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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CONSTITUTIONAL CONUNDRUM: RECONCILING RELIGIOUS FREEDOM AND GENDER EQUALITY IN THE SABARIMALA VERDICT

AUTHORED BY - AKSHAT AGARWAL & DHAWAL JAIN

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INTRODUCTION

Values Religious Places hold for a common man/woman is something very precious and something that cannot be compromised at any cost. India/Bharat is a nation that comprises various cultures and religions and does not promote just one or any specific religion. India/Bharat's Constitution helps recognise various religions and allows them to perform their religious/traditional practices with a free hand but until and unless they do not violate the basic principles of the constitution, or they do not harm any individual's Fundamental Rights. But now the question arises what happens if a religious practice is harming an individual's right? Can a person sue the community for a violation of his/her rights? We also recall some traditional practices where a person is not allowed to enter a religious place because of their gender, caste, sex or also because of the reason of menstruation. This practice of prohibition of person entry to a religious place for reasons could be seen commonly in Hindu temples that hold great sentimental values like Sabarimala temple, Shri Venkataramana Devaru temple and Shirur Mutt, there would be many other places as well, but there are few temples.

This case commentary will mainly focus on the "Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors" commonly known as the Sabarimala temple case. The Apex Court of India declared unconstitutional, the custom of Sabarimala temple from prohibiting women (10-50 years) in their menstruating period from entering the temple. Women are not allowed to worship and visit the Sabarimala temple. Women aged around 10-50 were not allowed on this pilgrimage reason being said that women menstruate during this age gap, and they are impure which will make the religious place impure as well.

Worshipping the god Ayyappan, also called Dharma Shasta, is the focus of the Hindu temple Sabarimala Sree Dharma Sastha. It is believed that Shiva and Mohini, the female form of Lord Vishnu, are the parents of Ayyappan. Located in the Ranni Taluk of the Pathanamthitta district in the Indian state of Kerala, the temple is perched on a hill near the village of Ranni-Perunad. Estimates place the number of yearly pilgrims visiting this site between 10 and 15 million, making it one of the most popular worldwide. Only on the days of Mandala Pooja (about from November 15 to December 26), Makaravilakku, also known as "Makara Sankranti," on January 14, Maha Thirumal Sankranti on April 14 and the first five days of each Malayalam month the temple is open for worship.

Part I

Case Details

Parties Involved: -

“Petitioner: Indian Young Lawyers Association; Dr Laxmi Shastiri; Prerna Kumari; Alka Sharma; SudhaPal

Lawyers: R. P. Gupta; Raju Ramachandran (Amicus Curiae); K. Ramamoorthy (Amicus Curiae)

Respondent: State of Kerala; Travancore Devaswom Board; Chief Tanthri of Sabarimala Temple; District Magistrate of Pathanamthitta; Nair Service Society; Akhil Bhartiya Ayyappa Seva Sangham; Ayyappa Seva Samithi; Ayyappa Pooja Samithi; Dharma Sanstha Seva Samajam; Akhil Bharatiya Malayalee Sangh; Sabarimala Ayyappa Seva Samajam; Kerala Kshetra Samarak Shana Samithi; Pandalam Kottaram Nirvahaka Sangham; Sabarimala Custom Protection Forum

Lawyers: Jaideep Gupta; Liz Mathew; Venugopal; V. Giri; Rakesh Dwivedi; K. Radhakrishnan

Case Number: - WP (C) 373/2006” (Supreme Court Observer 2022a)

In 2006, the Indian Young Lawyers Association filed a Public Interest Litigation (PIL) Petition before the Supreme Court of India.

Background Of the Case

Located in the Periyar Tiger Reserve in the Pathanamthitta District of Kerala's Western Ghat mountain ranges, the Sabarimala Temple is thought to be the home of Lord Ayyappa. The temple is well-known for its peculiar religious rituals; before entering the sanctuary, pilgrims must forgo all

material comforts for 41 days. Lord Ayyappa is revered by devotees as a celibate deity. Women in their menstrual years, namely those between the ages of 10 and 50, were originally prohibited from entering the temple to preserve chastity. At first, the prohibition of women aged from 10 to 50 years to enter the temple, was challenged in the High Court and then in 2006, it was challenged in the Supreme Court of India.

The practice of prohibiting women from entering in temple was not just a rule but was a customary practice which the devotees followed. It believes that Lord Ayyappa followed the 41 days of celibacy before entering the temple and henceforth the devotees believed that it was their duty to follow the same and not just the women aged 10-50 years who were prohibited entry but also men who did not follow the 41-day celibacy are restricted entry.

In 2006, the Indian Young Lawyers Association filed a petition with the Supreme Court challenging the Sabarimala Temple's ban on women entering the premises. The Association claims that because the custom is "derogatory to the dignity of women" it violates Article 14's Right to Equality. "Everyone is equally entitled to freedom of conscience and the right freely to profess, practice, and promote religion" states Article 25. Such rights are violated when worshippers who are female are excluded. On the other hand, if we look into Article 26 of the Constitution, we can say that if the members of the temple come into a religious denomination, then they have the right to manage their affairs, which means they have the full right to deny anyone to enter the temple, according to their customs, tradition or as an essential religious practice.

In 1955 and 1956, two notifications were issued by the Travancore Devaswom board, prohibiting the entry of women, aged between 10 to 50 years. Rule 3(b) of the Kerala Hindu Places of Public Worship (authorisation of entry) Act of 1965 legally banned the entry of women above the age of 10 and below the age of 50 to enter the Sabarimala Temple.

Acts and Rules involved.

1. Article 14 (Right to Equality)
2. Article 17 (prohibition of discrimination)
3. Article 19 (prohibits untouchability)
4. Article 25 (Freedom to Religion)

5. Article 26 (Freedom to Manage Religious Affairs)
6. Travancore Cochin Hindu Religious Institutions Act, 1950
7. Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1956

Arguments by both parties

By the petitioners-

The first argument made by the petitioners was on the grounds of religious denomination, which means not only the practices followed by that denomination should be different, but its administration should also be distinct and separate, they argued that since the administration of the temples attached to the Devaswom board is centralised, it cannot attain a distinct identity of a separate religious denomination. and then they stressed that the different rituals and religious practices followed in various temples, considering the Sabarimala temple cannot be termed as an essential religious practice for that temple. With this, they argued that prohibiting the women from entering the temple cannot be seen as an essential religious practice for the temple.

And then the next argument from the petitioners, where that, the custom of the Sabarimala Temple was violating Article 14, the right to equality, article 15, and Article 17, that is untouchability. Regards to the women of the Indian constitution. It also violated Article 25, which gives all citizens the right to religious practices.

By the defendants-

The first argument they made was that they emphasised that all the rules were laid down under, keeping in mind the rules of article 25(2)(b). They argued that not only the women aged between 10 to 50 were prohibited from entering the temple, but also the men who did not follow the 41 days of celibacy, were also prohibited from entering the temple.

The next argument they made was that they should be treated as a separate religious denomination, which gives them the right to manage their religious affairs, also they claimed that the 41 days of celibacy or the women during their age of menstruation, prohibited from entering the temple was an essential religious practice for their particular religion. They stated that it is not social discrimination, but a special or essential or religious practice, with which they do not in an intention to discriminate against anyone.

Part II

Judgement

By the High Court of Kerala

(S. Mahendran v. The Secretary, Travancore Devaswom Board, Thiruvananthapuram, and Ors.)

The Kerala High Court, was proactive in 1991 when it asked the Travancore Devaswom Board not to allow women aged between ten and fifty years to go on a pilgrimage to Sabarimala, arguing that men are pure while women are seen as temptresses without any ability to maintain purity in thought, speech and actions hence diverting away the 'Brahmachari'. The basis for this decision was that during the 'Vratham' (penance) period which includes a forty-one-day period of purification before embarking on the journey to Sabarimala, these women within the age limit are physiologically incapable of doing penance continuously. They also said that no external body such as the judiciary could interfere in things like determining essential rites and ceremonies as they upheld the temple administration's autonomy. It is also important to note that there was no discrimination based on caste, creed, or race regarding the exclusion of women from visiting this place.

By the Supreme Court of India

(Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors)

"The majority concluded that the barring of women from Sabarimala violated the fundamental rights of women aged 10 to 50. They further claimed that devotees of Lord Ayyappa did not form a new religious denomination. The custom, according to Justices Misra, Khanwilkar, and Chandrachud was not an essential religious practice. While most of the judges did not expressly indicate if the tradition violated the right to equality under Article 14, they did state that the practice was discriminatory under Article

15. According to Justice Chandrachud, the protection against untouchability is broad and includes any type of social exclusion based on ideals of 'purity.' Furthermore, Rule 3(b) of the Public Worship Rules, permitted the practice of prohibiting women as unconstitutional. In the Judgment matrix, SCO breaks down each judge's decision on key questions in the case. The court ruled by a 4:1 majority that the practice infringed the fundamental rights to equality, liberty, and religious freedom, as well as Articles 14, 15, 19(1), 21, and 25. (1). Rule 3(b) of the Kerala Hindu Places of Public Worship Act

was declared invalid. Rule 3(b) permitted Hindu denominations to bar women from public places of worship provided the ban was based on custom. The Supreme Court has permitted women of all ages to enter the Sabarimala Temple, ruling that 'devotion cannot be subjected to gender discrimination.' In her dissent, Justice Indu Malhotra stated, 'It is not for the courts to determine which of these religious practices are to be set down, unless they are harmful, repressive, or a social ill, like Sati.'" (Legal 2022).

The constitutional bench with a majority vote of 4:1 ratio found it unconstitutional that women (10-50 years) were not being allowed to enter the Sabarimala temple on discriminatory grounds and the fact that this practice violated Articles 14, 15, 19, 21 and 25 of the Indian Constitution. The bench also found unconstitutional rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 which supported the ban of entry of women in the temple. The bench also stated that devotion cannot be subjected to gender. But Justice Indu Malhotra, the only female member of the bench, disagreed. She maintained that, unless there is resistance from within that religion, the Court should normally stay out of situations involving strong religious feelings. She underlined the protection that shrines and deities receive under Article 25 of the Indian Constitution and stressed that reason should not control matters of faith.

Legal Questions Answered by the Court

Does the Sabarimala Temple's ban on menstruation women entering violate their rights to equality, freedom from discrimination, and the removal of untouchability?

Regarding the Sabarimala Temple issue, the interpretation of Articles 25 and 26 of the Indian Constitution—which address religious freedom—is central to the ratio. The legal reasoning or concept that forms the basis of a court's decision is known as the "ratio decidendi" in legalese. It is the crucial component of a decision that establishes the standard for cases in the future. The Sabarimala Temple had previously prohibited women of menstruation age from attending, but a custom was overturned when the Supreme Court ruled that women of all ages might now enter. The ratio placed a strong emphasis on equality and non-discrimination, declaring that the practice infringed upon the constitutional rights of women and was discriminatory.

Equality and Freedom: - Entry of menstruating women (aged 10-50) into the Sabarimala temple was based on the belief that the god Lord Ayyappa was celibate, and it would be disrespectful for menstruating women to enter the temple. This restriction was challenged based on Article 14 of the

Constitution of India which violates the right of women to equality which guarantees equality before the law and prohibits discrimination. was based on various grounds including gender. The Supreme Court of India ruled that banning menstruating women from entering temples is unconstitutional and violates their right to equality. The court ruled that devotees of all age groups, regardless of gender, should be allowed to enter the temple.

Discrimination and Loss of Immunity: - This practice prevents menstruating women from entering the temple. The temple was also criticized as a form of discrimination and a violation of religious freedom according to Article 25 of the Indian Constitution, which guarantees freedom of conscience and the right to freely confess, practice and spread religion. - Critics argued that the practice amounted to immunity, which is prohibited by Article 17 of the Indian Constitution and has maintained a kind of gender-based social marginalization. The decision of the Supreme Court was generally seen as an important step forward. the principles of equality, freedom, and non-discrimination in religious practices.

Can a "religious denomination" prohibit women between the ages of 10 and 50 from entering places of public worship according to Rule 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules?

Rule 3 of the Kerala Hindu Worship (Entry) Rules, 1965 prohibits menstruating women from entering public places of worship, except for temples or places dedicated to female deities. This rule has been criticized for being discriminatory towards women and violating their fundamental rights under the Indian Constitution. The Supreme Court ruled that this rule violates women's rights to equality and religious freedom, as it discriminates against them based on biological characteristics. The court further stated that the restriction imposed by Rule 3 infringes upon women's right to practice their religion freely. As a result, the Supreme Court struck down Rule 3, allowing women of all ages to enter the Sabarimala temple and ensuring their equal access to places of worship.

According to Article 25, is the exclusion of women an "essential religious practice"?

doctrine of essentiality generally termed as essential religious practices states that there are some essential or separate rituals or customs which a particular religious community must follow or practice as a custom or a tradition. In this case, temple members argued that not allowing women aged from 10 to 50 years was not just a special ritual or custom which they had to follow but an essential religious

practice. However, the judgement given by the constitutional bench stated that this essential religious practice cannot Override the fundamental rights under Article 14, article 15, article 19, article 21 and Article 25 for any gender.

Do followers of Lord Ayyappa have the authority to run their affairs in areas of religion because they are a distinct religious denomination?

The principle of religious denomination means if the temple is owned and managed by a small denomination or a small group of individuals who belong to a particular religion, then they are termed as a separate religious denomination and they are empowered with some special rights under the article 26 to manage their affairs. In the judgement, the bench with the majority stated that the devotees and the members of the temple belonged to the Hindu community, which cannot be termed as a separate religious denomination, and hence are not empowered with any special rights to manage their affairs and management of the temple.

Part III

Commentary of the Case

The case of the Sabarimala temple provides a poignant commentary on the complex interplay in modern India between religious traditions, constitutional ideals, and changing societal standards. In a broad sense, we can find two views to the judgement passed in the case, one could be that the judgement was not justified as it was violating Article 26 of the religious sect, and another view could be that the judgement passed was fair as the practice of preventing women of age 10–50 to enter the temple was a breach of Article 14. Thinking this from a legal perspective the latter view could be more reasonable. Preventing someone from practising their duties and violating their fundamental rights could not be just. The case being a landmark decision showed a very key aspect of the Indian constitution that is, its evolving nature of Indian secularism. From a general person perspective, it could be said that menstruation could not be a reason for stopping women from entry and that this practice is no less than the practice of untouchability. Supreme Court decision laid a legal precedent by prioritizing gender equality over religious beliefs. Many people not being satisfied by the decision passed by the Supreme Court had come to protest. The case, however, also highlights the subtleties and complications involved in negotiating the boundary between religion and the law in a multicultural and diversified society. The centuries-old customs of the Sabarimala temple, which are based on ideas

about the deity's chastity, highlight how deeply devoted followers are to their spiritual activities. The fierce opposition to the court's ruling demonstrates the lasting power of patriarchal traditions within religious institutions as well as the established cultural resistance to change. In the end, the Sabarimala temple case is a painful reminder of the ongoing fight for inclusivity, equality, and justice in a world that is changing quickly. It pushes us to face deeply rooted prejudices and imagine a world in which everyone is treated with equal dignity, regardless of their gender, religion, or social standing. In this way, the case symbolises not just a turning point in the law but also a moral necessity for a country hoping to live up to its democratic promise.

Analysis of the Bench Verdict

The Bench gave a majority verdict of 4:1 ratio, all the judges expressed their views in their part of their judgement. Let's analyse each judge's view under a specific theme.

Harmonious Reconstruction of Religious Freedom and Gender Equality

"CJI Dipak Misra, speaking on behalf of Khanwilkar J and himself, observed that religion is a way of life intrinsically linked to the dignity of an individual. Exclusion of one gender in favour of another could not be allowed, as it infringed upon the fundamental freedom to practice and profess one's religion. He stated that the exclusion of women between the ages of 10-50 years practised by the Sabarimala Temple denuded women of their freedom of worship, guaranteed under Article 25(1). Further, he held that the devotees of Lord Ayyappa did not pass the constitutional test to be declared a separate religious identity." (Supreme Court Observer 2022). They are Hindus, he said. The State's duty for social transformation under Article 25(2)(b) superseded the temple's denominational right to conduct its internal affairs under Article 26(b). According to Article 25(2)(b), the State may enact legislation to reform Hindu religious groups. It empowers the State to enact any legislation that grants access to all "classes and sections" of Hindus to a public Hindu institution. According to Justice Misra, "classes and sections" encompass the gendered category of women. Furthermore, he believed that the Sabarimala Temple's exclusion of women between the ages of 10 and 50 could not be considered a necessary religious practice. He maintained that the exclusion of women cannot be considered a fundamental religious practice if the Ayyappans are Hindus.

Constitutional Rights and Temple Practices

"He declared that the exclusion of women from the temple effectively rendered their right under

Article 25 meaningless. He emphasised that Article 25(1) protects the fundamental right of women between the ages of 10-50 years to enter the Sabarimala Temple and exercise their freedom of worship. He stated that there was sufficient material to conclude that the exclusion of women from Sabarimala violated Article 25(1).” (Supreme Court Observer 2022). A concurring opinion was given by Justice Rohinton Nariman. According to him, devotees of Ayyappa do not belong to a distinct religious sect. He described them as worshippers of the deity Ayyappa, who are Hindus. He ruled that the State's obligation to implement social change under Article 25(2)(b) supersedes the denominational freedom of the Sabarimala Temple under Article 26. He concluded that it was unlawful for the Ayyappans to keep women between the ages of 10 and 50 out of the Sabarimala Temple. Additionally, he declared that Kerala Hindu Places of Public Worship (Authorization of Entry) Rules of 1965, namely Rule 3(b), were unconstitutional.

Constitutional Morality and Gender Equality

“In a separate and concurring opinion, Justice D Y Chandrachud held that the exclusion of women between the ages of 10-50 years by the Sabarimala Temple was contrary to constitutional morality and that it subverted the ideals of autonomy, liberty, and dignity. He held that the morality conceptualised under Articles 25 and 26 of the Constitution cannot have the effect of eroding the fundamental rights guaranteed under these Articles. Justice Chandrachud concurred with the opinions delivered by CJI Dipak Misra and Justice Nariman to hold that the Ayyappans, or worshippers of Lord Ayyappa, did not satisfy the requirements to be considered a separate religious denomination. He held that the exclusion was not an essential religious practice.” (Supreme Court Observer 2022). He considered how cultural and religious practices that discriminate against people based solely on their gender must give way to constitutional morality.

Dissenting Views on Religious Autonomy

“Justice Indu Malhotra delivered a dissenting opinion. She argued that constitutional morality in a secular polity, such as India, requires a ‘harmonisation’ of various competing claims to fundamental rights. She said that the Court must respect a religious denomination’s right to manage their internal affairs, regardless of whether their practices are rational or logical.” (Supreme Court Observer 2022). According to her, the Sabarimala Temple meets the criteria to be classified as a distinct religious organization. According to her ruling, the Sabarimala Temple is exempt from the social reform requirement under Article 25(2)(b), which solely affects Hindu faiths, and is free to conduct its

internal affairs under Article 26(b). According to Justice Malhotra, one must consider India's varied society while interpreting "morality" or constitutional morality. She declared that the freedom of different people and religious sects to practice their beliefs must be respected by the State. She argued that Article 25, which provides everyone the freedom to profess, practice, and spread their faith, supersedes the basic right to equality granted to women under Article 14. According to her ruling, Rule 3(b) and its parent Act, the Kerala Hindu Places of Public Worship Act, are not at odds. The regulation "carves out an exception in the case of public worship," she emphasized. According to her, the regulation complied with the Constitution's Article 26(b).

Analysis Of the Sabarimala Case Concerning Some Similar Cases

1. Venkataramana Devaru State of Mysore Vs. State of Mysore -

Religious freedom and authority over temple administration are at issue in both cases. Religious traditions and government action or regulation are at odds in both situations. The central question in each case is whether the temple is a private religious organisation with independent management of its business or a public institution under government control. The exact legal questions raised by the two cases are different, even though their respective circumstances are religiously distinct. Whereas the Venkataramana Devaru case was centred on the independence of temple administration from government oversight, the Sabarimala temple case was primarily concerned with gender discrimination and women's spiritual rights.

2. The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt -

Legal challenges about the customs and practices of religious institutions are at issue in both cases. The cases call into question how to strike a balance between the Indian Constitution's provision of the freedom of religion and the requirement to preserve equality and non-discrimination. The judiciary was essential in both instances in interpreting the legislation, deciding which religious practices were permissible, and influencing the practices of the participating religious institution.

3. State Of Orissa and Sri Jagannath Temple vs Chintamani Khuntia & Ors -

Both the Jagannath Temple entryways lawsuit and the Sabarimala Temple case involve problems with religious customs and practices. There were disputes over long-standing traditions and convictions about access to the temples in both situations. In addition to raising concerns about the

judiciary's role in interpreting and upholding constitutional principles in areas of faith and tradition, these instances also call into question the proper balance between social reform and religious freedom.

Conclusion

The central question in the Sabarimala temple case was whether women of all ages should be permitted entry into a well-known temple. Although the court ruled in favour of it, several individuals disagreed because they thought customs should be upheld. This choice sparked a lot of conversations about how to strike a balance between these antiquated traditions and contemporary notions of equality and justice. The court's decision was celebrated as a victory for women's rights.

It demonstrated that all people, regardless of gender, ought to have the same rights. Some, on the other hand, were offended because they believed the court was going against their religious convictions. This made us think about how to uphold the laws that defend people's rights as well as these beliefs. Through comprehending diverse perspectives, we can devise methods to honour customs while simultaneously guaranteeing equitable treatment for all. It is like locating a medium ground where all viewpoints are respected.

We can identify common ground and solutions that benefit everyone by talking and listening to each other. This case showed us that to build a society in which everyone feels valued and included, we must consider all points of view and collaborate. It is important to strike a balance between upholding everyone's rights and honouring customs. The Sabarimala Temple case served as a reminder of the value of communication, compassion, and comprehension. We can work towards a more peaceful society where customs are upheld, and everyone is treated fairly by uniting and appreciating one another's perspectives.

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W H I T E B L A C K
L E G A L