

**The Sabarimala Debate:
An Analysis of the Judgment of Indian Young Lawyers
Association V. State of Kerala**

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Abstract

Religion has always remained one of the most intrinsic elements in an individual's life. The rights to freedom of religion coupled with the right to equality are the monumental foundations of Indian democracy. When on one hand the Supreme Court was confronted to choose between women's rights and religious rights, it inclined towards women's rights in the case of Indian Young Lawyers' Association v. State of Kerala and others. But was this choice made as a matter of public interest and beneficial to the general mass? This paper not only discusses the ongoing Sabarimala debate, that is, whether or not allowing women of menstruating age is a move towards women empowerment and development but also attempts to bring forth the subsequent reaction after the judgment. This research paper also attempts to comprehend whether such a decision of the Supreme Court contravenes the constitutional mandate of secularism.

Keywords: *Sabarimala, secularism, right to freedom, right to religion, women rights and women empowerment*

I. Introduction

Sabarimala is a shrine considered to be one of the holiest temples in Hinduism. It is located in Periyar Tiger Reserve in Pathanamthitta district in Kerala, India. The temple is situated on a hilltop named Sabarimala with a unique feature i.e., it is about 3000 feet above sea level. The Sabarimala Sree Dharma Sastha Temple was built for the idolisation of Lord Ayyappa who is believed to be the offspring of Lord Shiva and Goddess Mohini (Lord Vishnu's Female Avatar). The temple welcomes people of all religions. This temple, however, does not

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remain open throughout the year. It is open for worship only during the three days of “Mandalapooja, Makaravilakku and Vishu”. The pilgrims have to observe a period of celibacy which is for 41 days before going to Sabarimala.³

Lord Ayyappa was an eternal celibate and since times immemorial women of menstruating age, that is, between 10 to 50, were forbidden from entering the temple. According to the Puranas, Lord Ayyappa was born with a purpose to defeat and kill a female demon. As a child born of Lord Shiva and Lord Vishnu, he was a result of union of forces. After fulfilling his mission of killing the female demon, a beautiful woman emerged from the body. She had been cursed and now was released because of Lord Ayyappa. On being asked to marry her, Lord Ayyappa refused because he had to return to Sabarimala to answer his devotees’ prayers and questions. He promised to marry her when kanni-swamis (first devotees) stop visiting him. She is portrayed as waiting for him in the neighboring shrine near the main temple and is worshipped as Malikapurathama. The women of menstruating age do not enter the temple out of respect for Malikapurathamma and to respect Lord Ayyappa’s celibacy.⁴

This restriction was first challenged in the Kerala High Court in the year 1991 in the case *S. Mahendran v. The Secretary, Travancore Devaswom Board*.⁵ However, the High Court upheld the age-old restriction on women of a certain age group from entering the temple. The judgment dated 28 September 2018 by the Supreme Court in the *Indian Young Lawyers’ Association v. State of Kerala*⁶, struck down the said ban on women. The Constitution Bench headed by the then Chief Justice Dipak Misra in a 4:1 verdict said the temple rule violated their right to equality and right to worship and therefore, lifted the said ban. However, Justice Indu Malhotra did not agree with the given judgment and was the lone dissenter in the case. The judgement that has been given is not completely satisfactory on the part of the worshippers and the believers of the said custom. Justice Indu Malhotra is of the view that an age-old custom that is

³ GOVERNMENT OF KERALA, SABARIMALA SHREE DHARMA SASTHA TEMPLE <http://www.sabarimala.kerala.gov.in> (last visited Oct. 11, 2021).

⁴ M.A Deviah, *Here's why women are barred from Sabarimala; It is not because they are 'unclean'* FIRST POST (Oct 11, 2021, 05:10 PM) <https://www.firstpost.com/india/why-women-are-barred-from-sabarimala-its-not-because-they-are-unclean-2583694.html>

⁵ AIR 1993 Ker 42.

⁶ (2019) 11 SCC 1; AIR 2018 SC (Supp) 1650; AIROnline 2018 SC 243

religious in nature should not be tampered with and worshipping is a sacred thing between the worshipper and the worshipped.

II. An Analysis of the Judgment Allowing Menstruating Women in the Sabarimala Temple

The Chief Justice of India Hon'ble Dipak Misra, R.F. Nariman, J., A.M. Khanwilkar, J. and D.Y. Chandrachud, J. constituted the majority whereas Indu Malhotra, J. constituted the sole dissenting judgement.

A. An Analysis of the Majority Judgment⁷

Dipak Misra, CJI and A. M. Khanwilkar, J.

The judgment on behalf of himself and A. M. Khanwilkar, J., Dipak Misra, CJI expressed that women are in no way inferior to men. There cannot be any religious patriarchy in matters of faith and belief. The duality in religion is what made them question the validity of the said restriction. On one hand, women are revered as goddesses and on the other, severe restrictions are imposed on their right to religion.

It is the need of the hour for society to undergo a reformation and transition from a patriarchal hegemony to giving equal status to women with that of their male counterparts. Religion and faith do not support or encourage discrimination, however, religious practices have perpetuated patriarchal notions and have given superiority to men.

The exclusionary practice of not allowing women of menstruating age, i.e. 10-50 years old, from entering the temple is violative of Article 14 as the exclusion is based on physiological conditions beyond the control of women. In *Deepak Sibal v. Punjab University* and another⁸, the Supreme Court held that exclusionary practice violates the sacrosanct principle of equality of status to women and also equality before law. In *Shayara Bano v. Union of India*⁹, as the giving of triple talaq gave men superiority and was based on physiological

⁷ WRIT PETITION (CIVIL) NO. 373 OF 2006

⁸ (1989) 2 SCC 145 (India).

⁹ (2017) 9 SCC 1. (India).

factors, neither did it serve any valid object nor satisfied the test of reasonable classification hence the practice was abolished.

In *National Legal Services Authority v. Union of India*¹⁰ and *Justice K.S. Puttaswamy and another v. Union of India and others*¹¹, the Supreme Court averred that exclusionary practices against women violates the fundamental right guaranteed under Article 21 of the Constitution, namely right to life and personal liberty.

Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 is violative of Article 25(1) of the Constitution, that is, the right to practice, profess and propagate religion. The Rule forbidding the women of menstruating age from entering the Sabarimala premises is a clear violation of the right of Hindu women to practice their right to religion and therefore, ultra vires the Constitution. Coming to the factual score, the petitioners of the concerned case namely; the Indian Young Lawyers' Association, Bhakti Pasrija, Laxmi Shastri, Purna Kumari, Alka Sharma and Sudha Paul, contended that the Sabarimala Temple is not a separate religious denomination. Since they conduct 'Puja' which is one of the tenets of Hinduism, the Ayyappans are also Hindus.

In *S.P. Mittal v. Union of India & Ors*¹², the Supreme Court held that the words 'religious denomination' in Article 26 of the Constitution must take their true meaning from the term 'religion', therefore, the expression 'religious denomination'. Therefore, there has to be a strong connection amongst the members of the denomination. Such denominations must be comprehensively distinct with a particular set of rituals, usages or practices and have their own distinct name and religious institutions. If the attributes vividly reflect that there exists a sect which can be identified as being distinct by its practices and beliefs and has a group of individuals as followers who follow the same faith, it would thus be a 'religious denomination'.

¹⁰ (2014) 5 SCC 438(India).

¹¹ (2017) 10 SCC 1(India).

¹² 1983 AIR 1; 1983 SCR (1) 729. (India).

In the Indian context, the concept of essential practices has evolved gradually and considerably and has made possible the courts' intervention in the religious aspect.¹³ The issue of doctrine of essential religious practices was first raised in Shirur Mutt,¹⁴ in the year 1954 wherein, a bench comprising seven judges of the Supreme Court addressed a challenge raised at the Madras Hindu Religious and Charitable Endowments Act 1951. The impugned enactment gave powers of framing and settling any scheme to a statutory commissioner. There existed ample reason to believe that the concerned religious institution was misgoverning funds. The petitioner felt that his right to manage religious affairs was being violated and encroached and as a result violated Article 26(b) of the Constitution.¹⁵ Distinguishing between religious and secular practices the Court held that what constitutes the essential part of a religion is primarily to be ascertained regarding the doctrines of that religion itself.

The legitimate parameter of deciding on religious issues (on violation of civil rights) and duly interfering in religious matters is passably narrow. It is an arduous task to differentiate between religious ritual and what is a right to worship itself.¹⁶ The civil court will not interfere in the matters and questions which are not related to the right to worship per se but to the manner of how the worship should be conducted. In *Bijoe Emmanuel v. State of Kerala*,¹⁷ the Headmistress of a school in Ettumanoor near Kottayamschool, expelled three children, namely Bijoe, Bino Mol and Bindu Emmanuel. The reason for the same was refusal to sing and join along the other students for singing the National Anthem. These kids belonged to Jehovah's Witnesses and had approached the High Court of Kerala through a writ petition to challenge the action of their Headmistress. The children belonging to this sect exercising their

¹³ Gilles Tarabout, *Ruling on Rituals: Courts of Law and Religious Practices in Contemporary Hinduism*, SOUTH ASIAN MULTIDISCIPLINARY ACADEMIC JOURNAL, (Oct, 11 2021, 5:17 PM)

<https://journals.openedition.org/samaj/4451>.

¹⁴ 1954 SCR 1005.

¹⁵ LEGITQUEST <https://www.legitquest.com/case/indian-young-lawyers-association-v-the-state-of-kerala/105124> (last visited Oct 12, 11:17 AM).

¹⁶ *J. Gopanna v. K. Ramaswami*, AIR 1944 Mad 416.

¹⁷ 1987 AIR 748, 1986 SCR (3) 518. (India).

right to worship contended that they could only sing non-secular or religious songs.

The petitioners have submitted that even if Sabarimala temple were considered as a religious denomination, their basic tenets are not restricted only to the oath of celibacy for certain period of pilgrimage as all pilgrims are allowed freely in the temple and there is no such practice forbidding them the sight of women during this period.¹⁸ Furthermore, the oath of celibacy cannot be so weak to be broken by a mere sight of women. Therefore, maintaining celibacy is only a ritual that a few Ayyappans follow and a few don't. The devotees of Ayyappa do not go to the Sabarimala Temple only to take the oath of celibacy, they go to receive abundant blessings from their Lord.

This case also discusses about public morality and constitutional morality. The concept of morality should not be looked into with a narrow lens. The term morality in Article 25(1) is not confined to individual perception or subjective morality. The Constitution is adopted and given by the people to themselves, therefore, the concept of morality is public morality and has to be understood as apposite to constitutional morality.

Justice R.F. Nariman

Although Justice Nariman had a separate judgment but it is concurring to the judgment delivered by Dipak Misra, CJI on behalf of A.M. Khanwilkar, J and himself. Nariman, J said that the concerned writ petition raises substantial question of fundamental rights under Articles 25 and 28. The complete and indefinite exclusion of women can be said to be violative of Article 25 of the Constitution.

As was held by the Supreme Court in *Ratilal Panachand Gandhi v. State of Bombay and Ors.*¹⁹, that the freedom of religion under Article 25 of the Constitution means to perform those acts which is in pursuance of the concerned religion and forms an essential practice of the same. However, this right is subject to State regulation to secure order, public health and morals.

¹⁸ SUPREME COURT OF INDIA,
https://main.sci.gov.in/supremecourt/2006/18956/18956_2006_Judgement_28-Sep-2018.pdf (last visited Oct. 13 2021).

¹⁹ 1954 SCR 1055 (India).

The term religion as defined by Fields, J. in the American case of *Davis v Beason*²⁰, as one's manner in defining his relation with the Creator and having reverence obligations and obedience towards the Will of the Creator. Although, religion can be expressed by outwardly acts, it is highly intrinsic and something that can be considered conducive to their spiritual well-being. Hence, the complete prohibition on women is a hindrance to their right to worship.

In *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*²¹, although the then Chief Justice Sinha dissented from the majority judgment of striking down the Bombay Prevention of Excommunication Act, 1949, his dissenting judgment contained parts that were apposite to the majority judgment. Therefore, it was laid down that the right guaranteed under Article 25 is an individual right distinct from right exercised by a collective body or a religious denomination. Hence, every member of the community, as long as he/she does not hinder the rights of others, can profess, practice and propagate his/ her religion.

Justice D.Y. Chandrachud²²

Justice D.Y. Chandrachud emphasised on the importance of the principles laid down in the Preamble of our Constitution namely, justice, equality, liberty and fraternity. Secularism has always impliedly been a part of our Constitution, however, it was explicitly inserted into the Preamble by the 42nd Constitutional Amendment Act, 1976. The custom in question goes against the very ideology of the Constitution framers. As the Constitution recognises religion as intrinsic and gives the right to freedom of religion to its people, it is equally important to ensure the same.

Chandrachud J., also put for that the custom in question is violative of Article 17 of the Indian Constitution. Article 17 abolishes untouchability and its practice in 'any form'. The Constitutional framers have deliberately left the term 'untouchability' undefined. The fundamental reason of abolishing

²⁰133 U.S. 333. (USA).

²¹ 1962 Supp. (2) SCR 496.

²² SUPREME COURT OF INDIA,

https://main.sci.gov.in/supremecourt/2006/18956/18956_2006_Judgement_28-Sep-2018.pdf (last visited Oct. 13 2021).

untouchability is to uproot the practice of social ostracisation and to bring equality.

The custom can be seen as one that promotes the notion of purity and pollution and ostracises women because of ‘impurity’ during their menstruation. As the Article mentions “any form”, prohibiting the entry of women into the premises of a temple can also be considered as a form of untouchability. Explanation II of Section 7 of the Protection of Civil Rights Act, 1955 explains untouchability as untouchability or its practice in any form and even if a person tries to justify the practice on historical, religious or philosophical ground, it would be incitement to untouchability.

B. Justice Indu Malhotra’s Dissenting Judgment

Justice Indu Malhotra said the right to equality conflicted with the right to worship of devotees of Lord Ayyappa and the deity of the Sabarimala temple; and that the doctrine of equality cannot override the fundamental right to worship under Article 25 of the Constitution. The issues raised in this case have serious and unprecedented consequences for various religions professed throughout the country. Which has turned out to be true as the nine-judge Bench constituted will also hear the matters of religious practices in connection to women belonging to Islamic and Zoroastrian religions.

Maintainability of Writ Petition

Article 32 of the Indian Constitution provides the right to move the Supreme Court for the violation of Fundamental Rights. Therefore, the petition filed by the petitioners of the Sabarimala Temple must have their rights violated. However, the petitioners do not claim that their rights have been violated. She also added that permitting religious PILs will lead to overburden amongst courts and encroaching religious customs or practices in question. Concerning the legal requirement of having locus standi, it became necessary to define who should be considered as a worshipper, that is, the worshippers need to have a personal interest in a given conflict to be allowed to file litigation. It is important for the petitioner to have an interest in the petitioned case or else the petition stands rejected.²³ In *Chockalingam v. Nambi Pandiyan*²⁴, it was held

²³ WRIT PETITION (CIVIL) NO. 373 OF 2006.

²⁴ S.A.(MD).No.1075 of 2009.

that the matters of any temple can be taken to the court by worshippers peculiar to the temple only. The Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, under clause (15)(b) of Section 6 defines the phrase 'person having interest' as one who frequents the temple or any temple services or performance of worship or is entitled to any benefit.

For instance, the Lord Brahma's temple at Pushkar in Rajasthan dating back to the 14th century is one of the most significant temples for the worship of Lord Brahma. The married men are forbidden from entering the temple. During Kartik Poornima, Kartik religious festival is held annually in Brahma's reverence.²⁵

It is believed that Maa Parvati went to a secluded site amidst an ocean for 'Tapasya' or meditation. This 'Tapasya' was to get Lord Shiva as her husband. Therefore, only women are allowed in the famous temple of Kanya Kumari of Goddess Bhagati Maa and men are strictly prohibited there. In this temple, Kanya Maa Bhagwati Durga is worshipped by women only.

A Mata temple at Muzaffarpur in Bihar during the special period only women devotees are allowed to enter the temple, not even the Pujari of the temple is allowed to enter the premises.

Applicability of Article 14 of the Constitution of India

Indu Malhotra J. further pointed out that Article 14 comes into force when situations are similarly placed, i.e. by persons either belonging to the same religion, sect or faith. The petitioners are not the devotees of Lord Ayyappa and are not aggrieved by the said custom. The right of an individual to worship is protected under Article 25(1) of the Constitution.

A restriction imposed by reason of a statute, must be upheld in the event it is found that the person to whom the same applies, forms a separate and distinct class and that such classification is a reasonable one based on intelligible differentia having sufficient nexus with the object to be achieved.²⁶ Keeping this in mind, it is safe to say that the Kerala Hindu Places of Worship Act is valid and owing to long usage of custom the restriction imposed on women is

²⁵ Editorial "Temples or Rituals in India Where Men are Not Allowed", *The Fresh Press Journal*, Apr. 26, 2016.

²⁶ *John Vallamattom v. Union of India*, (2003) 6 SCC 611; AIR 2003 SC 2902. (India).

also valid. If a special law can be passed for Shri Jagannath Temple for holding a unique position among the Hindu temples,²⁷ it becomes important to recognise the uniqueness of Sabarimala temple also and respect the deity's celibacy.

Article 14 can not be the sole touchstone to test religious customs and practices and Article 24 gives the right to profess and propagate their religion. Equality in matters of religion must be perceived in the milieu of the worshippers of the same faith.

Article 17: Whether applicable or not?

The petitioners contended that the said custom is a form of 'Untouchability' under Article 17 of the Constitution and is in this way a culpable offence. Be that as it may, all types of prohibition are not under untouchability. Article 17 specifically relates to class based ostracisation. The impugned custom is predicated upon the verifiable root and the convictions and practices of the Sabarimala Temple. In the current case, women of the any age group are allowed entry into every other temple of Lord Ayyappa where he has not shown Himself as an abstinent or a celibate. The limitation on the passage of women in this Temple is because of the novel character of the God and not founded on any social avoidance. The comparison between the Dalits and women of impermissible age limit is misjudged and impractical.

During the constitutional debates, Mr V.I. Muniswamy Pillai had stated that under caste distinction they suffer tyrannically at the hands of so-called higher caste Hindus. All those people who were not of higher class like that of landlords were barely treated as human beings. He believed that by the adoption of the untouchability clause, many a Hindu who is a Harijan will have a place in society.²⁸

Dr Mono Mohan Das while accepting the meaning of untouchability under our Constitution or the then Draft Constitution quoted Gandhi. Gandhiji said that he did not want to be reborn but if he would be born again then he preferred to be born as a Harijan or an untouchable so that he can lead a life of constant battle

²⁷ Bira Kishore Das v. State of Orissa, AIR 1964 SC 1501; (1964) 7 SCR 32. (India).

²⁸ CASEMINE, <https://www.casemine.com/judgement/in/5baf12129eff430ce6534b78> (last visited Nov 13, 2021).

against persecution and insults that have been loaded upon these classes of individuals since as long as memory serves.

In *Sri Venkataramana Devaru & Ors. v. State of Mysore & Ors.*,²⁹ the Supreme Court observed that one of the biggest problems faced by the people trying to eliminate religious evils is superstition and lack of acceptance living amongst all other communities. Therefore, the social reformers attempted to eliminate this social evil which impelled the enactment of Article 17, which abolished untouchability and forbade its practice in any form and also made it a punishable offence. Furthermore, not a single precedent exists in a manner brought forth by the petitioners. It is of significance to mention that this submission was rejected by the Counsel of the State of Kerala.

III. Reactions to the Sabarimala verdict dated 28.09.18

An online survey was conducted by the author amongst the advocates and non-advocates from Kerala³⁰ for a better and a closer understanding of the impact of the judgment.

Reaction to the Judgment by the Advocates

The majority (56%) supported Justice Indu Malhotra's dissent and were of the opinion that the followers have severely opposed to the judgment as it was against their belief and customary practice. They also opined that if the society needs to change certain traditions it must be implemented judiciously and not forcibly. Furthermore, they were of the opinion that the Supreme Court should not have indulged in sacrosanct religious affairs.

As far as the non-followers are concerned; their view is totally opposite to that of the followers. The non-followers supported the judgment as they viewed it in a more pragmatic sense and believed that lifting such ban would prove beneficial to women empowerment and granting equality to women in matters of religion.

As far as the Kerala Government's response was concerned, it was found that they had a divided opinion. One half believed that the government welcomed

²⁹ 1958 AIR 255, 1958 SCR 895. (India).

³⁰ The platform used for the survey was Google Forms.

the judgment at first and supported the women's right to enter the temple bit after the continuous riots and strikes by the people, the government took a different stand. The other half opined that the government advocated pseudo-feminism by promoting, volunteering and actively encouraging women to enter the temple premises.

The majority (56%) believed that the judiciary or the government can indulge on a matter that is predominantly a matter of faith and religion, however, to indulge cautiously and without hampering our constitutional mandate of secularism.

Reaction to the Judgment by the Non-Advocates

The majority (64%) of the non-advocates viewed it as a step towards achieving gender equality. As a resident of Kerala, 55% found the judgment to be reasonable. However, 55% are of the view that the judgment did not sit very well with the women from Kerala in particular.

The majority (70%) do not view the lifting of such a ban as an interference on customary practices and neither an anti-secular judgment. Rather they are of the opinion that lifting of such a ban determines secularism for the as the custom was unreasonable and illogical.

The majority (73%) believed that the verdict will make Hinduism all-inclusive and will not reduce Sabarimala to a mere tourist spot. Rather, the verdict have a positive impact on eliminating discriminatory customary practices.

IV. Post Judgment Developments

On November 14, 2019 the Bench with a majority of 3:2 referred the case to a larger Bench. Justices Nariman and Chandrachud constituted the dissenting judgment dismissing all the review pleas. Chief Justice Ranjan Gogoi read the verdict on behalf of himself and Justices AM Khanwilkar and Indu Malhotra; he said the larger bench would decide all such religious issues relating to

Sabarimala, the entry of women in mosques and the practice of female genital mutilation in the Dawood Bohra community.³¹

The 9-judge bench constituted by the Supreme Court headed by the then Chief Justice S.A. Bobde commenced the hearing on the aforementioned issues on February 06, 2020.³² The 9-Judge Constitution Bench thus constituted comprises the then Chief Justice of India S.A. Bobde and Justices R Banumathi, Ashok Bhushan, L Nageswara Rao, Mohan M Shantanagoudar, S Abdul Nazeer, R Subhash Reddy, BR Gavai, and Surya Kant and shall cater to seven questions.³³

The questions are as follows³⁴:

1. The interrelation between Articles 14, 25 and 26, i.e., right to equality, the right to freedom of religion and the right to manage religious affairs respectively.
2. The meaning and the intent of the words 'public order, morality and health' occurring in Article 25(1) of the Constitution.
3. The expression 'morality' or 'constitutional morality' has not been defined in the Constitution.
4. The extent to which the court can intervene in deciding whether a particular religious practice is essential to the religion or not, or should that be left exclusively to be determined by the head of the section of the religious group.
5. What is the meaning of the expression 'sections of Hindus' appearing in Article 25(2)(b) of the Constitution?

³¹ MURALI KRISHNAN, *Sabarimala Review: Majority Judgment explained*, BAR AND BENCH (Nov 14, 2021, 4:30 PM) <https://www.barandbench.com/columns/sabarimala-review-majority-judgment-explained>.

³² THE WIRE, <https://thewire.in/law/sabarimala-verdict-supreme-court> (last cosine Nov. 13, 2021).

³³ BAR AND BENCH, <https://www.barandbench.com/news/9-judge-bench-reference-in-sabarimala-review-lawyers-to-meet-on-jan-17-to-chart-out-course-of-hearing> (last visited Nov 17, 2021).

³⁴ *Supra*

6. Whether the “essential religious practices” of a religious denomination, or even a section thereof are afforded constitutional protection under Article 26?
7. What would be the permissible extent of judicial recognition to PILs in religious affairs by people not belonging to the concerned religious denomination?

At the outset, a core committee member of the Sabarimala Temple urged the Court to hear and decide the review petition in light of submissions made by the head of the committee. However, CJI Bobde responded:

“We are not hearing the review petition, are only hearing the 7 points as mentioned in the reference.”³⁵

Therefore, at present the review petition for the Sabarimala judgment has been kept aside and matters of public importance in terms of elision is in the forefront.

V. Conclusion

This research attempted to provide an in-depth analysis of the Indian Young Lawyers Association v. State of Kerala³⁶ case and assess the Apex Court in matters of religious interference.

This assessment has been made on account of the history of the Sabarimala Temple and the present scenario of the devotees of the Temple. The worshippers of Lord Ayyappa of the Sabarimala Temple or the ‘Ayyappans’ as they would prefer to call themselves, vehemently believe that their idol is a celibate and have been upholding the custom of barring women of child-bearing years to enter the Temple. The Supreme Court on September 28, 2018, held that the aforementioned custom as protected under Rule 3(b) of the Kerala Hindu Places of Worship Rules, 1965 is unconstitutional as it violates Articles 14, 15, 25 and 51A(e) of the Constitution of India and ordered to pass further directions for the safety of women pilgrims.

³⁵ *Supra*

³⁶ (2019) 11 SCC 1; AIR 2018 SC (Supp) 1650; AIROnline 2018 SC 243

The language of Rule 3(b) of the 1965 Rules, that protects the custom is very ambiguous. It states women are absolutely barred from entering a place of public worship at 'such time 'are not allowed to enter 'by custom', shall not enter the premises of the Temple. It does not explicitly clarify what 'such time ' and 'by custom 'means. The terms 'by custom 'indicate that in the Hindu religion women are forbidden to enter into places of worship during 'such time'. The case refers that women from 10 to 50 years of age are forbidden from entering the premises of the Sabarimala Temple. However, female anatomy cannot assure menarche and menopause at that time span. It is not possible to assume menstruating women belong to a certain age. It may happen that a girl child of 8 years and a woman of 55 years is menstruating. It may also happen that a girl child of 15 years of age has not begun menarche. Therefore, whether 'such time 'means 10-50 years or any time a female begins menstruating cannot be confirmed. As wrong as it is to assume menstruation, it would be equally wrong to ask women to confirm the same. Therefore, there is no straitjacket formula to determine menstruating women.

Custom is very intrinsic to every individual. It is something that has been practised for a very long time with tremendous reverence. However, customs can have both positive and negative impacts on society. For example, the Hindu custom that dictated widow burning or Sati had a very degrading and inhuman standpoint. Therefore, it had to be abolished. There are other customs which hold a lot of spiritual value in the lives of the people, for example, the Hindu custom of saptapadi or seven circles of vows of marriage. This custom is an essential religious practice and does not adversely harm any person or their rights whatsoever. Therefore, it becomes utterly important for the judiciary to harmonise contradicting customs, protect the citizens from any existing social evils and also equally important to respect the citizens 'customs.

The problem began when the aforementioned judgment was not accepted by the mass followers and protests broke out when women tried to enter the premises. The devotees have been aggrieved by the judgment, however, the petitioners were not aggrieved by the custom. In the tussle of collective customary rights and individual rights, it is usually the former that prevails. However, in this case, the individual rights of the women to worship has been granted and the

right to worship of the devotees based on collective customary practice has been denied.

Lord Ayyappa has manifested himself in several forms and is worshipped in those forms in various temples. Women are prohibited entry only in one Temple where he is depicted as an eternal celibate and are allowed to worship him in other temples in other forms. On one hand, it can be contended that the Supreme Court made this judgment in order to change people's perspective towards menstruation and the attached stigma, which can also be termed as judicial activism. Whereas, on the other hand, the Supreme Court forcing the devotees to let women enter the premises can be seen as a sign of judicial overreach. It is an arduous task to define the line between judicial activism and judicial overreach. Judicial activism means to render justice by the judiciary by unprecedented measures for e.g. Public Interest Litigation and suo moto cognizance and judicial overreach is when judicial activism crosses its limits. This case is a classic example of both judicial activism and judicial overreach wherein one half of the population, that is to say, the petitioners and the supporters of the judgment strongly believe that it is judicial activism. Whereas, the other half of the population, including the devotees and the supporters of the custom, believe that it is judicial overreach.

The question that arises in this case is whether the rights arising out of a customary practice can supersede individual rights. The judgment explicitly holds the statement untrue and states that individual rights to worship supersedes collective customary rights. However, this judgment is not exhaustive and it depends upon every case as to which one of the rights is more important to meet the ends of justice. But, this judgment has received its fair share of criticism and rejection.

This judgment, however, has been welcomed by those wanting to end the stigma attached to menstruation, as it is a natural physiological phenomenon it should not be a ground of discrimination in matters of the right to worship. Both men and women have equal freedom of the right to worship.

As Indu Malhotra J. said in the 2018 judgment that allowing women to enter into Sabarimala premises will lead to more serious ramifications. The unacceptance of this judgment led to a lot of review petitions and finally on November 14, 2019, the Supreme Court referred this case to a larger Bench,

now comprising nine judges. This case has opened up a floodgate of unanswered religious questions, therefore, the Bench will also take into account matters concerning essential religious practices of Zoroastrian, popularly known as Parsis in India, Dawoodi Bohra and Islamic religions.

It can be said that customs should be made very clear and unambiguous so that neither the judiciary nor the followers of the concerned custom have any problem regarding its practice or malpractice. Individual and collective rights are two distinct types of rights which more often than not, will be in conflict with one another. Hence, it is the task in the hands of the judiciary to harmonise these two contradictory rights in a manner that does not adversely affect the other. Every case has its unique characteristics and with the expertise of the judges and advocates, it is possible to strike a balance between the two.