The Sabarimala Verdict

In the conflict of customs and law, which one should prevail?

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ABSTRACT:

Kerala's Sabarimala Temple issue is about the conflict between women rights and tradition. The situation revolves around the age-old customs and SC's verdict which gave supremacy to constitutional morality over these customs.
The Rule 3(b) of the Kerala Hindu Places of Public Worship [Authorization of Entry Rules, 1965 (Rules 1965)] which states that "Women at such time during which they are not by custom and usage allowed to enter a place of worship" was the basis of the practice of excluding women from the age group ten to fifty years to enter the temple. These Rules were framed under Section 4 of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act, 1965. In 1993, a division Bench of the Kerala High Court had upheld the entry ban saying it is usage prevalent from time immemorial. The HC had further held that only the chief priest was empowered to decide on traditions.
A five-judge Constitutional bench of Hon'ble SC ruled 4:1 in favour of allowing women of all ages to enter the temple. It found the practice discriminatory in nature and that it violates Hindu women's right to pray and practice religion. It also ruled that devotees of Lord Ayyappa do not constitute a separate religious denomination as they do not have common religious tenets peculiar to themselves other than those which are common to the Hindu religion.

I. INTRODUCTION

Kerala's Sabarimala Temple issue is about the conflict between women rights and customs. The analysis revolves around the SC's verdict which gave supremacy to constitutional morality over these customs.

The Sabarimala temple restricted menstruating women between the age of 10 and 50 years from entering into the temple. The restrictions and its source is based on the fact that the temple deity, Swami Ayyappa, is a 'NaishtikaBrahmachari' (celibate) and therefore, n epitome of purity which should not violated by menstruating women. Based on this, Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965, restricts prohibitswomen by prohibiting them from entering the Sabarimala temple premises. Kerala High Court in 1991 ordered in favour of the restriction by mentioning that the restriction was in place throughout the history and is not discriminatory to the constitution. The HC also held that only the chief priest was given the power to decide on traditions. In 2006, Indian Young Lawyers Association challenged and questioned the ban in Supreme Court. However, the Kerala government appealed to the SC that the beliefs and customs of devotees cannot be altered by means of a judicial process and the priests' opinion is final. Hence the SC referred the issue to a larger constitutional bench.

There have been various arguments from both sides. These should be considered first.

II. ARGUMENTS AGAINST WOMEN'S ENTRY INTO THE TEMPLE INCLUDE THE FOLLOWING:

- Allowing menstruating women to enter the temple would affect the deity's celibacy and austerity which is the unique nature of Lord Ayyappa.
- Temples, managed by trusts, are public places. The Sabarimala Shrine's trust's representatives asserted that it has its own traditions and customs that need to be respected, just like other public places which have their own rules.
- Clause (2) of Article 25 of the Constitution of India which provides access to public Hindu religious institutions to all classes and sections of the society is applicable only to societal reforms, not religious matters which are covered under Article 26 of the Constitution. Article 26 (b) gives right to every religious group to manage their own religious affairs.
- The Guwahati HC in *Riju Prasad Sarma v. State of Assam*[1], ruled that the religious customs which are protected under Article 25 and 26 are resistant from dispute under other provisions of Part III of the constitution.
- Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 restricts women by prohibiting them from entering the Sabarimala temple premises.

The above arguments are clearly presented and supported in a way with intention to consider the customs and traditions of religions supreme than anything else. And, that these should be followed and protected at any cost.

Also, in *Riju Prasad Sarma v. State of Assam*[2], the Hon'ble SC held that "it is well settled that Article 25 (2) (a) and Article 26 (b) guaranteeing the right to every religious denomination to manage its own affairs in matters of religion are subject to and can be controlled by a law contemplated under Article 25 (2) (b) as both the Articles are required to be read harmoniously."

III. ARGUMENTS FAVOURING WOMEN'S ENTRY INTO THE TEMPLE INCLUDE THE FOLLOWING:

- When all the people are equal in the eyes of God as well as the Constitution, there is no ground on whichonly women should be barred from entering certain temples.
- The Constitution of India under Article 25 provides an individual the liberty to determine his/her religion. Hence praying in a temple or mosque or church or at home must be the individual's choice.
- The Constitution guarantees right to freedom (Article 21) and religious freedom to the individual.

[1] Riju Prasad Sarma v. State of Assam, 2011 SCC OnLine Gau 563.
[2] Riju Prasad Sarma v. State of Assam, (2015) 9 SCC 461

- There are countless Ayyappa temples in India where such rules don't apply and there are no restrictions in praying. The deity is also being worshipped by women of this ages in their houses. Then why only Sabarimala temple?
- The argument that menstruation would pollute the temple premises is unacceptable since there is nothing "unclean" or "impure" about a menstruating woman. It is a biological phenomenon, therefore, the question of purity should not even arise.
- Discrimination based on the biological factor exclusive to the female gender is unconstitutional as it violates fundamental rights under Article 14 (equality), Article 15 (discrimination abolition) and Article 17 (Untouchability abolition) and is deprecatory to women under the Directive Principles of State Policy (DPSP) under Article 51A (e).
- The temple's trust gets its funds from the Consolidated Fund. Thus, the temple is a public place of worship and not a private temple.
- Hinduism is not a religion*per se* but it is a way of life. Hence its practice cannot be governed only and narrowly by religious pundits and tantric priests.

IV. SUPREME COURT VERDICT:

A five-judge Constitutional bench of the Hon'ble SC ruled 4:1 in favour of allowing women of all ages to enter the temple. It found the practice prejudicial in essence and that it violates women's right to practice religion. It also ruled that the devotees of Lord Ayyappa do not constitute a separate religious denomination as they do not have any common religious tenets specific and different to themselves other than those which are customary to the Hindu religion.

The Hon'ble SC struck down Rule 3(b) of the Kerala Hindu Places of Public Worship Rules 1965, and declared the restriction as *ultra vires* of both Section 3 and Section 4 of the 1965 Act. Section 3 is a non-obstante provision which explicitly lays down that all places of public worship shall be open to all classes and sections of Hindus, women being one of them, irrespective of any custom or tradition to the contrary. Additionally, Proviso to Section 4(1) generates an exception to the effect that the regulations made under Section 4(1) shall not discriminate, in any manner whatsoever, against any Hindu on the basis that he/she belongs to a particular section or class. The scrupulous SC held that the language of both of these provisions indicate that custom and usage must make way to the rights of all sections and classes of Hindus to pray at places of public worship. Any explication to the contrary would obliterate the purpose of the 1965 Act and the fundamental right of such women as they are qualified to practice religion under Section 25(1) of the Constitution of India.

The court ruled that prohibition on women is not an essential part of Hindu religion and therefore, the courts can intervene in such a matter. The verdict establishes the principle that individual freedom prevails over professed group rights, even in religious matters. The judgement relooks at the stigmatization of women devotees based on a medieval perspective that the menstruation symbolizes impurity and pollution. It declares that the exclusion on the basis of impurity is a form of untouchability. Further, the argument that menstruating women could not observe the 41-day period of temperance failed to make any sense. Therefore, the court declared that any rule that isolates women due to their biological characteristics is unconstitutional.

Also, the SC held that 'a claim for the exclusion of women from religious worship, even if it's found in religious texts, is subordinate to the constitutional values of liberty, dignity and equality. Such exclusionary practices are contrary to constitutional morality.'

V. ANALYSIS WITH HISTORICAL REFERENCES:

Soon after the Constitution came into being, courts were confronted with a question they were ill-equipped to answer: What constitutes religion? The Supreme Court answered this much-debated question in the *Shirur Mutt case.*[3] It held that the word "religion" in Article 25 covers all rituals and practices that are fundamental to it. With time, the Judiciary developed the 'essential religious practice' test. Only those practices 'essential' to the religion were deemed deserving of Constitutional protection. Over the years, the test has been applied inconsistently. CJI Dipak Misra and Justice Khanwilkar in the Sabarimala case[4] held that the devotees of Lord Ayyappa at Sabarimala did not constitute a "separate religious denomination". They were thus not entitled to protection under Article 26. Additionally, the Judges held that the practice of prohibiting women did not constitute an "essential religious practice".

Expounding the word 'morality' used in Articles 25 and 26, Justice Chandrachud held that morality referred to in these articles is constitutional morality. It includes the principles of justice, liberty, equality and fraternity. To pass Constitutional muster, religious practices must meet these four tests. Practices excluding the entry of women into temples do not withstand legal scrutiny on this point.

The father of India's Constitution, Dr. B.R. Ambedkar himself had engineered a number of 'Dalit temple entry movements' in colonial India. "The issue is not entry, but equality," Ambedkar had famously said.

Justice Chandrachud also held that omitting menstruating women from entering the temple is antipodal to Article 17 of the Constitution which forbids untouchability. He held that the notion of untouchability is

[3]Commissioner, Madras Hindu Religious and Charitable Endowments v. Narayana Ayyangar, AIR 1965 SC 1916.
[4] Indian Young Lawyers' Association v. State of Kerala (2018)

established in the ideas of 'purity and pollution'. It is these same ideas that form the foundation for barring the entry of menstruating women into religious places.

There is a tradition of barring of menstruating women from social and religious functions. At times, it takes the appalling form of untouchability. Despite the Nepalese government passing a law and making it illegal, such beliefs of purity and pollution are doubted, which condemn women in what is vitally a biological operation, are abhorrent to human rights.

Such a practice assuredly has no position in our constitutional scheme. When the Constitution of India came into force, it sought to smash the oppressivechains of prejudice, injustice, and social ranking and established structures that prolong discrimination and inequity. It is undeniably outrageous that it is still a scuffle to combat against inequality and untouchability.

It is riveting to see the growth of Indian law through endeavours by Indian Courts to differentiate between what is a "matter of religion" and what is not, in various cases over the decades.

One of the earliest cases emerged when the Madras Hindu Religious and Charitable Endowments Act, 1951 was passed to authorize a statutory commissioner to intercede if they had 'reason to believe' that a religious establishment was mishandling funds. This Act was disputed by the Mathadhipathi of the Shirur Mutt who insisted that the law hampered his right to manage the religious affairs of the Mutt.[5] The Hon'ble SC analysed the question that – where is the line to be drawn between what are the matters of religion and what are not? The Court held: 'What constitutes the essential part of a religion is fundamentally to be settled with reference to the tenets of that religion itself.'[6] This meant that the perspectives of the followers of the religion were decisive to determine what included the essential aspects of a religion.

In one other case, the Qureshi Muslims of Bihar moved to the Supreme Court and challenged the ban on cow slaughter on the basis that it violated their fundamental right to religion as they were urged by their religion to sacrifice cows on Bakrid.[7] The Court, looked into the Islamic religious texts andfound that there was no proof to show that immolation of cows on Bakrid was an essential religious practice for the Qureshi Muslims. The court looked at the texts and scriptures of that community closely and concluded that the practice avowed to be essential was not validated by religious principles.

Thus, over the decades, Indian Courts have played a significant role in determining what is or is not essential to a religion; and what practices are mere myths and beliefs formulated in a religious shade. In a vibrant and diverse state like India, with its multifarious practices, beliefs and traditions, the Courts have intermittently

[5]Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiyar of Shirur Mutt, (1954) SCR 1005.
[6]Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiyar of Shirur Mutt, (1954) SCR 1005.
[7]Mohd Hanif Quareshi v. State of Bihar, (1959) SCR 629.

been called upon to decide whether a practice was to be safeguarded or not under the Right to Religious Freedom. The Sabarimala issue is one such where the court has firmlyreviewed anintensely-rooted belief that permeates Indian society at different levels — from our homes to our places of worship. This judgement takes the bull by the horns, refusing to find a way out from debating upon the anathema of menstruation.

Applying the essential practices test, the majority opinion of the Court states that the practice of barring women between the ages of ten and fifty from undertaking the pilgrimage and praying at the Sabarimala shrine is not an essential part of the religion. The religious texts and beliefs do not establish a connection between the Lord's celibate nature and exclusion of women. The Supreme Court noted the observations of the Kerala High Court in *Mahendran's case*[8] that even when old customs triumphed earlier, women were allowed to visit the temple.

It is quite intriguing to note the conduct in which the Court refuses to comply with these exotic ideas and funny little stories that surrounded the exclusion of menstruating women. In everyday life, we are often faced with a plethora of such arguments that appear endearing and picturesque in their exegesis to justify something which is evidently unjust. It is this action that happens when we are told that solitary spaces in our houses are for the sake of menstruating women so that they can have rest from housework, or menstrual blood is powerful enough to do black magic with and so menstrual cloth must not be dried in the sun, or kumkum must not be offered to a widow, or women without husbands should not attend weddings etc. All these arguments of artistry promote beliefs which we may as a society ignorantly accept or oppose at the risk of being called a rebel or struggle to come to terms with. Either any way, they cannot be given constitutional protection.

Justice Chandrachud's Judgement in this case highlights: "The stigma around menstruation has been built up around traditional beliefs in the impurity of menstruating women. They have no place in a constitutional order. These beliefs have been used to shackle women, to deny them equal entitlements and subject them to the dictates of a patriarchal order. The menstrual status of a woman cannot be a valid constitutional basis to deny her the dignity of being and the autonomy of personhood. The menstrual status of a woman is deeply personal and an intrinsic part of her privacy. The Constitution must treat it as a feature on the basis of which no exclusion can be practised and no denial can be perpetrated. Nobody can use it as a barrier in a woman's quest for fulfilment, including in her finding solace in connect with the creator."[9]

VI. CONCLUSION:

As we move forward as a youthful nation built on ancient cultural values, change is a laboriously-resisted and slow-moving process. We are moving forward slowly and steadily through legislations, campaigns and court orders to uplift the status of our women. Every once in a while comes along a judgement that gives an extensive

[8]S.Mahendran v. The Secretary, Travancore Devaswom Board, Thiruvananthapuram, AIR 1993 Ker 42.
[9]Indian Young Lawyers' Association v. State of Kerala (2018)

push to this slow. Whether it was to make our work-spaces safer for our women or whether to recognise her property rights or whether to remove chains on her choice of life partner, the Courts have escalated the momentum at which women's lives stood to retrieve honour in India. The Sabarimala judgement is one such escalator. It is about wiping the taints of our head about menstruation and the ideas of impurity affiliated with it. It is about making our girls free on those 60 days in a year without thinking that they are children of a lesser God during those days. It is about relocating the focus of our conversations from menstruation taboos to important issues like menstrual hygiene, more long-lasting sanitary protection, keeping access open to education, sports, travel, social life and all other regular activities.

We, the people of India are governed by the Constitution of India. Notions of purity and pollution which denounce individuals can have no place in a constitutional nation like ours. Regarding menstruation as polluting or impure and, worse still, imposing exclusionary dysfunctions on the premises of menstrual status is against the honour of women guaranteed by the Constitution. Dignity as a characteristic of Article 21 is boldly embedded in the Constitution after the decision of the Nine Judge Bench in *Justice Puttaswamy's case*.[10] The menstrual position of a woman is a trait of her privacy. Women have a constitutional prerogative that their biological processes must be free from social and religious practices that enforce segregation and discrimination.

For the Supreme Court, the Sabarimala trial was a test of "constitutional morality". The judgment was an act of social scheme and constructed on the hypothesis that faith and custom must quadrate to the diktats of modernity. It has mechanically directed radical change on a Hindu culture that is both eternal and constantly adaptive. Quite unwittingly, the Supreme Court may have set the stage for a hardening of attitudes upholdingthe supremacy of the Constitution. This renowned verdict overrides all other laws of the land and customary practices and beliefs and traditions of different religions/faith which are antithetical to it. Thus, on the one hand, it manifests the conquest of women's rights towards equality with men and on the other it establishes the predominance of Constitutional morality over customary laws, rituals and traditions. The far reaching socio-economic and political consequences of this landmark verdict will unravel themselves as the country inches forward.

[10]Justice K.S.Puttaswamy &Anr v. Union of India & Others, (2017) 10 SCC 1.