

**WOMEN AND RELIGION WITH SPECIAL REFERENCE TO SABRIMALA  
JUDGEMENT**

RUPESH SINGH\*

**Abstract**

There is a very famous saying in India “Yatra Naryastu puhyante! Ramante tatra Devata!...” that means where women are respected, gods make their home. “It is a universal truth that faith and religion do not countenance discrimination but religious practices are sometimes seen as perpetuating patriarchy thereby negating the basic tenets of faith and of gender equality and rights. The societal attitudes too centre and revolve around the patriarchal mindset thereby derogating the status of women in the social and religious milieu. All religions are simply different paths to reach the Universal One. Religion is basically a way of life to realize one's identity with the Divinity. However, certain dogmas and exclusionary practices and rituals have resulted in incongruities between the true essence of religion or faith and its practice that has come to be permeated with patriarchal prejudices. Sometimes, in the name of essential and integral facet of the faith, such practices are zealously propagated”.<sup>1</sup> Having considered the above position of woman in religious practices the Hon'ble Supreme Court of India has delivered its judgement in case of **Indian Young Lawyers Association and Others v. State of Kerala**<sup>2</sup> saying that entry of female devotees between the age group of 10 to 50 years to the Lord Ayyappa Temple at Sabarimala (Kerala) which has been denied to them on the basis of certain custom and usage is unconstitutional as violative of Article 14, 15, 25 & 51 (A) of the Constitution of India. With all due regard to the opinion of Supreme Court, this paper will include that Article 25 is based on practice of religion and religious faith on equal basis to all with respect to the public religious institution. This paper says that the very Right of Article 25 is based on the faith in religion and if in Sabarimala temple God (Lord Ayyappa), who is considered to be living entity in Hindu religion, has himself provided that he will not give **darshana** to the women of certain age as He is observing celibacy in that temple and if woman still wishes to take that '**Vratham**' going against the will of the same God who does not want to give darshana to such woman that is justified even on constitutional parameters as **Article 25 is subject to 'morality'**. The Hon'ble Apex Court, however, while deciding the question of equality has totally discarded this very important aspect morality.

**Introduction**

THERE is a very famous saying in India “Yatra Naryastu puhyante! Ramante tatra Devata!...” that means Where women are respected, gods make their home. The irony that is nurtured by the

---

\* Guest Faculty at Lloyd Law College, Greater Noida.

<sup>1</sup> This extract is taken from *Indian Young Lawyers Association and Others v. State of Kerala 2018 SCC OnLine SC 1690 at page no. 296.*

<sup>2</sup> 2018 SCC OnLine SC 1690.

society is to impose a rule, however unjustified, and proffer explanation or justification to substantiate the substratum of the said rule. Mankind, since time immemorial, has been searching for explanation or justification to substantiate a point of view that hurts humanity. The theoretical human values remain on paper. Historically, women have been treated with inequality and that is why, many have fought for their rights. Susan B. Anthony, known for her feminist activity, succinctly puts, “Men, their rights, and nothing more; women, their rights, and nothing less”. It is a clear message.

### **History of Lord Ayyappa Temple, Sabrimala**

#### **Historical Background**

Sabarimala, one of the most protruding temples in Kerala after Lord Ayyappa is centuries old and has visitors and worshippers from all over the world. The temple has several customs known as “Acharas” which include restricting women aged (10 - 50) from entering into the temple. This distinct deity at the temple is a configuration of a “Naishtik Brahmachari” practising rigorous atonement and chastity. From the ancient times, it is asserted that the deity at Sabarimala had its human sojourn at ‘Pandalam’ as the son of ‘King of Pandalam’ named as “Manikandan”, who was found on the river bank wearing the ‘Mani’ (pearl).

The king was told by the Lord to build the temple on the banks of same Holy river “Pampa” and to place the deity there. The king hence built up the temple as directed and dedicated it to Lord Ayyappa. Thus deity placed in the temple showcased the lord as “Naishtik Brahmachari”.

The rule of celibacy is taken very seriously and includes celibacy in thought and action. Ayyappas are advised to look upon all women older than them as mothers and those younger as daughters or sisters. Menstrual taboos are now strictly imposed. Sexual cohabitation is also forbidden. During the vratam, Ayyappas not only insist on these taboos being rigidly followed but they go a step further and insist on physical separation. It is not uncommon for a wife, daughter or sister to be sent away during her menses if a male member of the household has taken the vratam<sup>3</sup>.

#### **Relevance of Centuries- old Customs**

As per the beliefs from ancient times it is said that Lord Ayyappa clearly explained the method that has to be undertaken to attain pilgrimage after observing 41-days “Vratham”.

As said by our ancestors Lord Ayyappa himself took up 41-days “Vratham” before he moved to Sabarimala Temple to merge with the deity. This procedure of worshipping the deity was revealed by the lord himself and is mentioned in “Sthala Purana” i.e. the ‘Bhuthanatha Geetha’. This 41-days ‘Vratham’ is an age-old practice and is usually done to train the devotees for spiritual realization of oneself. This ‘Vratham’ is an important ingredient to observe the “Sattvic” lifestyle and bring peace and calmness to mind and soul. This ‘Vratham’ is usually observed to cut the man from the materialistic world and to fantasize him into the world of spirituality. Once

---

<sup>3</sup> *Ibid.*

this vratham is undertaken by any pilgrim he has to dispartate himself from all the women folk including women of his own family i.e. his wife, daughter, mother etc.

### **Understanding “Vratham”**

The ‘Vratham’ and atonement consist of:-

- Giving up of all kind of religion with spouse;
- Giving up all alcoholic and intoxicating food items and drinks;
- Living in isolation;
- Cooking all Food;
- Bathing twice in a day;
- Wearing black mundu or veshti along with an upper garment;
- Walking barefoot;
- Having a single meal in the entire day.

### **The Pilgrimage Process to the Sabrimala Temple**

After the completion of this 40-days ‘Vratham’, the pilgrims on 41st day take irumudi (consisting of rice and other provision for once own travel along with coconut filled with ghee and pooja articles) and begin their journey to “Sannidhanam” which is around 13 kms of climb through dense forest including river “Pampa”. The cultos members maintain the strictest celibacy before they undertake their journey.

### **Contentions of the petitioner challenging the Ban on entry of woman devotees in Lord Ayyappa Temple, Sabrimala**

The main contention of the petitioner in this case was that the entry of a woman devotee should be ensured by the Government of Kerala, Devaswom Board of Travancore, Chief Thanthri of Sabarimala Temple and the District Magistrate of Pathanamthitta to ensure entry of female devotees between the age group of 10 to 50 years to the Lord Ayyappa Temple at Sabarimala (Kerala) which has been denied to them on the basis of certain custom and usage; to declare Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 (for short, “the 1965 Rules”) framed in exercise of the powers conferred by Section 4 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 (for brevity, “the 1965 Act”) as unconstitutional being violative of Articles 14, 15, 25 and 51A(e) of the Constitution of India and further to pass directions for the safety of women pilgrims. This is based on following grounds:-<sup>4</sup>

1. Out of several conditions for religious denominations put out one of the most important is that the devotees of Lord Ayappa have no record of any common religious belief peculiar to

---

<sup>4</sup> This extract is taken from *Indian Young Lawyers Association and Others v. State of Kerala 2018 SCC OnLine SC 1690*.

## WOMEN AND RELIGION WITH SPECIAL REFERENCE TO SABRIMALA JUDGEMENT

themselves which they take as beneficiary to their spiritual well-being other than those which are general in the Hindu religion Therefore, the “Ayappans” as generally referred to are just Hindus and do not form a separate religious denominations.

2. Having stated that the Ayappans do not form any religious denominations within the ambit of Article 26 and the temple is a public place by virtue of Article 15, it has all directions of powers and supervisions in the light of Travancore Devaswom Board which is also unveiled as other authority within the ambit of Article 12.

3. Moving ahead to the rights guaranteed by the constitution, it is crystal clear under Article 25(1) that the expression ‘all persons’ signifies the freedom of conscience and right to freely practice and preach any religion though subject to restrictions defined under Article 25(1), including women.

4. Article 25(1) has no mention of gender in particular or any other psychological matters attributable to women. It simply says that every person has a right to freely practise any religion under Article 25(1). When we say so we are relieved that any such proposed exclusion of women from entering into any religious places forms an essential part that would be examined at a later stage.

5. While speaking of morality under Article 25(1) of the constitution, it cannot be read in a restricted manner. It is important to note that when there is infringement of fundamental rights the term morality refers to constitutional morality and is ultimately considered by the courts in accordance with the values and tenets of this constitutional morality.

6. Article 17 prohibits untouchability “in any form” in order to abolish all practises based on notions of purity, and pollution. The exclusion of menstruating women is on the same footing as the exclusion of oppressed classes.

7. The term “morality” used in Articles 25 and 26 refers to Constitutional Morality, and not an individualised or sectionalised sense of morality. It must be informed by Articles 14, 15, 17, 38, and 51A.

So, these were the ground on which the ban on entry of the woman devotees from the age of 10 to 50 were challenged.

### **Arguments Advanced by the Respondents**

The grounds on which the ban of entry of the women devotees from the age of 10 to 50 years was justified by the respondents can be summarized as follows:

Apart from the sabrimala temple there are numerous other temples for worshipping Lord Ayappa where the deity is not embodied as ‘Naishik Brahmachari’ and the religious offerings in the temple also differ from that of sabarimala. Also these temples place no restriction on entry of women in the temple as the case is in sabarimala temple.

The restriction on entry of women in Sabarimala is an essential practice as its clear motive is to restrain any kind of distraction related to sex and the important objective is the creation of circumstances in all respect fortunate spiritual-practice. The age restriction imposed on women

in the temple is because of religion and religious faith and practice and they are the underlying 'pratishtha' for worshipping of the deity of Lord Ayappa.

The restriction on entry of women is not absolute and only girls aged between 10-50 are restricted while others can freely move into the temple and offer prayers. Moreover, the other temples of Lord Ayappa do not pose any such similar restrictions on entry of women. Therefore, the classification of age forms a nexus with the objects sought to achieve which is to protect the deity of 'Naishtik Brahmachari'.

Religious denomination as described in Article 26 should take light from the word 'religion' as described in the Constitution of India and must satisfy three conditions as mentioned in **S.P Mittal v. Union of India**<sup>5</sup>

1. Must be a group of individuals sharing common beliefs which they regard conducive to their spiritual well-being.
2. Same organisation
3. Designation by distinctive name.

Religious denominations have been described as religious maths, religious groups, religious bodies, religious sub-sects, or any segment thereof. The religious denominations who preach Ayappan Dharma are called Ayappans in males and all the female devotees below and beyond the prescribed age limit are called Mallikapurams. Every devotee has to act as per the traditions of the temple.

Where Article 25 of the Constitution focuses on other provisions of the fundamental rights, Article 26 focuses only on public order, morality and health. As a result, religious denominations do not fall under Article 14 and 15 of the Indian Constitution. Therefore, in view of Article 25(1) it was proposed that Lord Ayappa's worshippers had complete freedom of conscience and right to propagate and preach their religion thereby maintaining the deity's status as ' Naishtik Brahmachari'.

### **Supreme Court View: Codified Customs as a Violation of Fundamental Rights**

- Hon'ble Apex Court of India has given the majority decision with 4:1 declaring the ban on entry of certain class of woman as unconstitutional being violative of Constitution of India on the following grounds:-<sup>6</sup>
- This conventional practise, as codified in rule 3(b) of the 1965 in conjunction with the notices provided by the Travancore Devaswom Board dated October 21, 1955 and November 27, 1956 does not satisfy the tests as laid down in article 14, 15 and 21 of the Indian Constitution. This practise in the temple has no grounds of reasonable classification and differentia. It is entirely subjective, since it is based exclusively on physiological considerations and had no clear legal justification.

---

<sup>5</sup> AIR 1983 SC 1.

<sup>6</sup> This extract is taken from *Indian Young Lawyers Association and Others v. State of Kerala 2018 SCC OnLine SC 1690*.

## WOMEN AND RELIGION WITH SPECIAL REFERENCE TO SABRIMALA JUDGEMENT

- It is also in contravention with the Articles provided by the Constitution [Article 15(1)] as it discriminates solely on the grounds of “gender”. Moreover since the temple is a place of public gathering and is partly financed by the State under Article 290A, the practice violates not only Article 15(1), but also Article 15(2)(b).
- The right to worship and profess any religion is guaranteed by Article 25 of the Indian Constitution. The practise followed by Sabarimala temple infringes Article 25 also by restricting women from entering in the temple and thereby tapering their right to Worship and Profess which is guaranteed by the Indian constitution.
- The act is ultra-vires since Rule 3(b) of the Kerala Hindu places of worship, 1965 restricts women’s entry.
- It was also submitted by the Petitioner that in order for a religious denomination to be recognized, it must have the following characteristics: It must have its own property and organization that can be passed on to its members, It must have a separate identity from any existing faith, It must have its own community of adherents who commit to a series of values, habits, traditions, or beliefs. Lastly, it must have its own management hierarchy and is governed by outside agencies.
- It was believed that the pilgrims of Lord Ayyappa do not bring about religious denomination under Article 26 as they don’t share common faith or a definite name. In India, every temple has its own set of religious practices which differ from state to state. Minute differences do not separate religious denomination from one another.
- The religious denominations as mentioned above do not satisfy the test as mentioned by the courts. Even if we take Sabarimala to be a place of religious denomination, the restriction on the entry of women is not a reasonable religious practice. Any law or custom protected under Article 26 must have constitutional legitimacy.
- The practice of refraining women from entering the temple is violative of Article 21 as it hurts the sentiment of women henceforth making them feel tainted. This practice undermines the dignity of women as per Article 21.
- This practice also violates Article 17 of Indian Constitution which draws our attention towards untouchability. Exclusion of women from public places based on menstrual cycle aggravates untouchability thus infringing Article 17 of Constitution.
- The Sabarimala temple is under the authority of a statutory body named Travancore Devaswom Board. As per the rules a public place is established for the public at large. The right of entry in the temple is a legal right and the statutory authority has no right on same. The Travancore Devaswom Board is a statutorily created authority under the Travancore- Cochin Hindu Religious Institution Act, 1950 and it receives a partial payment from a consolidated fund of India. The fundamental right under Article 25(1) is available to both men and women without any discrimination on the basis of gender. Thus the right to enter into a temple is a fundamental right of a woman guaranteed by constitution.
- Article 17 prohibits untouchability of any kind to bring an end to any kind of notions of purity and pollution and the exclusion of women is on the same footing. The use of morality under Article 25 and 26 constitutes constitutional morality and not an individual morality.

On the basis of the aforementioned grounds which were taken into consideration while delivering the majority judgment by the Hon’ble Supreme Court of India declaring the ban on

entry of a woman from 10 to 50 as unconstitutional, however Hon'ble apex court should have taken into consideration the following grounds as well:-<sup>7</sup>

- i. The custom and usage of restricting the entry of women in the age group of 10 to 50 years followed in the Sabarimala Temple is **pre-constitutional**. As per Article 13(3)(a) of the Constitution, "law" includes custom or usage, and would have the force of law. The characteristics and elements of a valid custom are that it must be of immemorial existence, it must be reasonable, certain and continuous. The customs and usages, religious beliefs and practises as mentioned above are peculiar to the Sabarimala Temple, and have admittedly been followed since centuries.
- ii. The exclusion of women in this Temple is not absolute or universal. It is limited to a particular age group in one particular temple, with the view to preserve the character of the deity. Women outside the age group of 10 to 50 years are entitled to worship at the Sabarimala Temple. The usage and practice is primary to preserve the sacred form and character of the deity. It was further submitted that the objection to this custom is not being raised by the worshippers of Lord Ayyappa, but by social activists.
- iii. There are about 1000 temples dedicated to the worship of Lord Ayyappa, where the deity is not in the form of a 'Naishtik Brahmachari'. In those temples, the mode and manner of worship differs from Sabarimala Temple, since the deity has manifested himself in a different form. There is no similar restriction on the entry of women in the other Temples of Lord Ayyappa, where women of all ages can worship the deity.
- iv. If women as a class were prohibited from participation, it would amount to social discrimination. However, this is not so in the present case. Girls below 10 years, and women after 50 years can freely enter this Temple, and offer worship Further, there is no similar restriction on the entry of women at the other Temples of Lord Ayyappa. The classification of women between the ages of 10 to 50 years, and men of the same age group, has a reasonable nexus with the object sought to be achieved, which is to preserve the identity and manifestation of the Lord as a 'Naishtik Brahmachari'.

The abovementioned grounds should have been considered by the court as the practice is based on the very reasonable prohibition.

### **Sum Up:**

Having considered the above position of woman in religious practices the Hon'ble Supreme Court of India has delivered its judgement in case of **Indian Young Lawyers Association and Others v. State of Kerala**<sup>8</sup> saying that entry of female devotees between the age group of 10 to 50 years to the Lord Ayyappa Temple at Sabarimala (Kerala) which has been denied to them on the basis of certain custom and usage is unconstitutional as violative of Article 14, 15, 25 & 51 (A)e of the Constitution of India.

With all due regard to the opinion of Supreme Court, it is submitted that Article 25 is based on practice of religion and religious faith on equal basis to all with respect to the public religious institution. The very Right of Article 25 is based on the faith in religion and if in Sabarimala

---

<sup>7</sup> This extract is taken from *Indian Young Lawyers Association and Others v. State of Kerala 2018 SCC OnLine SC 1690, the dissenting opinion of Justice Indu Malhotra.*

<sup>8</sup> 2018 SCC OnLine SC 1690.

**WOMEN AND RELIGION WITH SPECIAL REFERENCE TO SABRIMALA JUDGEMENT**

temple God (Lord Ayyappa), who is considered to be living entity in Hindu religion, has himself provided that he will not give darshana to the women of certain age as He is observing celibacy in that temple and if woman still wishes to take that 'Vratham' going against the will of the same God who does not want to give darshana to such woman that is justified even on constitutional parameters as Article 25 is subject to 'morality'. The Hon'ble Apex Court, however, while deciding the question of equality has totally discarded this very important aspect morality. However the review petition of this judgement has been referred to a Seven Judges bench of Hon'ble Supreme Court of India to decide the issue and the apex court may come with a different view considering all the facts and the morality based on reasoning as "H.L.A Hart has rightly said that "morality may be relevant but cannot be conclusive".

\*\*\*\*\*