

SABRIMALA AND GENDER JURISPRUDENCE: A DISCOURSE ANALYSIS ON WOMEN ACCESS TO A TEMPLE IN KERALA

SABRIMALA E A JURISPRUDÊNCIA DE GÊNERO: UMA ANÁLISE DO DISCURSO SOBRE O ACESSO DAS MULHERES A UM TEMPLO EM KERALA

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Abstract: The idea of gender equality and freedom of religion are the two essential rights upheld by the Indian Constitution. Various International Human Rights instruments recognize the right to freedom of religion, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights. However, there are incidents where religious practices and traditional beliefs barred women of menstrual age from attending the temple. In the most controversial Sabarimala Case of Kerala, the same was contested as discriminatory and violative of the Right to Equality. The paper will critically analyse the case with the governing religious practices in its historical backdrop and India's Right to Freedom of Religion. The author will discuss the legal ramifications of the Sabarimala Temple Case and whether it includes a violation of women's rights, the reasons for the non-admittance of women in the temple, and whether allowing only men to access the temple

constitutes discrimination and a breach of Article 15, 25, and 26 of the Indian Constitution. Additionally, the paper posits and analyses the discourse of the judgment and its practical implications.

Keywords: Sabarimala, Women, Restriction, Access to the Temple, Discrimination, Lord Ayyappa.

Resumo: A ideia de igualdade de gênero e liberdade de religião são os dois direitos essenciais mantidos pela Constituição indiana. Vários instrumentos internacionais de direitos humanos reconhecem o direito à liberdade de religião, incluindo a Declaração Universal dos Direitos Humanos, o Pacto Internacional sobre Direitos Civis e Políticos e a Convenção Europeia sobre Direitos Humanos. No entanto, há incidentes em que práticas religiosas e crenças tradicionais impedem mulheres em idade menstrual de frequentar o templo. No mais polêmico Caso Sabarimala de Kerala, o mesmo foi contestado como discriminatório e violador do Direito à Igualdade. O artigo analisará criticamente o caso das práticas religiosas governantes em seu cenário histórico e o direito à liberdade de religião da Índia. O autor discutirá as ramificações legais do Caso do Templo de Sabarimala e se inclui uma violação dos direitos das mulheres, as razões para a não admissão de mulheres no templo e se permitir apenas homens acessar o templo constitui discriminação e violação dos direitos Artigos 15, 25 e 26 da Constituição indiana. Além disso, o artigo postula e analisa o discurso do julgamento e suas implicações práticas.

Palavras-chave: Sabarimala, Mulheres, Restrito, Acesso ao Templo, Discriminação, Lord Ayyappa.

1. Introduction

The Sabarimala Temple, known as the abode of Lord Ayyappa, is located in Kerala's Pathanamthitta District's Periyar Tiger Reserve in the Western Ghats' mountainous regions. The temple is well-known for its unusual religious traditions, which include a 41-day penance during which worshipers forego worldly pleasures before entering the building. Followers revere Lord Ayyappa as a celibate divinity. To maintain celibacy, it has historically been illegal for women to attend the temple when they are in their "menstruating age" (in between ages of 10 and 50).

Triple talaq is the most recent discriminatory religious practice to be overturned by the Supreme Court of India (*Shayara Bano v. Union of India*¹). The reference of the Sabarimala admittance question to a 5 Judges Constitution Bench is a bold judicial decision in and of itself. It is discriminatory to forbid women from entering the Sabarimala shrine because of an absurd and out-of-date idea of "purity" that violates the Constitution's equality provisions. It suggests a partisan and patriarchal mindset. The entrance prohibition nullifies the women's right to equality under Article 15(1) of the Constitution. It restricts Article 25, which guarantees freedom of religion. It is disrespectful to forbid women from entering the shrine based just on their gender and the biological characteristics connected with being a woman.

There is a dispute about whether the Sabarimala temple bar is "age-old." A weak rule and an equally terrible judgment of the Kerala High Court sustained the practice (*S. Mahendran v. The Secretary, Travancore Devaswom Board*²). The Kerala Hindu Places of Public Pray Act, 1965, was explicitly created to guarantee equal temple access for all Hindus. Rule 3(b) of the act, which forbids women from entering based on menstruation, appears to contradict the purpose of the parent legislation and is, therefore, impractical. Without conducting a more thorough examination of the malicious allegations, the High Court relied excessively on the Tantri's (head priest) opinion in reaching its decision.

According to a quote by Dr. B.R Ambedkar, public temples, like Roadways and schools that are open to the public are examples of places where admission is a question of equality. The individual woman's right to exercise her religion, granted by Article 25 of the Constitution, cannot be superseded by the management rights of devotional authority under Article 26(b) of the Constitution. The latter is meant to be protected by the former, not destroyed by it. Liberty is tested individually since, in a republic, the public can be made up of only one person. In spirituality, women's ethical autonomy and the inherent worth of womanhood need to be

¹ *Shayara Bano v. Union of India* 2017 9 SCC 1

² High Court of Kerala, *S. Mahendran vs The Secretary, Travancore on 5 April, 1991*, 1 (1991).

affirmed. The Supreme Court also stated in S.R. Bommai (1994) that the country's transition from "tradition to modernity" is made possible by secularism.

The conflict between religious tradition and economic equality has recently returned to the spotlight due to worries about limitations on women entering worship places such as Shani Shingnapur, Sabarimala, and the Haji Ali. Keeping women out of temples is an apparent contradiction of their fundamental rights and right to equality (Article 14), non-discrimination (Article 15), and religious freedom (Article 25). Not entrance but equality is the fundamental problem. The religious exemption includes a public component; it is not just an issue of holy tradition but of human and civil rights, substance, and equal value in symbols. Regrettably, the government is the only person who can determine what constitutes true religion. Due to the Indian Government's position as a reformer and controller of the Hindu religion and its institutions, this scenario has developed. The judicial system cannot change the beliefs and practices of devotees. Reforms ought to start at the top of the social hierarchy. It is anticipated that religious disputes will frequently be contested in Court, barring any unforeseen circumstances.

2. Objectives of The Study

This paper aims to assess women's rights in the context of the Sabarimala ruling and to evaluate constitutional morality, equality, and religion. The paper will further consider the biases, misunderstandings, and ignorance in Sabarimala Temple and review the judgment's effects on India's citizens' fundamental rights.

3. Significance of The Study

The demonstrations that shook Kerala throughout the majority of 2018 and 2019 have made it impossible for many observers to reconcile this impression of the State with it. In a landmark ruling, the Supreme Court declared in September 2018 that it was unconstitutional to restrict women's entry to temples to those between the ages of ten and fifty. This was the issue at the center of the debate. The Sabarimala controversy exposed Kerala's profound religious roots in a way that had never been witnessed before. The devotion of Sabarimala has been a sensitive topic. The historic Supreme Court decision from September 2018 set off the eruption. The love of Sabarimala has been a sensitive topic. The landmark Supreme Court decision from September 2018 set off the explosion. This ruling removed the long-standing ban on women of reproductive age accessing the temple. In November 2019, a bigger Supreme Court bench

overturned the injunction, declaring that a seven-member court would consider all cases involving women's rights, including those involving minority religious practices. The legal status of the situation in Sabarimala is unclear. Hence women are not permitted there until the Supreme Court delivers more instructions. This order had entirely reversed the Court's former stance. This paper posits that the Sabarimala movement unveiled several long-buried concerns relating to Kerala's social and historical history and future course, like removing the lid of a dusty chest to discover hidden but long-forgotten goods.

This essay tries to examine a few of these issues. The history and origins of the taboo against menstruating women entering a shrine; the centuries-long Sanskritization of temple worship and ritual; the effects of Kerala's anti-caste social reform movement on ritual, religiosity, and women's self-awareness; the legal aspects of these questions; and, finally, the effects of the Sanskritization of temple worship and ritual.

Caste and patriarchy are two configurations that may be considered ideological components of the superstructure. However, they are also ingrained in the underlying economic operations that make up a society, contributing to its core exploitation structure. This calls for a critical analysis of religion, sexism, caste, and methods used by different political and social groups to challenge them.

4. Methodology

The researcher has used an integrated method for doing research. The doctrinal approach strongly emphasizes conducting research by examining library resources. On the other hand, non-doctrinal research demands that the researcher travel to the study site. The current integrated study is suitable since it conceptualizes several complex issues, including case law, the effect of women's exclusion from temples on fundamental rights, and other issues. The research uses analytical, descriptive, and critical approaches and draws conclusions. The study looks at the ideas of gender equality and religion.

4.1. Sources of Data

Generally, primary and secondary data are the two main categories of data-gathering sources. The analysis of the available primary and secondary data is the main emphasis of this study. Primary data sources include the constitutions and laws of many countries, court judgments, conventions, Commission Reports, etc. Additionally, the researcher uses secondary

sources, including books, comments, articles from various national and international magazines, and online resources.

5. Review of Literature

1. "Parvathi Menon's Sabarimala and Women's Identity in Kerala"³

The case was rebuilt and examined in this essay. The author discusses the context of the temple, including its history, setting, and pilgrimage. Discusses the change from Lord Ayyappa to Sastha. The paper includes a "Legal and Dharmic Sanction for a Customary Practice" section. The reviewer researches Kerala's many social reform movements. He compares the early traditions, rituals, and other practices that people at the Sabarimala Temple observed and the gradual changes made over time. "It is my thesis that the mature and clear-sighted attitude of the Left on this matter only enhanced the credibility of its leadership at a challenging point in Kerala's social transformation," the author says in his concluding statement.

2. Women's Rights, Secular Norms, and Sacred Spaces⁴

Are democratic and equitable principles to be left outside the door of hallowed sanctuaries, along with one's footwear? This is the author Kavita Krishna's opening query. She continues to convey her worries and opinions by claiming that the Sabarimala situation has shown our secular State's weaknesses, with gender being the most obvious. Progressive political groups and civil society organizations must press the Government to halt its participation in gender discrimination under the guise of "tradition." this relates female sexuality to societal and religious norms. It further argues that neither "sacredness" nor "security" can be used to justify such discriminatory behaviors. Discrimination based on gender or caste is unacceptable under contemporary democratic and civic principles.

3. The Supreme Court supports the referral of religious matters to a bigger bench and outlines seven legal questions in the Sabarimala case⁵.

³ Parvathi Menon, *Sabarimala and Women's Identity in Kerala*, 48 SOC. SCI. 3 (2020), <https://www.jstor.org/stable/26979095>.

⁴ Kavita Krishnan, *Sacred Spaces, Secular Norms and Women's Rights*, 41 ECON. POLIT. WKLY. 2969 (2006), <http://www.jstor.org/stable/4418425>.

⁵ Krishnadas Rajagopal, Sabarimala case: Supreme Court upholds referring religious questions to larger Bench, frames 7 questions of law, T.H., February 10, 2020.

In a news report titled "Sabarimala case: Supreme Court supports transferring religious issues to a higher Bench, specifies seven difficulties of law," Krishnadas Rajagopal," A nine-judge Supreme Court panel has put up seven questions for a more extensive discussion of judges to examine. The bench was headed by India's Chief Justice, S.A. Bobde. The Supreme Court will hear arguments about the depth of religious freedom during the first week of February. The Gogoi Bench has decided to reject the petition for a rehearing of the September 2018 Sabarimala decision. Shyam Divan, a senior counsel, had argued that the ruling that worshipers of Ayyappa did not constitute a separate religious community was the most compelling justification for requesting a reversal.

6. Background of The Case

According to the Sabarimala temple traditions, menstruating females between 10 and 50 years of age were not allowed within. Since Swami Ayyappa's deity is a "Naisthik Brahmachari (celibate)," menstruating females are not permitted to visit the temple of the limitations and their origins." They should refrain from defiling the temple, which is the picture of cleanliness. In response to this restriction, The Kerala Hindu Places of Public Worship Rules, 1965, Rule 3(b), was enacted, which forbids women from accessing the Sabarimala temple complex.

A Constitution bench overturned the practice earlier this year, allowing women of any age to visit the Sabarimala Temple because it infringed their constitutional right to freedom of religion under Article 25 of the Constitution, *Indian Young Lawyers Association v. State of Kerala*⁶, case no (refer Appendix). The Court found the law prohibiting women from voting on state legislation unconstitutional and invalidated it.

Five female lawyers have launched a lawsuit to challenge Rule 3 (b), which permits excluding menstruating women. The Kerala High Court maintained the restrictions, which held that only "priests" may make decisions regarding historical rituals; they petitioned the Supreme Court. In her response, Senior Advocate Indira Jaising said that the limitations were against Articles 14, 17, 18, and 19 of the Indian Constitution on behalf of the petitioners. She asserts that women should pray wherever they like because the practice stigmatizes and discriminates against them.

⁶ *Indian Young Lawyers Assn. v. State of Kerala*, (2017) 10 SCC 689.

7. Results

According to "Section 31 of the Travancore Kochi Hindu Religious Institutes Act, 1950"⁷, two notifications were released in 1955 and 1956. According to temple tradition and custom, females between 10 and 50 years of age could not enter the Sabarimala Temple.

The Kerala Hindu Places of Worship Rules, 1965 forbade women from engaging in acts of worship in any public place or visiting public places of worship wherever local custom or practice forbade them from doing so.

The British mostly followed a "non-regulation of personal law policy" throughout the colonial eras, enabling natives to manage their personal affairs without government intrusion. The respondents maintained that only the clergy members should define the norms and practices of their distinct faiths and that the Supreme Court encroached on the territory of specific religious clergypersons.

Justice D.Y. Chandrachud was a prominent opponent of religious interpretation in the courts and was aware of its risks. He maintained that the Court shouldn't interpret the Bible or other religious texts in any way; instead, it should determine if a particular action violates someone's fundamental rights.

To achieve this, an "Anti-Exclusion test" is necessary. By taking this stance, the courts would uphold religious freedom while simultaneously abolishing practices that deprive individuals of their fundamental civil rights guaranteed by the Constitution.

To fill in the loopholes in the law regarding religion, the Indian courts will inevitably have a role. While it is indisputably true that only secular activities are subject to governmental regulation, the Indian Constitution safeguards religious actions against state meddling in matters of faith.

Lastly, the judiciary can become involved in religious practice and belief cases. One of the contributions made in the area is the test of Essential Religious Practice, created by the Indian judicial system. According to the required religious practice test, any spiritual practices regarded as "important" to religion or serving as its cornerstone will be covered by Articles 2522 and 2623 and should be protected due to their inclusion.

J. Chandrachud referred to the landmark decision made by the Bombay High Court in the Narasu case ("Narasu Appa Mali vs. the State of Bombay 8"), which held that the personal law did not fall under the definition of "laws in force" as stated in Article 13 clause (1) of the

⁷ Travancore-Cochin Hindu Religious Institutions Act, 1950.

⁸ Narasa Appa v. the State of Bombay AIR 1952 BOM 84

Constitution. Furthermore, it is recognized that constitutional scrutiny does not apply to personal law. The decision received harsh criticism and was seen to be legally dubious.

Dr. B.R. Ambedkar explained that although minorities and organizations have rights protected by the Constitution, the primary feature of the Constitution was the person when the Constituent Assembly was discussing religious freedom. On September 28, 2018, the Court's ruling in the case of *Indian Young Lawyers Association v. State of Kerala*⁹ was reviewed (4 votes for, one vote against)

Dipak Mishra, a former Indian Chief Justice, said the following on behalf of AM Khanwilkar, J.: He based his judgment in favor of the petitioners on primary legal considerations to support it. Following Lord Ayyappa's teachings, He concluded that Lord Ayyappa's followers did not fulfill the three requirements to be considered a religious denomination under Article 26 of the Constitution. (Outlined in the case of *S.P Mittal vs. Union of India*¹⁰, which is a group of individuals who believe in common that they find unusual, a typical institution that various users may recognize, and a standard institution. Unlike what is typically believed, "morality" in Articles 25 and 26 refer to constitutional principles rather than public or societal moral norms.

Rule 3 (b)³¹ is, therefore, arbitrary and unlawful. Additionally, it contradicts Section 3 of the 1965 Act 32, which outlaws discrimination against female followers by Article 25³³ of the Constitution.

Justice A.M. Khanwilkar and former Indian Chief Justice Dipak Mishra also provided their perspectives "Women are not accorded lower status to men or treated as second-class citizens. Biological or physiological reasons cannot be tolerated in the name of religious tolerance, nor can the patriarchy of religion be allowed to supersede faith. Although, at its core, religion is a way of life, sure of its practices are incompatible with this way of life.

He continued by saying that while the devotees of the lord Ayappa were Hindus in their religious beliefs and practices, the Sabarimala Temple's ban on females between the ages of ten and fifty could not be considered an essential spiritual practice. Rule 3 clause (b) of the Kerala Hindu Places of Public Worship Rules of 1965 was deemed unenforceable by former Chief Justice Dipak Mishra. He claims this violates Sections 3 and 4 of the California Parents Act and our Constitution. The legislation's Sections 3 and 4 were developed to upgrade public Hindu venues to make them more accessible to individuals of all backgrounds.

Rule 3(b), on the other hand, prohibits women from entering Hindu public places of worship because of religious custom. Due to this, Former Chief Justice Mishra concluded that

⁹ *Indian Young Lawyers Association v. The State of Kerala* 2017 10 SCC 689

¹⁰ *S.P Mittal v. Union of India* 1982 INSC 81

this clause not only contravenes the Indian Constitution but also defeats the main object of the Parent Act. Because they are Hindus who adhere to Lord Ayyappa's teachings, The court ruled that Lord Ayyappa's devotees did not comply with the legal requirements to be recognized as a "Separate Religious Identity Later, the Court found that the temple's denominational right to govern its internal affairs under Article 26 (b) was subject to the State's mission of social reform under Article 25 (2), which was upheld. According to Article 25(2) (b) of the Constitution, the State may pass legislation to modernize Hinduism. The State is given the authority to establish any direction, in particular under Article 25(2) (b), that authorizes all "sections and classes" of Hindu to enroll in a public Hindu institution of higher learning.

Women were included in the gendered category of "classes and divisions" in Justice Mishra's view. He concluded that an official decree might change the practice of excluding women from Sabarimala. Former Chief Justice R.F. Nariman believed their constitutional right under Article 25 was effectively nullified by restricting women's entry to the temple. The Minister stressed that females between the ages of 10 and 50 are protected under Article 25 (1) when they exercise their right to freedom of religion by going to the Sabarimala temple. He concluded that there was sufficient proof that excluding women from Sabarimala Temple definitely violated Article 25 of the Indian Constitution.

8. Discussion

A rational individual would keep religion and the State apart if they were the dictator. They swear allegiance to their faith. For it, they would be prepared to die. However, each person's relationship with this is unique. It has nothing whatsoever to do with the State. The State protects secular well-being (such as health and communications), international relations, money, etc. Everyone's interest is the national interest, according to Gandhi.

Any criminal (a rapist, a murderer, a delinquent, or a thief) is permitted to visit a temple. Still, as that is the only crime a menstruating woman has committed, she is not permitted to do so.

In the majority opinion of the Sabarimala review petition, Kantaru Rajeevaru v. Indian Young Lawyers Association, Ranjan Gogoi, the former Chief Justice of India, suggested that 3 other cases that were currently unresolved before the Supreme Court and are related to Sabarimala be combined when a larger Bench takes up the review petition in the future.

The inclusion of Muslim women in mosques and dargahs, Parsi women living with non-Parsis in the Agyari, and the Dawoodi Bohra community's practice of female genital mutilation

are among the concerns in the three cases. Decisions in the Sabarimala case, outlawing triple talaq and decriminalizing "Section 377 of the Indian Penal Code", have restored the public's faith in the judiciary. The Supreme Court has taken a reforming strategy, a positive development.

As a result, it both asserts constitutional morality's supremacy over traditional laws, rituals, traditions, and social character. It symbolizes a significant advance in the development of female rights toward equality with those of men. The conversation is hoped to change from taboos surrounding menstruation to essential issues like menstrual hygiene practices, longer-lasting sanitation, and hygiene protection, ensuring that all females have access to high-quality education, sporting opportunities, travel, social interactions, and other routine activities.

9. Conclusion

Sabarimala represented the hopes of devout women who wanted to enter the temples and those who wanted to create a clear, unambiguous constitutional precedent for the future. In the Sabarimala case, The Supreme Court had a fantastic opportunity to set a precedent upholding constitutional integrity and releasing restrictions on the individual rights of collective ownership. The jurisprudential aspect of this decision is consistent with Jeremy Bentham's Theory of utilitarianism. Giving "the greatest possible pleasure for the biggest possible number of individuals" is the foundation of practical philosophy. Second, we may compare our findings to John Stuart's Damage Theory, which holds that the actions that injure others must be avoided.

To put it another way, a person has complete liberation to do what they want as long as it does not cause harm to others. Finally, we may connect this and Sir Henry Maine's Status of Contract Theory. He repeatedly said that the "trend of the developed societies has always been a shift from status to contract."

Individual status is a predetermined state in which individuals are placed without regard to their own volition and cannot be disengaged via personal efforts. With the development of civilization, this State is progressively replaced by a social order based on contracts.

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