

Sabarimala Judgement: Another case of Judicial Over-reach?

Background

Sabarimala is a prominent Hindu temple located on a hilltop in Pathanamthitta district of Kerala. The temple is dedicated to Lord Ayyappa, the God of growth. The temple attracts pilgrims from the states of Kerala, Tamil Nadu, Karnataka and Andhra Pradesh and from various other parts of the country and the world. The temple is open for worship only during the days of Mandalapooja in November-December, Makara Sankranti on January 14 and Maha Vishuva Sankranti on April 14, and the first five days of each Malayalam month.

It was mostly unreachable for about three centuries after its installation. In the 12th century, a prince of Pandalam Dynasty, Manikandan, rediscovered the original path to reach Sabarimala¹. He had many followers with him, including the descendants of Vavar (a Muslim warrior whom Manikandan defeated) family. This Prince is considered an Avatar of Lord Ayyappa. It is believed that he meditated at Sabarimala temple and became one with the divine.

The Ayyappa temple happens to be one of the most famous pilgrimage sites for Hindus in India. Every year, thousands of people undertake the holy trek to the hill temple. *The temple, however, does not open its doors to women of menstruating age (10 to 50 years).*

Belief or Myth?

The legend has it that the temple deity Ayyappa, followed celibacy all through his life. Therefore, women devotees of menstruating age are considered “impure” by supporters of the ban and are prohibited from entering the temple, on the pretext that they would disturb the celibacy of the deity².

The pilgrims have to observe celibacy for 41 days before going to Sabarimala. They are also required to strictly follow a lacto-vegetarian diet, refrain from alcohol, not use any profanity and allow the hair and nails to grow without cutting. They are expected to bath twice in a day and visit the local temples regularly. They wear black or blue clothes, do not shave until the completion of the pilgrimage, and smear *vibhuti* or sandal paste on their forehead³.

¹ Source: <https://www.ndtv.com/kerala-news/the-story-of-sabarimala-origin-beliefs-and-controversy-on-women-entry-1933477>

² Source: <https://www.insightsonindia.com/2018/09/29/insights-daily-current-affairs-29-september-2018/>

³ Source: <http://sabarimala.kerala.gov.in/>

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

Controversy

The dispute over women entering the temple can be traced back to 1991 when the Kerala High Court ruled that the ban on women entering the Sabarimala temple had existed since time immemorial and that it was not discriminatory in nature as per the Constitution.

After 15 years, the ban was challenged in 2006 by the Indian Young Lawyer's Association claiming that prohibiting women from entering a public place of worship was "*a violation of ideals of equality, non-discrimination and religious freedom*".

The Supreme Court on October 13, 2017 referred the issue to a constitution bench after framing five "significant" questions, including whether the practice of banning entry of women into the temple amounted to discrimination and violated their fundamental rights under the Constitution.

After marathon hearings for eight days in the Supreme Court, the five-judge Constitution Bench delivered its judgement in 4:1 majority on 27 September 2018 stating that devotion cannot be subject to gender-discrimination. Interestingly, the lone woman judge on the bench, Ms. Indu Malhotra dissented with the majority view. The judgement held that the 'Ayyappa devotees' do not constitute a separate religious denomination. Rule 3(b) of the Kerala Hindu Places of Public Worship (Entry of Authorization) Rules, 1965 prohibiting the entry of women in the age group of 10-50 years was held to be unconstitutional.

The eight-day long marathon hearing was privy to a debate on the 'essential religious practices' doctrine and the principle of constitutional morality. Justice D. Y. Chandrachud observed that abstinence is a state of mind and to restrain women from pursuing their right to worship on physiological grounds would be unconstitutional. Countering The submission of historic religious beliefs and customary practices, he asserted that after the coming into force of the Constitution, all actions have to be tested on the touchstones of equality.

Post-Judgement Actions

The Travancore Devaswom Board, the Board which defended the case on behalf of Sabarimala devotees have clearly stated that they were hugely disappointed with the order of the Supreme Court. Protests, clashes and demonstrations have been carried out throughout the state of Kerala, with support from political parties as well alleging this as a perfect case of judicial over-reach. Various attempts have been made by certain women activists as well as devotees to enter the temple but they have had to face fierce opposition

and attack by the authorities as well as the devotees. Interestingly, the state of Kerala in its affidavit submitted before the Supreme Court in July 2018 stated that it had no problem with women of celibate age-group entering the temple and supported the commonly held view that barring the entry of women constituted a violation of their Right to Worship.

Pointing to the dissenting view of Justice Indu Malhotra, she states in her judgement that issues of deep religious sentiment should not be generally interfered by the Courts. In this case, none of the aggrieved women or persons from that religion or section of devotees approached the Supreme Court citing a violation of their religious freedoms.

The judgement has led to law and order problems in the State. No woman feels safe to visit the pilgrimage. On the 2nd of January 2019, two women tried to enter the temple during odd hours and in the presence of police and security personnel. As soon as it was revealed to them that these women visited the shrine, a 'purification' of the temple premises was conducted and the temple was shut down. As many as 51 review petitions have been filed before the Hon'ble Supreme Court post the September 27 judgement and it would suffice to say that the Supreme Court has not been able to address the concerns of the devotees and the public alike. Chief Justice of India has scheduled the hearing for 22nd January 2019 for taking up the review petitions all at once.



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⁴ Image courtesy: Press Trust of India (PTI)

So why is this a case of Judicial Over-reach?

Justice D.Y Chandrachud laid emphasis on the patriarchal mindset of the Indian society which gives rise to the ideology that women are not equal to men. He believes that the kind of unfair and unequal treatment women face in matters of family, profession, education would be extended to the practice of religion if matters and practices such as these are not abolished. Taking inspiration from Article 25 of the Constitution, he states that such a practice of barring the entry of women in the age group of 10-50 years was an extension of this mindset and is oblivious to any rational reasoning and understanding whatsoever. Justice Indu Malhotra in her dissent opinion states that “notions of rationality are impervious to religion”.

Emphasis must also be paid to the fact that these practices have been followed over centuries and constitute an essential component of the religious practice of that particular institution. Many temples and institutions like these have certain rules that are specific to the deity of that religion or sect. These are an extension of the ‘essential practices’ principle and cannot be challenged on those grounds. If judgements such as these are passed by the Courts, it would open a can of worms and lead to litigation spanning religions wherein such practices would be challenged. With this judgement, the Supreme Court has given the impression that it does not value customary practices over rationality and equality and the same is to be taken care of by the particular sect or the State. The judgement of the Supreme Court is flawed because the Supreme Court in the guise of libertarian and pro-equality messaging has totally disregarded the kind of society our country is and the customs and beliefs the people follow. It needed to be a bit more sensitive to the feelings of the devotees who undertake this important pilgrimage and their beliefs about their God. While the Supreme Court can consider itself as progressive and reformatory, the same would not apply to the religious sect that prides itself on those essential beliefs and customs and gives it a distinguishing characteristic because of those practices and rules.

In my view, the Supreme Court could have avoided the controversy by suggesting that the practice was violative of constitutional morality and condemned the same in the strongest possible words. To go to the extent of barring the practice altogether constitutes judicial over-reach. The Court still has one chance left though to correct its mistake and modify the order. Lets hope it does the same.