

## BURNISHED LAW JOURNAL

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### **Sabrimala verdict: The Battle of superiority between Judiciary and Tradition**

#### **ABSTRACT**

In 21<sup>st</sup> century we are facing problem of discrimination on the basis of gender. Currently Supreme Court has given Sabrimala verdict. Situated in Kerala, Sabrimala is considered as abode of lord Ayyappa. Temple authorities imposed restriction on the entry of woman of age 10 to 50 years.

Different organizations are protested against this act of temple authority. So in 1991 ban was challenged before high court of Kerala in S Mahendranvs the secretary, Tranvancore in that particular case the court said that the ban is valid and authorities are correct on their part. This decision is further challenged in Supreme Court of India. Young lawyer association filed a PIL.

We are living in 21<sup>st</sup> century and we are facing the problems of gender discrimination on the places of worship. How a country is said to be a developed country when they are still dealing with such kind of issues.

The author in this paper will analyze every aspect of Sabrimala Judgement why authorities are discriminating on the basis of gender. What is the point of view of Supreme Court on this particular issue.

**Key words:** Discrimination, Judgement, Authorities, PIL,

## SABRIMALA VERDICT:

The Battle of superiority between Judiciary and Tradition

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### **CONTENTS**

<b>HISTORY</b> .....	4
<b>WOMEN</b> .....	5
<b>JUDGEMENT-</b> .....	8
<b>INDU MALHOTRA'S VIEW:</b> .....	8
<b>DEEPAK MISHRA'S VIEW:</b> .....	9
<b>CONCLUSION:</b> .....	11
<b>BIBIOGRAPHY</b> .....	12

### **HISTORY**

Sabrimala temple is located in Periyar tiger reserve in Pathanamthitta district, Kerala, India. It is one of the largest sites of annual pilgrimage in the world. Approximately 17 million to 50 million devotees visit this temple. Lord Ayyappan also known as Dharma Sastha who is believed to be a son of Lord Shiva and Mohini. Temple is situated at an altitude of 480m(1,574 ft.) above sea level, and it is surrounded by mountains and dense forest. Sabrimala is an ancient temple. Until 3 centuries it was isolated from any

type of human interaction. A prince of Pandalam Dynasty, Manikandan, rediscovered the original path to reach Sabarimala. Manikandan, an incarnation of Lord Ayyappa, rediscovered the temple in the 12th century. Manikandan was a prince of the Pandalam dynasty. He was found by the king on the bank of a river. Later, in a conspiracy hatched against him by a minister and the queen who wanted her own son to be crowned as the next king, Manikandan was sent to the forest to bring the milk of a tigress. The conspirators hoped he would be killed by tigers. But they realised his divine origin when he returned to the palace. Many people follow him many, including the descendants of the Vavar (a Muslim warrior whom Manikandan defeated) family. The prince was considered as an Avatar of Ayyappa. It is believed that he meditated at Sabarimala temple and became one with the divine. Dense forest region is also known as Poongavanam. Temple is surrounded by 18 hills. Those hills also have functional and intact temples<sup>1</sup>.

Nilakkal, kalaketty, and karimala are one of the old temples which are still functioning. The devotees are expected to follow a *Vratham* (41-day austerity period) prior to the pilgrimage. This begins with wearing of a special *Mala* (a chain made of Rudraksha or Tulasi beads is commonly used, though still other types of chains are available.). During the 41 days of *Vratham*, the devotee who has taken the vow, is required to strictly follow the rules that include follow only a lacto-vegetarian diet (In India, vegetarianism is synonymous with lacto-vegetarianism), follow celibacy, follow teetotalism, not use any profanity and have to control the anger, allow the hair and nails to grow without cutting. They must try their maximum to help others, and see everything around them as lord Ayyappa. They are expected to bath twice in a day and visit the local temples regularly and only wear plain black or blue coloured traditional clothing.

Hundreds of devotees still follow the traditional mountainous forest path (approximately 61 km) from Erumely, 12.8 km from Vandiperiyar and 8 km from Chalakayam, believed to be taken by Ayyappa himself. The Erumely route starts from Erumely to Aludha river, then crosses the Aludha mountain to reach Karivilam thodu. Now comes the sacred Karimala crossing, from there to Cheriyanavattom, Valliyanavattom and finally Pamba River. Then they have to climb Neelimala and enter into the Ganesha-Bettam, Shreerama-Betta Padam. Then comes the Aranmulakottaram, which is one of the stops of holy journey *Thiruvabharana Ghoshayatra* (the grand procession of the divine jewelry).

Now Days people use vehicles to reach the Pamba River by an alternate route. From Pamba, all the pilgrims begin trekking the steep mountain path of Neeli Mala till Sabari Mala.

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<sup>1</sup><https://en.wikipedia.org/wiki/Sabarimala>.

## ***WOMEN***

The temple is in picture because they did not allow women of age between 10-50 that is women of menstruating age. According to the survey of Travancore and Cochin states women were not allowed to enter in the temple. Survey was completed in 1820 and after research of 5 years it was published in 2 volumes only in 1893 and 1901. Old women and young women can approach the temple but those who have attained the age of puberty are not allowed to enter into temple. The reason behind this custom was that deity Ayyappaan is considered as brahamchari. And being a brahamchari he is far away from any contact with females in society so it is not appropriate that a female who is in her age of puberty will come to temple and worship deity, and sexual intercourse in the vicinity of temple is prohibited.<sup>2</sup>

In 1991, Justices K. Paripoornan and K. Balanarayana Marar of the Kerala High Court, in their ruling against the Travancore Devaswom Board, restricted the entry of women between ages 10 and 50 from offering worship at the temple, stating that such a restriction was in accordance with the usage prevalent from time immemorial. In addition, the judges directed the Government of Kerala, to use the police force to ensure that restriction was complied with.

On 28th September 2018, the Supreme Court of India, in a 4-1 majority decision, overturned the ban on the entry of women. The Chief Justice, Dipak Mishra, stated that the selective ban on women was not an "essential part" of Hinduism, and instead a form of religious patriarchy. Justice Dhananjaya Y. Chandrachud stated that the ban stigmatises and stereotypes women, while placing the burden of men's celibacy on them. The lone women judge, Indu Malhotra noted in her dissenting judgement that "what constitutes an essential religious practice is for the religious community to decide" and not a matter that should be decided by the courts. She added that "notions of rationality cannot be invoked in matters of religion by courts".

This led to protests at Nilakkal and Pamba base camps on 17 October 2018, when the temple was opened for the first time after the Supreme Court verdict. Protesters assaulted women journalists, stole their camera equipment, and damaged a vehicle. The police were also attacked. A number of women were among the protesters, checking cars to see if they contained women of menstruating age and helping with the road blocks. There were also reports of police damaging protesters' motor bikes. However Lord Ayyappa devotees in a large scale all over Kerala and also in other southern state of India namely Tamil Nadu, Andhra Pradesh and Karnataka, protested against entry of women in 10-50 age group in Sabarimala.

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<sup>2</sup><https://indianexpress.com/article/india/sabarimala-verdict-live-updates-supreme-court-women-temples-kerala>.

Large number of people participated in the protest mainly women devotees. On 26th December 2018 Devotees conducted 'Ayyappa Jyothi' lighting diya or lamp all across The State of Kerala against young women's entry to temple.

Two women of menstruating age attempted to enter the temple on 19 October 2018 but were blocked by protesters about 100 m away. After the Thantri threatened to close the sanctum sanctorum if the women attempted to ascend the 18 sacred steps, they turned back.

On 2 January 2019 at 3:45 AM, for the first time after the Supreme Court verdict, two women in their early 40s were escorted by police into the Sabarimala temple, allegedly through a back gate meant for staff. The Chief Minister of Kerala, Pinarayi Vijayan, confirmed their entry. Thereafter, priests closed the temple for one hour to ritually purify it.

The ban on women entering the temple premises is being practised for centuries, as devotees consider Lord Ayappa, the presiding deity of the temple, to be celibate.

In 1991, the Kerala High Court restricted entry of women above the age of 10 and below the age of 50 from Sabarimala temple as they were of the menstruating age. 27 years later on September 28, 2018, the Supreme Court lifted the ban, saying that discrimination against women on any grounds, even religious is unconstitutional. Temple's head priest, Kandarurajeevaru, said they were "disappointed" by the court order but accepted it. Following the court's order, hundreds of Ayyappa devotees, including women, blocked the state and national highways in various parts of Kerala. The protests took a political turn after BJP ally Shiv Sena warned of "mass suicides" if women set foot inside the Sabarimala temple. The protests intensified as the date of opening neared. On October 17, when the doors to Sabarimala opened, the protesters camped at the base of the trek at Nilakkal and at the last stretch of the trek at Pamba to stop women from entering the temple.



## JUDGEMENT-

### *INDU MALHOTRA'S VIEW:*

#### *1. On challenging religious practices*

According to justice Malhotra entertaining PILs challenging religious practices could cause harm to secular fabric of the country. In her judgement she said, "In a pluralistic society comprising of people with diverse faiths, beliefs and traditions, to entertain PILs challenging religious practice followed by any group, sector denomination, could cause serious damage to the constitutional and secular fabric of this country."<sup>3</sup>

#### *2. On right to equality*

The article 14, right to equality, justice malhotra said that it cannot be the only touchstone to test religious customs and practises. She said, "Article 25 (freedom of religion) specifically provides the equal entitlement of every individual to freely practice their religion. Equal treatment under Article 25 is conditioned by the essential beliefs and practices of any religion. Equality in matters of religion must be viewed in the context of the worshippers of the same faith."<sup>4</sup>

#### *3. On gender equality*

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<sup>3</sup>Indian Young Lawyers Association and Ors.vs. The State of Kerala and Ors., MANU/SC/1094/2018, (2018).

<sup>4</sup>*Ibid.*

Justice Malhotra observed that there are 1000 temples of lord Ayyappa where women are not denied entry. She said, “the right to gender equality to offer worship to lord ayyappa is protected by permitting women of all ages, to visit temples where he has not manifested himself in the form of a ‘Naishtik Brahamachari’, and there is no similar restriction in those temples. It is pertinent to mention that the respondents, in this context, have submitted that there are over 1000 temples of lord ayyappa, where he has manifested in other forms, and this restriction does not apply<sup>5</sup>.

#### 4. *On essential practices*

Justice Malhotra observed that a religion can lay down a code of ethics, and also prescribe rituals, ceremonies etc. which are also regarded as an integral part of religion and hence are to be protected as a religious belief. She said, “the religious practice of restricting the entry of women between the ages of 10 to 50 years, is in pursuance of an ‘essential religious practice’ followed by the respondents. The said restriction has been consistent, followed at the Sabrimal temple for years.<sup>6</sup>

#### 5. *On women being treated as untouchables*

Justice Malhotra observing petitioners’ argument based on women being treated as untouchables, thus drawing a parallel between the rights of Dalits under Article 17 which abolishes untouchability, said that the analogy is “misconceived”. She said, “the right asserted by dalits was in pursuance of right against systematic social exclusion and for social acceptance per se. in the case of temple entry, social reform preceded the statutory reform, and not the other way about.” Justice Malhotra concluded that the Article 17 referred to the practice of untouchability as committed in the Hindu community against harijans or people from depressed classes, and not women, as contended by the petitioners<sup>7</sup>.

### **DEEPAK MISHRA’S VIEW:**

1. In view of the law laid down by this Court in Shirur Mutt and S.P. Mittal<sup>8</sup>, the devotees of Lord Ayyappa do not constitute a separate religious denomination. They do not have common religious tenets peculiar to themselves, which they regard as conducive to their spiritual well-being, other than those

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<sup>5</sup>*Ibid.*

<sup>6</sup>*Supra Note 1.*

<sup>7</sup>*Supra Note 1.*

<sup>8</sup>S.P. Mittal v. Union of India and Ors, MANU/SC/0532/1982, (1982).

which are common to the Hindu religion. Therefore, the devotees of Lord Ayyappa are exclusively Hindus and do not constitute a separate religious denomination.<sup>9</sup>

2. Article 25(1), by employing the expression 'all persons', demonstrates that the freedom of conscience and the right to freely profess, practice and propagate religion is available, though subject to the restrictions delineated in Article 25(1) itself, to every person including women. The right guaranteed Under Article 25(1) has nothing to do with gender or, for that matter, certain physiological factors specifically attributable to women.<sup>10</sup>

3. The exclusionary practice being followed at the Sabrimala temple by virtue of Rule 3(b) of the 1965 Rules violates the right of Hindu women to freely practise their religion and exhibit their devotion towards Lord Ayyappa. This denial denudes them of their right to worship. The right to practise religion Under Article 25(1) is equally available to both men and women of all age groups professing the same religion.<sup>11</sup>

4. The impugned Rule 3(b) of the 1965 Rules, framed under the 1965 Act, that stipulates exclusion of entry of women of the age group of 10 to 50 years, is a clear violation of the right of Hindu women to practise their religious beliefs which, in consequence, makes their fundamental right of religion Under Article 25(1) a dead letter<sup>12</sup>.

5. The term 'morality' occurring in Article 25(1) of the Constitution cannot be viewed with a narrow lens so as to confine the sphere of definition of morality to what an individual, a Section or religious sect may perceive the term to mean. Since the Constitution has been adopted and given by the people of this country to themselves, the term public morality in Article 25 has to be appositely understood as being synonymous with constitutional morality<sup>13</sup>.

6. The notions of public order, morality and health cannot be used as colourable device to restrict the freedom to freely practise religion and discriminate against women of the age group of 10 to 50 years by denying them their legal right to enter and offer their prayers at the Sabarimala temple.<sup>14</sup>

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<sup>9</sup>Supra Note 1.

<sup>10</sup>Supra Note 1.

<sup>11</sup>Supra Note 1.

<sup>12</sup>Supra Note 1.

<sup>13</sup>Supra Note 1.

<sup>14</sup>Supra Note 1.

7. The practice of exclusion of women of the age group of 10 to 50 years being followed at the Sabarimala Temple cannot be regarded as an essential part as claimed by the Respondent Board.<sup>15</sup>

8. In view of the law laid down by this Court in the second Ananda Marga case, the exclusionary practice being followed at the Sabarimala Temple cannot be designated as one, the non-observance of which will change or alter the nature of Hindu religion. Besides, the exclusionary practice has not been observed with unhindered continuity as the Devaswom Board had accepted before the High Court that female worshippers of the age group of 10 to 50 years used to visit the temple and conducted poojas in every month for five days for the first rice feeding ceremony of their children.<sup>16</sup>

9. The exclusionary practice, which has been given the backing of a subordinate legislation in the form of Rule 3(b) of the 1965 Rules, framed by the virtue of the 1965 Act, is neither an essential nor an integral part of the religion.<sup>17</sup>

10. A careful reading of Rule 3(b) of the 1965 Rules makes it luculent that it is ultra vires both Section 3 as well as Section 4 of the 1965 Act, for the simon pure reason that Section 3 being a non-obstante provision clearly stipulates that every place of public worship shall be open to all classes and Sections of Hindus, women being one of them, irrespective of any custom or usage to the contrary.<sup>18</sup>

11. Rule 3(b) is also ultra vires Section 4 of the 1965 Act as the proviso to Section 4(1) creates an exception to the effect that the Regulations/rules made Under Section 4(1) shall not discriminate, in any manner whatsoever, against any Hindu on the ground that he/she belongs to a particular Section or class.<sup>19</sup>

12. The language of both the provisions, that is, Section 3 and the proviso to Section 4(1) of the 1965 Act clearly indicate that custom and usage must make space to the rights of all Sections and classes of Hindus to offer prayers at places of public worship. Any interpretation to the contrary would annihilate the purpose of the 1965 Act and incrementally impair the fundamental right to practise religion guaranteed Under **Article 25(1)**. Therefore, we hold that **Rule 3(b)** of the 1965 Rules is ultra vires the 1965 Act.<sup>20</sup>

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<sup>15</sup>Supra Note 1.

<sup>16</sup>Supra Note 1.

<sup>17</sup>Supra Note 1.

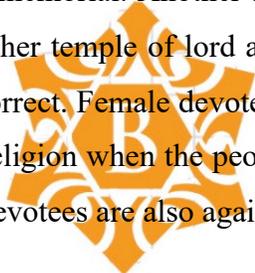
<sup>18</sup>Supra Note 1.

<sup>19</sup>Supra Note 1.

<sup>20</sup>Supra Note 1.

**CONCLUSION:**

As we discussed that Supreme Court is trying to think out of the box and they are trying to remove stereotypes from the society. SC has taken a land mark step to remove stereotype by allowing women in Sabrimala. Deepak Mishra J. gave various points to support the views of Supreme Court why they are allowing women in the temple. Most important point was that we are living in 21<sup>st</sup>, on one hand we are empowering women. But on the same hand we are practicing such kind of rituals. The judgement was given by 5 judge bench with a majority of 4-1. Irony in the judgement was that the female judge supported this ritual. Indu Malhotra J. supported this ritual and gave her judgement in favor of Travancore board. We have to consider her view because on one hand judges are trying to give a judgement which give strength to women empowerment, But a women judge is opposing the same judgement. Her view was that court should not interfere in the matter of religion especially when devotees themselves are not opposing the ritual. Devotees are protesting against the judgement because they are following this ritual from time immemorial. Another aspect was that the female devotees of the restricted age group are allowed to visit other temple of lord ayyappa. So, the point that this is the only place where devotees can worship is not correct. Female devotees are also against the judgement. Verdict of court should not interfere in matter of religion when the people who are following it are following the rituals which are prescribed in it. Female devotees are also against the judgement.

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