

A Critical Analysis of Indian Young Lawyers Association vs The State of Kerala Judgement

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I. SABARIMALA TEMPLE BACKGROUND:

Sri Ayyappa Temple dedicated to lord Ayyappa is the most famous and prominent among all temples in Kerala. The temple is situated on a hill top named Sabarimala amidst 18 hills. According to legend, Lord Ayyappa has been found as a baby by the river and raised by the king and queen of Pandalam as Manikandan. Manikandan later renounced the kingdom and the king built a shrine for him atop hill called Sabarimala where Manikandan acquired divine from and became Lord Ayyappa or Ayyappan. Ayyappan believed to be the son of Shiva and mohini female avatar of Vishnu. While the temple is open to all irrespective of caste, creed or religion but entry of menstruating women has been restricted or women between 10 to 50 years were not allowed to enter in the temple.¹ There are different versions that why menstruating women were not allowed to enter the Sabarimala temple. Legend has said that Ayyappa is celibate and this believe led to Ayyappa's relations with lady- demon Malikapurathamma. Malikapurathamma wanted to marry him after Lord Ayyappa defeated her in a battle and set her free from the curse of living as a demon. Ayyappa refused the proposal citing is vow to remain a celibate. But promised to marry her the year no first time pilgrim would visit his shrine. Malikapurathamma agreed to wait for him at a neighbouring temple. The legend further says that in honour of Malikapurathamma. Lord Ayyappa does not receive any menstruating women. Also the women shows not to visit lord Ayyappa for it would be an insult to Malikapurathamma's love and sacrifice. Lord Ayyappa was a historical figure. He was raised in a royal family where Sabarimala is situated. Ayyappa defeated Arab warrior Vavar and later Vavar became Ayyappa's devotee. Vavar is said to protect the pilgrims going to visit lord Ayyappa. Ayyappa took a vow to answer prayers to every devotee walking up to his shrine. The temple remains open only for 127 days a year. The journey to the temple is to taken on foot through difficult paths in the forest as vehicles can only go up to a certain point. Devotees are expected to follow a 41 day fast prior to the pilgrimage and dress in black. The colour signifies renunciation of all worldly pleasures but it also means that everyone is equal before lord.

II. THE SUPREME COURT VERDICT:

Rule 3(b) of the Kerala Hindu Places of Public worship (Authorisation of entry) Rules, 1965 were challenged by a group of five women lawyers. Rule 3(b) authorises restriction to women of menstruating age to enter into

¹ <https://www.clearias.com/sabarimala-temple-issue/>, last access 12th Jan,2019(10:00pm)

temple. But Kerala high court upheld the centuries- old restriction or tradition and said that only priest of the temple was empowered to decide on traditions. So, the group of women lawyers moved to the Apex court. Senior Advocate Indira Jaising, who represented from the side of the petitioner, argued that this old practice is the violation of Article 14, 15 and 17 of the constitution.² This custom is discriminatory in nature and hence women should be allowed to pray at the place of their own choice. This particular has very long standing more than 800 years. The prime reason why this particular age group is the deity in the Sabarimala temple is Lord Ayyappa is eternal celibate. He has taken a vow that women of between 10 to 50 years are not allowed to enter the temple. Devotees has protested against the entry of women in the group of 10 to 50 years a ban that was lifted by the Supreme court. Devotees considered Lord Ayyappa the presiding deity of the Sabarimala temple to be celibate and that is why women of menstruating age were banned from entering the temple premises.³

On 28th September, 2018 Supreme court lifted the ban saying that discrimination against women on any grounds even religious is unconstitutional. Following the Supreme Court's order allowing women of all age groups to enter the temple protest were held across kerala. Demonstrations intensified as the date of opening of the temple were neared. Protestors stopped women from entering the temple even before the gates of the temple had been opened but violent protests ensured that no women from previously banned age groups could enter the shrine. There was chaos in the road leading from Nilakkal (the gateway to the shrine) to Pampa (the foothills from where the devotees start the 6km uphill trek for Sabarimala). Activists clashed with the police leaving many injured and bleeding. Women journalists were heckled and their equipment damaged and young female Ayyappa devotees were turned back as group of activists seize the road leading to the temple. The tensed law and order situation prompted the district authorities to issue prohibitory order banning large gathering in a 30 sq km radius of the town. A state wide shut down was observed Kerala by a group that calls itself the Sabarimala Protection Committee. The shutdown shows a huge response with road and shops, markets were shut. Dozens of demonstrators were detained for staging protest in violation of section 144. Both sides now await the Supreme Court's decision on the review petition which it is expected to take up shortly. The Supreme court broke gender barriers with its Sabarimala verdict by allowing women of all ages to enter the temple calling the practice violate of the constitution. The court held that the patriarchal notion cannot be allowed to trump equality in devotion. Devotion cannot be subjected to discrimination with this landmark observation the Supreme Court opened the doors for Kerala's Sabarimala temple to women of all ages. The Supreme court struck down the rule that has for years disallowed girls and women in the age group of 10 to 50 years from

² <https://indianexpress.com/article/what-is/what-is-the-sabarimala-case-5376596/>, last access 13th jan,2019(11:15am)

³ <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-allows-women-to-enter-sabarimala-temple/articleshow/65989807.cms>, last access 17th Jan, 2019(12:10am)

entering the Sabarimala shrine. The constitution bench headed by Chief justice of India Deepak Mishra said the temple rule violated the right to equality and right to worship. The note of dissent in the 4:1 verdict came from the women judge on the bench Justice Indu Malhotra.

The court said that “we have no hesitation in saying that such an exclusionary practice violates the right of women to visit and enter a temple to freely practice Hindu religion and to exhibit her devotion towards Lord Ayyappa. The denial of this right to women significantly denudes them of their right to worship.”⁴ While Justice D.Y. Chandrachud termed this custom as untouchability that cannot be allowed under the Constitution. The bench said a patriarchal notion cannot allow trumping equality in devotion. Adding to the custom that barring women from a place of worship that violates Article 25(1) of the Constitution that promises freedom of conscience and the right freely to profess, practice and propagate religion. However, the Apex Court said that the devotees of Lord Ayyappa do not constitute a separate denomination observing that any exception placed on women because of biological differences violate the constitution. Chief Justice Deepak Mishra said the practice of excluding women of 10 to 50 years of age cannot be regarded as essential religious practice. The court held that it cannot be an obvious reason to disallow women from entering the temple due to physiological reasons (menstruation). Preventing women from entering temples is the violation of Article 14, 15, 19 and 25 of the Constitution. And it violates the free practice of religion of any individual. Shani Shingnapur is the temple in which women were barred from entering its core area for over 400 years. In 2016 court struck down the rule and now the temple authority is following the court’s rule.

Justice Indu Malhotra who gave the dissenting judgement said to the worshipers and not the court to decide what should and what should not count as essential practices in religion. Justice Malhotra said “In a secular polity, issues which are matters of deep religious faith and sentiment must not ordinarily be interfered with by courts. However she drew the line at practices such as sati. The PIL on which the verdict was delivered has intended that not allowing women to worshipping Sabarimala temple violated constitutional guarantees. The Supreme court verdict to opening the doors of the Sabarimala temple in Kerala to women of all ages has thrown a string of challenges to the temple managers as well as the state government.”⁵

III. CHALLENGES AT SABARIMALA:

The temple board has contended that the hill shrine is one of the most congested temples in the country. It has inability to handle securities and safety of women in Sannidhanam. Besides the mid-August floods have destroyed many structures at Pampa. The structures destroyed by the flood were a temporary shelter that could house 5000 pilgrims at a time. Apart from the 3 multi- storey toilet blocks, bathing ghats and three bridges

⁴<https://timesofindia.indiatimes.com/india/what-is-sabarimala-case/articleshow/66054724.cms>, last access 18thjan, 2019(10:15am)

⁵ <https://scobserver.clpr.org.in/court-case/sabarimala-temple-entry-case>, last access 19th Jan, 2019 (11:12pm)

across the Pampa river were destroyed. A pump house of the Kerala water authority was also buried under a huge deposit of sand. Environmental organisations have been highlighting the need for action on a number of issues that have been neglected for long at Sabarimala. Expert teams have reported a high chance of landslips and tremors at the holy hillock due to extensive concrete flooring at SabarimalaSannidhanam. They also point out arrangements for the annual Sabarimala pilgrimage starts extremely late. After the worst floods in the state, the state government has announced that it will not allow permanent structures or constructions on the bank of the river Pampi. But the Supreme Court's ruling has necessitated the construction of new structures, rest rooms for pilgrims and security personnel in the forest trek path if women are allowed. At present according to a survey that Temple board said it needs to acquire more land to develop facilities for pilgrims. The forest department cannot allow more land as it is a reserve forest.

IV. CONCLUSION:

The Supreme Court verdict to allow women to worship Lord Ayyappa at his temple has received praised from several women rights groups and rationalists. Extremely unfortunate event has happened if the women had not been allowed to enter the shrine despite the verdict of the Honourable Supreme court. Any citizen of the country whether he/she belong to the north or to the south enjoys the protection which has been granted by the constitution by way of the Fundamental rights. And Article 14 of the constitution clearly says that there will be no differentiation between men and women. Women will not be suffered any type of discrimination on the account of gender. So, keeping this in mind Hon'ble Supreme Court has passed this landmark judgement because there was no logical reasoning as to why women between the age of 10 to 50 should not be allowed into the temple and women below 10 and above 50 years of age are allowed. Since there was no rationale to it and constitution does not allow any such kind of a illegal, illogical, irrational differentiation between men and women this judgement was passed. Now, it would be in the interest of all the concern parties including the devotees of Lord Ayyappa as well as all political parties. India is a democratic country and we are bound by the constitution. Now, the judgement has been passed and everybody should respect it and follow it and ensure that it is taken to logical conclusion. Those who do not want or wish to go to the temple on certain days can do and nobody is forcing. They can still practice what they want and here it is about even a one woman who wants to go she cannot be stopped because of physiological reasons and that's what the judgement says and that needs to be applauded and respected by all.⁶

⁶ <https://www.livelaw.in/the-sabarimala-judgment-i-an-overview/>, last access 20th Jan, 2019 (12:15am)