

THE SABRIMALA JUDGMENT

- Ritika Gupta¹ & Deepanshi²

ABSTRACT

Considered to be one of the most divine and sacred place of worship by Hindus THE SABARIMALA TEMPLE, devoted to Lord Ayyappa is today one of the most widely discussed topics in legal field as it marks the victory of equality over religion and the triumph of morality against discrimination. Since long time immemorial millions of devotees from all around the globe visited this historical temple constructed in 11 century to offer their prayers to the holy incarnation but this tale does not end here.... The temple barred the entry of women belonging to menstrual age because of the pseudoscientific belief that Menstruation is an impure phase in a woman's life. These customary beliefs soon turned as a form of discrimination against women under the cover of religion. With the passage of time many feminist groups raised their voice to support women's right to permit them to enter the premises of the holy SABARIMALA TEMPLE and finally it was On September 2018 when the Supreme Court turned down the patriarchal religious belief permitting the entry of women of all age group in the temple. Many scholars have taken a stand in support of the verdict expressing it as a concrete step taken by the Supreme Court in direction of Gender Equality, a few resented the decision as they felt that sentiments cannot be placed against constitutional morale. The researcher in this research would cite the historical background of the pilgrimage along with the reasons as to why women aren't allowed inside the temple and its practical reasoning to counter claim these arguments. This research paper also examines the implications of the apex court's decision in the India Young Lawyers Association (IYLA) v State of Kerala and how this decision has revived the debate on Sabarimala Controversy which will mark a new phrase in the history of a Secular Democratic Country

KEYWORDS: *Sabarimala Temple, Lord Ayyappa, Gender Equality, Religion, Constitution, Supreme Court*

¹ 2nd Sem, Student, Indore Institute of Law

² 2nd Sem, Student, Indore Institute of Law

INTRODUCTION

Sabarimala is one of the most prominent Hindu shrines of Lord Ayyappa located in Kerala. It is situated in hilltop above 3000 m sea level in Pathananthilla district of Kerala. It is surrounded by 18 hills in the Periyar Tiger Reserve. According to an old belief, Sabarimala Temple was unknown to people before 12th century until Manikandan, a prince of Pandalam Dynasty found the way between the hills to reach the temple.

He had many followers with him, including the descendants of the Vavar family, a Muslim warrior whom Manikandan defeated. Later, the prince emerged as the avatar of Lord Ayyappa and became one of his divine. Over the years, many pilgrims came to worship him. For this, they need to perform 41 days of celibacy. Celibacy includes not shaving, cutting hair and nails, not involving in sexual activities, to apply sandal paste on forehead. But women can't perform these celibacy because of menstrual cycle. Hence, they aren't allowed to enter in a temple.

In the Sabarimala Temple of Lord Ayyappa, it is believed that lord answers the prayers of his devotees who visit his temple with utmost good faith and follow the pilgrimage rituals. The temple is open only in some occasions like Mandalapooja in Nov-Dec, Maha Sankranti, Maha Vishwa Sankranti (April 14) and first five days of each Malayalam month. It has always been a strenuous journey to reach the pilgrimage which covers around 48 miles through dense forest and hill track. Sabarimala Temple is the second largest seasonal pilgrimage with a significant dress code for its devotees which denote that all the devotees are equal before Lord Ayyappa.

THE HISTORY OF LORD AYYAPPA

Lord Ayyappa, also known as the Dharma Shashtra is a popular Hindu deity worshipped in South India. According to one of the legendary tale, once there was the evil demoness Mahushasuri, who is cursed to live a life of a demoness unless son of Lord Vishnu and Shiva free her. For this Lord Vishnu transformed into Mohini (his female incarnation), and give birth to Lord ayyappa.

Later, he defeated the demons and set her free. Demons turned into beautiful young lady named Malikappurathamma. She proposes him for the marriage. But Lord ayyappa declined her proposal saying that he wants to live the life of a saint. He promised her when kanniswanis (new devotees) would stop visiting him then he will marry her. But nothing happened like this. Every year, new devotees came to his shrine to worship him. The young woman is worshipped as goddess Malikappurathamma.³

According to the “Memoir of the Survey of the Travancore and Cochin States”, published in two volumes by the Madras government in 19th century, women belonging to menstrual age or not allowed to enter into the temple. It was argued that the women of menstrual age cannot perform the celibacy which is required before entering in a shrine.

Even after the restriction some women entered in the temple –

- On 13th May 1940, the Maharani of Travancore had visited the temple.
- In 1986, for Tamil movie “Nambinar Keduvathillai”, four actresses danced near the deity of 18 steps. For this, fine was imposed on them.
- Actress and former politician of Karnataka Jayamala had also entered.
- Even after the ban on the entry of women in Sabarimala Temple by Kerala High Court a district collector named the Valsala Kumari entered the shrine with special permission to discharge her duty and she became the first woman to do so legitimately but she did not visit the sanctum.

This is one among the varied folklores famous about the birth of Lord Ayyappa but what's the exact truth nobody is conscious of till date. Females according to the ancient stories were considered as the sign of eroticism and sexual thoughts which tend to interrupt the celibacy of men. therefore, priest alongside devotees stopped the entry of girls on the lame ground that the vow of celibacy of Lord Ayyappa are going to be broken if a lady enters the temple.

If we consider this ancient folklore as the correct one but the contention which arises is that nowhere within the ancient folklore there is a discussion about not allowing women to enter the temple premises. Stories just lay the stress on the vow of Lord Ayyappa and his purity, no story claims women to be impure or the danger to the celibacy of Lord Ayyappa.

³ Radhika Sekar, The Process of Pilgrimage: The Ayyappa Cultus and Sabarimala Yatra 12-14 (1988).

Historic decision of Supreme Court in sabrimala case

The decision of the apex court comprehends the fact of Supremacy of Constitution. In a 4:1 majority, the provisions of Kerala Hindu Place of Public Worship Rules 1965 got quashed and ruled out the old age belief of debarring the women of menstrual age from entering the shrines. The verdict establishes the fact that Individual freedom prevails over professed group rights, even in religious matter.

The 5 judge constitution bench headed by CJI Deepak Mishra emphasized the fact that the temple rule was violative of Article 17 of the Constitution as it excludes woman's entry due to their biological and physiological features is Unconstitutional. Article 17 of the Indian Constitution abolishes “*untouchability*” and forbids its practice in any form. The humiliations, exclusion and subjugation faced by women would also be a form of Untouchability.⁴

It also offends the principle stated in Article 21 invading the Rights of Privacy as it exposes woman's menstrual condition in public. As stated in the constitution A citizen has right to safeguard the privacy of his own, his family, marriage, child bearing and education in other matter. Article 14 which talks about Equality before law and Equal protection of law were denied to women and hence were against Constitutional Ethos.⁵

Justice A.M Khanwilkar and R.F Nariman opined that “The denial of these fundamental rights to women significantly denudes them of their right to worship “. Justice D.Y Chandrachud affirmed that Court must decline to grant Constitutional legitimacy to practices which derogate the dignity of women.

The dissenting opinion was given by Justice Indu Malhotra the only female judge in the bench. She was of the view that religious matter should be left in the hands of religious communities to decide and the court should not look into the rationality and logic of such decision as Article 25 and 26 of the Constitution which confers Secularism and permits that every religious denomination has a right to manage its own religious affairs in matter of religion. Every person has his own religious beliefs and the court should not interfere in the deep grounded beliefs of the people. If court were to look into such matters then there would

⁴ Young Lawyers Association & Ors. v State of Kerala & Ors. SC (2018).

⁵ Satya Praso, The Sabarimala Case has the Potential to be a constitutional watershed, The Wire (Nov.7, 2016), <https://thewire.in/law/sabarimala-temple-case-constitutional-watershed>.

be far reaching consequential impacts questioning the very aspect of religious rituals in hundreds of different temples, mosques and gurudwaras all over India. Should court now start interfering in these?

The final judgement taken on 28 September 2018 was the outcome of long legal protest which grounded its base in year 1990 when a petition was filed by S. Mahendran alleging the women visiting the Sabarimala temple even after the restrictions imposed on them. In 1991 Kerala High Court banned the entry of women of age between 10-50 years. The Court observed that: 4

In 2006, six women of Indian Young Lawyers Association filed the petition in Supreme Court to remove the ban on women’s entry and this P.I.L was supported by Left Democratic Government. Hind Navotthan Pratishtan files plea in Supreme Court supporting entry of women’s. On October 13 2017 the plea filled in Supreme Court is referred to the Constitutional Bench and the hearing of this case started in July 17 2018.

On 1 August the Constitutional Bench comprising of Justice Dipak Mishra, Justice D.Y Chandchrun, Justice R.M Nariman, Justice A.M Khanvillar and Justice Indu Malahotra reserved the judgement after hearing the arguments and made it clear that the ground of there decision would be based on the test of Constitutional ethos. Finally on 28 September the Supreme Court allowed women’s of all age group to enter the temple.

ARGUMENTS IN FAVOUR AND AGAINST OF WOMEN’S ENTRY

Views of those who oppose women entry

1. Love and Sacrifice of Malikappurathamma – It is argued that women should not enter in a temple because of malikappurathamma . Lord Ayyappa declined her marriage proposal because of his brahamchari nature. Thus he does not want his penance to be disturbed and so it is argued that women should not enter the premises.

Justification – Malikappurthamma ‘s love and sacrifice cannot be used for argument against women’s entry .

Recently, a person from Bihar filed the petition against Lord Rama for the injustice he had done against Devi Sita. Court said that the plead of an advocate is not maintainable because neither Lord Rama can come to witness nor the arguments can be deal correctly. As nobody

knows the proper fact, laws of that time and what the situation was. And if Lord Rama may be held guilty then also who will take his punishment. And will Sita get justice in 21st century.⁶

Similarly, there are many legendary tales for the existence of Lord Ayyappa. Nobody knows which one is true among them and nobody can come to witness the fact. Hence, Goddess Malikappurthamma,s love and sacrifice is not a valid argument. Her love for him took place years ago and on that cannot be considered as a valid ground for the restrictions imposed on women.

Impurity of women during periods – It is said that during periods women should not worship as they radiate negative energy.

Justification – In the old time, it was done so that women can get relief from the cramps but now all these practices are forced upon a woman and hence considered as impure. People had forgetting that period implies their ability to conceive and to give birth to a new life.

RELIGION CONTRADICTS RELIGION

It is a love tale of Lord Shiva and goddess sati. Sati marriage Shiva against her father’s wish. Her father cuts all the ties with her. One such day Sati's father, King Darsha planned to conduct a yagna ritual for which he invited all the gods, princess and everyone except Shiva and sati. Later, sati came to her father’s place uninvited. King Darsha insulted her and her husband. Due to which sati jumped into the yagna's fire and dies. But before dying she wished that in her next birth she would get father to be respected.

When Lord Shiva came to know about this he was ready to destroy the whole world. Shiva was in rage due to which his sudarshan chakra destroyed the body of sati and cut it into 51 parts. Wherever her body part had fallen there her temple was established. One such part of her body that is vagina had fallen in Guwahati, Assam. This temple is known as kamakhya Devi temple. Every year Temple remain closed for three days as it is an old age believe that Devi bleed in these days. That time devotional is spirit of people increases. On 4th day, when when Temple opens, devotees get a red colour cloth as gracious gift as it signifies a

⁶ Radhika Sekar, The Process of Pilgrimage: The Ayyappa Cultus and Sabarimala Yatra 12-14 (1988).

auspicious presence of Devi sati. It is believed that that cloth is used by Devi during her menstrual cycle.

Compare –

At one side women's are not allowed to enter in a temple due to her menstrual cycle and on the other hand people worship in kamakhya Devi temple for the same reason. At one instance woman's are considered as goddess Lakshmi and Saraswati and on the other hand they are considered impure. People in the name of religion is getting partial for two different women. Now, how can a religion not permit women to enter in a temple?

CONCLUSION

Sabarimala – A religious site for most of the pilgrims in Kerala has continued to be the apple of discord, even after the Supreme Court decided to review its landmark judgement in 2018. Every year millions of devotees come to the holy shrine but only men: Woman's entry to Sabarimala still remains a challenge. When on December 2, 2019 two women tried to enter place of worship the temple had to remain close for its purification.

In this modern era where women's seems to hold a predominating position in every sphere it is inhumane to consider them as inferior or impure to everyone. Menstrual taboo is still treated as a curse on women even after knowing that it signifies her ability to conceive and give birth. Everyone who thinks women are impure during their periods don't forget it is the same impurity they survive for 9 months inside their mother's womb to give birth to the new offspring and continue the family.

The main issue is not an entry, but equality. The religious exclusion has a public character, and that it is not just an issue of a sacred tradition but one of the civil rights and material and symbolic equality. The review petition gives the devotees a new hope and opportunities to have the verdict partially overturned. The court should look beyond the denial of freedom of religion to women but also of equal access in public sphere. It will put the fundamental pillars of constitution to new challenge and interpretation.

India is trapped in a vicious cycle where the people who have solemnly resolved to abide by the rules of constitution have to redefine the new definition of faith and religion. The D.P.S.P imbibed in part IV of the Indian Constitution imposes the duty to promote scientific

temperament and it is possible when the final decision of Supreme Court. The researchers are of the opinion that when equality and secularism come into conflict a democratic state should put equality first and seeing the current developments in the country on matters of religion and faith, it becomes essential for the judiciary to device out a methodology to deal with reformation of religion through judicial intervention .