁹. According to Justice Misra, this provision allows the State to enact laws ensuring that public Hindu institutions are accessible to all sections of Hindus, including women.

Justice Misra also argued that the exclusion of women between the ages of 10-50 by the Sabarimala Temple cannot be considered an essential religious practice, particularly if the worshippers are classified as Hindus. He concluded by invalidating Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, stating that it not only violates the Constitution but also contradicts the objectives of its parent Act, which aimed to make public Hindu places of worship inclusive to all sections of Hindus.

²⁹ Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—
(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.

Justice Nariman's Opinion

Justice Rohinton Nariman, concurring with the majority opinion, emphasized that worshippers of Ayyappa cannot be recognized as a separate religious denomination but rather as Hindus who worship the deity, Ayyappa. He argued that the Sabarimala Temple's denominational freedom under Article 26 is subject to the State's authority to enact social reform measures under Article 25(2)(b).

Justice Nariman asserted that the exclusion of women from the temple effectively nullified their right under Article 25, which guarantees the freedom to practice and profess one's religion. He stressed that this right extends to women aged 10-50, entitling them to enter the Sabarimala Temple and exercise their freedom of worship. He found ample evidence to conclude that the exclusion of women from Sabarimala violated Article 25(1).

Ultimately, Justice Nariman deemed the custom of excluding women aged 10-50 from the Sabarimala Temple as unconstitutional. He also invalidated Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules of 1965, asserting its unconstitutionality.

Justice Chandrachud's Opinion

In a separate concurring opinion, Justice D Y Chandrachud strongly criticized the exclusion of women aged 10-50 by the Sabarimala Temple, deeming it contrary to constitutional morality and undermining principles of autonomy, liberty, and dignity. He argued that the moral standards outlined in Articles 25 and 26 of the Constitution should not erode the fundamental rights guaranteed by these Articles. Justice Chandrachud aligned with the views expressed by CJI Dipak Misra and Justice Nariman, emphasizing that worshippers of Lord Ayyappa did not meet the criteria to be considered a separate religious denomination and that the exclusion was not an essential religious practice.

Furthermore, Justice Chandrachud highlighted that women's physiological characteristics, such as menstruation, should not affect their entitlements under the Constitution. He condemned the stigma attached to menstruation, asserting that it has no place in a constitutional framework. Justice Chandrachud also addressed the argument that the exclusion amounted to a form of untouchability prohibited under Article 17 of the Constitution. He argued that the term "untouchability" was deliberately left open-ended by the framers of the Constitution to ensure

its broad interpretation and that Article 17 serves as a robust safeguard against exclusion, including the exclusion of women based on notions of purity and pollution.

Justice Malhotra's Dissenting Opinion

In her dissenting opinion, Justice Indu Malhotra argued for the importance of harmonizing various claims to fundamental rights within India's secular polity. She asserted that the Court should uphold a religious denomination's autonomy in managing its internal affairs, regardless of the rationality or logic of its practices.

Justice Malhotra contended that the Sabarimala Temple qualifies as a separate religious denomination and is therefore protected under Article 26(b) to manage its internal affairs without being subject to the social reform mandate under Article 25(2)(b), which applies only to Hindu denominations. She stressed that "morality" in the context of constitutional morality should be interpreted within India's pluralistic society, where the State must respect the freedom of various individuals and sects to practice their faith.

Furthermore, Justice Malhotra argued that the fundamental right to equality guaranteed to women under Article 14 should not override Article 25 which guarantees every individual the right to profess, practice, and propagate their faith.³⁰

Regarding Rule 3(b), Justice Malhotra maintained that it does not conflict with its parent Act, the Kerala Hindu Places of Public Worship Act, as it creates an exception for public worship consistent with Article 26(b) of the Constitution.

She dismissed the argument that the Sabarimala custom violates Article 17 of the Constitution, which pertains to untouchability and discrimination based on impurity³¹. Justice Malhotra interpreted untouchability in the context of caste and concluded that it does not extend to gender discrimination. Unlike Justice Chandrachud, she asserted that untouchability does not encompass discrimination based on gender.

³⁰<https://www.scobserver.in/reports/sabarimala-temple-entry-indian-young-lawyers-association-kerala-judgment-in-plain-english/>

³¹ <https://www.legalserviceindia.com/legal/article-5253-sabarimala-case-religious-rituals-and-religious-rites-in-hindu-law.html>

Critique of the Court's Reasoning

The Sabarimala ruling has drawn criticism for its flawed assumptions about untouchability, exclusion, and fundamental rituals. First off, judges are led to interpret religious texts and customs outside of their area of expertise by the essential practices test, which makes it an inadequate doctrinal tool³². By giving the court the authority to decide what constitutes a religion, it violates religious freedom.

Second, it goes beyond the bounds of Article 17 to compare the ban on menstruation women to untouchability. The idea of purity and contamination connected to caste hierarchy is not the source of the tradition³³. The goal of Article 17 to end caste-based exclusion—is undermined when it is applied to discrimination in any form.

Third, the ruling fails to fairly strike a balance between the rights of the collective and individual dignity³⁴. Community customs are valued, as seen by the protection of religious freedom found in the constitution. Religious plurality is threatened when customs are invalidated without regard for limitations, solely based on individual dignity.

³² Gautam Bhatia, “The Sabarimala Judgment – III: Justice Chandrachud and Radical Equality” (Indian Constitutional Law and Philosophy, 30 October 2018)

³³ Indian Young Lawyers Association v State of Kerala (n 1) (Malhotra J dissenting)

³⁴ Gautam Bhatia, “The Sabarimala Judgment – II: Justice Malhotra and Group Autonomy” (Indian Constitutional Law and Philosophy, 29 October 2018)