

## BURNISHED LAW JOURNAL

### Case Comment ON Young Indian Association Lawyers and ors. Vs. State of Kerala and ors (2017) 10 SCC 689

*“Freedom of mind is the real freedom. A person whose mind is not free though he may not be in chains, is a slave, not a free man.”*

*- Bhim Rao Ambedkar*

#### INTRODUCTION

Religion and culture are the glory of Indian Society. Is this civilisation bulwarked by our constitution or patriarchy has pacified it? India is a patriarchal society. Even after 72<sup>nd</sup> years of Independence, and breakthrough in technology and development it has not been triumphant in taking away the roots of patriarchy system from the Indian Society. This has been the hot-button issue in the God's own country known as Kerala's temple named Sabrimala one of the renowned temples for the Hindus. This antediluvian temple is staunch to Lord Ayyapan appertained as Dharmashastra, son of Shiva and Mohini, female epitome of Vishnu. This temple is bossed and operated by the Travancore Devaswom Board.

Kerala is the most literate state in India and the highest female literate population. The irony is this that the people who manages the temple and the priest have the most orthodox and fickle mindset. The women are called tainted and nasty during the period of their menstrual cycles. The women of Kerala are discriminated by the customs of the temple. The Indian Constitution guarantees each individual right to equality and right to dignity. Their religion has forced them to follow this culture and tradition. Various religious text is male oriented. Faith is the religion for human beings and they follow it tiddly. The western culture discards various norms and tradition of some religion. People are so deeply influenced with the tradition that they are not ready to change their tradition nor they realise the wrong in some trends as per the laws of our country. In India religious beliefs are given priority over any other beliefs. Change or variations are momentous for the enduringness in any society. But patriarchy is the clog for any

modification. Purity is not and cannot be a constitutional ideal, especially since the measures of purity are defined by and sculpted from vicious structures and wellsprings of casteism and patriarchy.<sup>1</sup>

God has created both male and females he has also not discriminated on the basis of gender then how can religion discriminates or differentiate on the basis of gender. Menstruation in female is the coinage of God and its congenital. But different religions on these grounds hinders women rights to worship. Hinduism views the menstruating woman as “impure” (Chawla, 1992), or “polluted” (Apffel-Marglin, 1994). In fact, menstruation is referred to in some places as a “curse” (Sharma, Vaid, & Manhas, 2006).<sup>2</sup>

Women are underling to male. Religion plays the grabby role in taming patriarchy. Untouchability has been abolished as per Article 17 of the Indian Constitution but still it is rehearsed and women face the atrocities of mingling in their own families during this period. In this project I will be commenting upon case *Young Indian Lawyers Association vs. State of Kerala*<sup>3</sup> (2017) 10 SCC 689.

## **LITERATURE REVIEW**

Menstruation in women is the biological factor created by God. It is the regular cycle of hormones which makes the pregnancy possible. It is the signal of turning into the women and opportunity to become mother which is the most alluring present given by the God.

Fundamental rights are indispensable for the development of the human being and courts ensure the ammuniton of these rights.

## **BRIEF FACTS**

In this case female maniacs age group from 10-50 were restricted to the place of worship because of certain customs and usage of their religion. They were reprobated the entry in the temple since blue moon’s time. Before the restriction given by the Kerala High Court, women

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<sup>1</sup> The Sabarimala Case Has the Potential to Be a Constitutional Watershed, THE WIRE, <https://thewire.in/law/sabrimala-temple-case-constitutional-watershed> (last visited Feb 21, 2020).

<sup>2</sup> Mark A. Guterman, Margaret S. Gibbs & Payal Mehta, MENSTRUAL TABOOS AMONG MAJOR RELIGIONS THE INTERNET JOURNAL OF WORLD HEALTH AND SOCIETAL POLITICS (2007), <http://ispub.com/IJWH/5/2/8213> (last visited Feb 21, 2020).

<sup>3</sup> *Young Lawyers Association & Ors. v State of Kerala & Ors.* (2017) 10 SCC 689

visited the temple mostly for non-religious purposes. The year 1990, the petition was filed by S Mahendran contending the young women visit to the Sabrimala temple. In the year 1991 the verdict was passed by the judges of the Kerala High Court enforcing the ban of women entry of the age group 10-50 from dropping in or worshipping in the Sabrimala temple, articulating that such practice has been prevailing since along period of time and it is the custom and usage of the religion. In the year 1995, even after the power of police two young women pierced inside the temple. The court's rationale behind the verdict was that there is no stricture imposed or violative in Indian Constitution as per Article 15, 25, 26. It also not contravening the proviso of the Hindu Places of Worship Act. The objection is on the women of the particular age-group not the women as a stratum. In the year 2006 the Young women lawyers of the Supreme court filed the Public Interest Litigation to elevate the ban against women of the age group 10-50 years from entering the Sabrimala temple. They contented in the honourable court that it is the transgression of their constitutional rights and oppugned the Rule 3 (b) of the Kerala Hindu Places of Worship (Authorisation of Entry) Rules, Act 1965. The basic fundamental rights are infringed by this act. *"Women who are not by custom and usage allowed to enter a place of public worship shall not be entitled to enter or offer worship in any place of public worship"*, stated in the act. Hindu dharma celebrates divinity in its complex diversity.<sup>4</sup> It has been contested by the petitioners in the court that the rules are discriminatory and creates injustice for the women. The respondent argued that as per Article 26 of the constitution each individual has the right to propagate any religion of their choice and as per Article 25 of the constitution individuals have freedom to follow religion. The arch reason for not allowing women to enter the temple was the complexion of the deity Lord Ayyapa and the Constitution guarantees that every religious communion have right to make their own rules.

In September 2018 the Supreme Court of India passed the verdict that women of all age groups can enter Sabarimala temple. The resolution of the case was given by 4:1 majority where four judges gave the judgement in the countenance of women entering to the temple whereas one of the judges dissented on entrance of the women in the temple.

### **ISSUE BEFORE THE SC**

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<sup>4</sup> Sandhya Jain, SABARIMALA: JUSTICE DOWNSIZES DIVINITY THE PIONEER (2018), <https://www.dailypioneer.com/2018/columnists/sabarimala--justice-downsizes-divinity.html> (last visited Feb 21, 2020).

Whether the practice on the basis of biological or natural factor solely to the female amounts to discrimination and violates the articles 14, 15, 17 and not protected by morality as per the Article 25 and 26 of the constitution?

### **JUDGEMENT**

Chief Justice Dipak Mishra, Justice DY Chandrachud, R.F. Nariman, A.M. Khanwilkar passed the verdict in the favour of the women entering the temple whereas Justice Indu Malhotra dissented on the entry of the women. The judgement came with 4:1 majority. The Supreme Court hefted the ban on the entry of the women to the temple as it has been observed by the court that it is violative of the fundamental rights of the women. The judges deemed that no one should be subjugated to discrimination on the basis of the gender and segregation on the grounds of somatic and consanguineous features like menstruating or pregnancy is unconstitutional. Both the men and women have even-handed rights in worshipping and temple practice of not allowing women was violative and discriminatory in cosmos. Astoundingly in the five Judge constitutional bench, four male judges passed the verdict in the favour of entry of women in the temple and the female judge dissented the entry of women in the temple stating that it is the subject matter of their personal faith and religious belief. Court should not intervene in this matter and hence it is not discriminatory. Her judgement was based on the persuasion of deep religious belief and sentiments. They have freedom to practice any religious beliefs even if they are discriminatory, fallacious or illegitimate. She also held that right to equality i.e. Article 14 cannot overpower right to profess, propagate or practice any religious faith which is Article 25 of the constitution. The other three judges along with the Chief Justice of India held this practice to be unconstitutional and violative of Article 25(1) and infringes the fundamental rights of women and exclusion of the women on the basis biological factors is discriminatory and it is the religious patriarchy. Hence, in the year 2018 Supreme court passed the order by allowing the entry of women to the temple and performing their religious practices.

### **ANALYSIS**

Sabrimala judgement has been the issue of imbroglio in the society. Half of the folks are gratified with the entry of women to the temple and the other half of the folk are hapless with the entry of the women as it is anguishing the religious notions and convictions of the particular

religion. Disallowing the entry of women is safeguarding the purity of the temple. Discrimination on the basis of gender is unconstitutional. Restricting the entry of the women to the temple is the exercising of the religious patriarchy. Every individual has the right to profess their religion but they cannot infringe the basic fundamental right of equality of others. Hindu devotees say that the ban on women entering Sabarimala is not about menstruation alone - it is also in keeping with the wish of the deity who is believed to have laid down clear rules about the pilgrimage to seek his blessings.<sup>5</sup>

### **Right to Equality in question**

All the religions are given candid respect and dignity and hence India is the secular country. Culture, religion and tradition are pride of our country. India has different religion and each have different and distinct religious text. Secularism represents faith born out of rational faculties and it enables to see the imperative requirements for human progress in all aspect.<sup>6</sup> Article 14 guarantees every individual equal right. Freedom of religion is given to each and every individual, hence it cannot be practiced on the basis of patriarchy or discrimination. Religion is deeply sensitive issue and court should not intervene into this matter but if it is overpowering the rights of the individual and then it is the imperative of the courts to armours the rights of the individual. India is limping in gender gap index. In many of the backward states, where literacy rate is low women are subjected by male and they encounter inferiority complex. The rules in the Hindu Worship Act are whimsical which states about the discrimination. Purity comes from heart and compoment not from the undergoing biological changes. Cultural institutions in India, particularly those of patrilineality (inheritance through male descendants) and patrilocality (married couples living with or near the husband's parents), play a central role in perpetuating gender inequality and ideas about gender-appropriate behaviour.<sup>7</sup> In the era of women empowerment, where women should be encouraged to raise their voices they are expected to belt-up.

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<sup>5</sup> Sabarimala: The Indian god who bars women from his temple, BBC NEWS (2018), <https://www.bbc.com/news/world-asia-india-45901014> (last visited Feb 21, 2020).

<sup>6</sup> Santosh Kumar v. Secy. Ministry of Human Resources Development, AIR 1995 SC 293

<sup>7</sup> Ununiversity, ACHIEVING GENDER EQUALITY IN INDIA: WHAT WORKS, AND WHAT DOESN'T UNITED NATIONS UNIVERSITY, <https://unu.edu/publications/articles/achieving-gender-equality-in-india-what-works-and-what-doesnt.html> (last visited Feb 21, 2020).

### **Fundamental Right- No to women**

Creation of the body is beyond human as it is cosmos and made by the forces of God. Humans cannot wield their volition. Discriminating women on the grounds of their biological and physiological factors is awful. Menstruating is since time immemorial and women has no control over it. In the era of technology and development restricting women from entering into the temple just because of the biological differences is horrendous. All the customs and traditions if are violating or contradicting with the basic structure of the constitution then they must be struck down. Women also have the right to worship and propagate their religious belief. People have deep faith over their religion and loses their capacity to listen against their religion.

### **CONCLUSION**

Entering the premises of Sabrimala is hallucination of women, Supreme Court has passed the verdict allowing the entry of women, the judgement of the court have given wings to their fancy. But has their “phantasm” being perpetrated or remained as an illusion. Still no positive retort. The decision of the court was supportive but the dissent of the female judge was astonishing. The entry in the temple for the women must be safe and secure, hence Supreme Court must ensure that there is no harm to any women while entering the temple.

Temples are the places of idolatry and all are free-standing to visit there for the blessings. Even God has not embargoed the entry of any individual then how can humans discriminate the entry of any individual.

India is the patriarchal society and all the religious text are male dominated. Women must not be seen as the object or subject of inferiority. They must be given equal representation in the society. The development of this society cannot be done by the male alone, female also has to give their valuable contribution. Both male and female gender must strike balance in the society God has given both of them equal masteries hence it must be exerted uniformly.

All the ponderous judgements can only be meritorious with the refashioning in the frame of the society.