

**INTERNATIONAL JOURNAL OF LAW**  
**MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 5 | Issue 4**

---

**2022**

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Interface between Law and Economics

## Analyzing Indian Young Lawyers Association & Ors. vs. The State of Kerela & Ors.

---

MANSI AGRAWAL<sup>1</sup>

### ABSTRACT

*This paper deals with the interface of Constitutional law and Economics of India and its impact on the same. A case where gender inequality has arisen controversial inequality in the global Indian society resulting in accelerating the existing misogyny in India. This paper examines the depts of such behaviour with respect to economic principles.*

### I. BACKGROUND NOTE

The temple of Sabarimala was constructed in the 12<sup>th</sup> century in the state of Kerela<sup>2</sup> where Lord Ayyappa is worship by over 50 million devotees including both men, women and children of all age. In the year of mid 1900s, huge stipulations arose with the devotees of Lord Ayyappa that, women between the age of ten- fifteen should be restricted to trek the holy hills of Sabarimala Temple and offer their worship at Sabarimala Shrine. The reason behind this action was that, since women undergo the act of menstruation<sup>3</sup>, they were considered unhygienic, unethical, immoral, indecent, corrupt, vicious and disrespect towards the Lord.

Two notifications were issued by the Travancore Devaswom Board (TDB) which stated, “In accordance with the fundamental principle underlying the prathishta (installation) of the venerable, holy, and ancient temple of Sabarimala, Ayyappans who had not observed the usual vows as well as women who had attained maturity were not in the habit of entering the above-mentioned temple for Darshan (worship) by stepping the Pathinettampadi. But of late, there seems to have been a deviation from this custom and practice. In order to maintain the sanctity and dignity of this great temple and keep up the past traditions, it is hereby notified that Ayyappans who do not observe the usual Vrithams are prohibited from entering the temple by stepping the Pathinettampadi and women between the ages of ten and fifty-five are forbidden

---

<sup>1</sup> Author is a Student at School of Law, Bennett University, India.

<sup>2</sup> Inside Periyar Tiger Reserve in Pathanamthitta District

<sup>3</sup> Start their menarche at an age of ten and stops their menstrual cycle at an age of fifty approximately, Division of Clinical Epidemiology, Canton Hospital, University of Geneva, Switzerland, National Library of Medicine, National Institute of Health, <https://www.ncbi.nlm.nih.gov/pubmed/9867266>

from entering the temple.”<sup>4</sup>

This article restricted the entry of women aged between ten to fifty-five inside the temple. The issue was then raised in the Kerala.

## II. INDIAN JUDICIARY AND ENVIRONMENTAL CONCERNS

(A) The Kerela state took over the raising issue that the Board amended and made some of its own rules regarding the same. It believed in the same opinion as the Board, to restrict the entry of women in the temple. Also, prohibit the benefits rising out of the temple to be restricted to the use of women such as using water from the tank, well, watercourse appurtenant, spring etc either for drinking purpose of for bathing. It stated its rule as,

“The classes of persons mentioned hereunder shall not be entitled to offer worship in any place of public worship or bathe in or use the water of any sacred tank, well, spring or watercourse appurtenant to a place of public worship whether situate within or outside precincts thereof, or any sacred place including a hill or hill lock, or a road, street or pathways which is requisite for obtaining access to the place of public worship- (b) Women at such time during which they are not by custom and usage allowed to enter a place of public worship.”<sup>5</sup>

(B) The issue was then raised in the Kerela High Court. The bench comprised Justice KB Marar and Justice KB Paripoornan<sup>6</sup> which made the following observations as:

1. Women aged above 10 and below 50 who were restricted from trekking the holy hills of Sabarimala and offering worship at Sabarimala Shrine in the usage of temples benefits and practices were prevalent from time immemorial.
2. The restriction imposed by the Travancore Devaswom Board in not violative of Article 15, 25, and 26 of the Constitution of India.
3. The restriction made by the Travancore Devaswom Board is not violative of the provisions of the Hindu Place of Public Worship (Authorization of Entry) Act, 1965 since the Act states that there has to be restriction between one section and some other section or between one class and another class among the Hindu community in the matter of entry to a temple whereas, the prohibition that the temple imposed was only in respect to a group i.e. women of a particular class, who are clearly not women as a class.

With this judgement, the court directed the Travancore Devaswom Board, not to permit women

---

<sup>4</sup> Travancore Devaswom Board, 27.11.1956, <http://travancoredevaswomboard.org/>

<sup>5</sup> Rule 3(b) of the Kerela Hindu Places of Public Worship (Authorization of Entry), Kerela

<sup>6</sup> S. Mahendra vs. The Secretary, Travancore Devaswom Board, AIR (1993) Ker 42

above the age of ten and below the age of fifty years. It also directed the Government of Kerala to take all the necessary precautions to not let any women (aged between 10- 50) enter the temple, even if it takes police assistance to escort and restrict women out of temple and from entering the temple.

(C) The Kerala High Court judgement was then again challenged by filing a PIL by the Indian Young Lawyers Association<sup>7</sup> as to the morality, fairness and equality of the judgement over the rules. The Supreme Court gave its decision over the Kerala High Court judgement, and made rules in opposing the prohibitions put on women as,

1. Justice Chandrachud holds, all the notifications issued by TDB is held unconstitutional
2. Majority judgement holds, rules made by the State of Kerala for the Temple of Sabarimala for the prohibition of entry of women is held invalid
3. The Court held that the judgement of Kerala High Court stands overruled/ set aside, though none of the judgement specifically say so as it was not impugned.

Only Justice Chandrachud judgement seriously discusses the notification, as it says that prevention of entry of women in the temple of Sabarimala and from offering their prayers would infringe the rights of all the Hindu women which is recognized by Section 3. The notifications issued by the Board ultra vires Section 3 of Kerala Hindu Places of Public Worship (Authorization of Entry)

### **III. REMEDIES RESORTED**

Remedies are one such honour given to whose fundamental right to be considered as equal in front of the eyes of law and to be treated equally in front of the society at large. The Supreme Court in its judgement<sup>8</sup> concluded that if:

- a. In furtherance of this judgement, if a woman is barred from entering of the temple, women may take a civil action against the wrong-doer and the law will do its job again.
- b. If the state makes again make such rule by way of ordinance or legislation, the court will again look into the matter and struck down the judgement which would infringe the fundamental rights of women.

### **IV. CONCLUSION- AN EFFICIENT SOLUTION FOR THE FUTURE**

The judgment of this case made a statement in the eye of Indian citizen that nobody will be and

---

<sup>7</sup> Indian Young Lawyers Association & Ors. vs. State of Kerala & Ors., AIR (2018) SC 373 of 2006

<sup>8</sup> Indian Young Lawyers Association & Ors. vs. State of Kerala & Ors., AIR (2018) SC 373 of 2006

would be subject to inequality based on gender in today's India. This case is not only on the equality based on gender, but also on the basis of being a normal human being who should possess his right to take benefits out of land where he was born, his own mother land.

By imposing rights which would help Indian citizen understand that no one is any less from the other. This act of equality should be imposed on every citizen to show that India is not a country who would face and let his subjects face inequality. This case was on usage of property (being a public property) by women who could not access it and take benefits of it.

## V. ECONOMIC TOOLS USED

Since, the Temple of Sabarimala is an institution build on the lands of the state of Kerala, it is considered as a government property as it is a place of worship of Lord of Ayyappa, it is considered to a property. The researcher will use "Economic Concept of Property" for the discussion of the case's economics analysis. In economics, there are two types of goods<sup>9</sup>:

- a. Excludable: A good or service is excludable if, a person can be prevented from using the good or service

Example: Wireless internet access, pencil, Pizza ordered by Zomato, etc.

Example of non- excludable: National Defence, Air, etc.

- b. Rival: A good or service is rival if, one person's use of the good or service, diminishes the other's use of the good or service.

Example of rival: Banana chips, ice-cream by Naturals

Example of Non- rival: Water in a society's tank, books in library

The goods and services are broadly categorised into:

- a. Private goods: Nature- Excludable & Rival
- b. Public goods: Nature- Non- excludable & Non- Rival
- c. Common Resources: Nature- Rival & Non- Excludable
- d. Natural Monopolies: Nature- Excludable & Non- Rival

	Rival	Non- Rival
Excludable	Private Goods	Natural Monopolies
Non- Excludable	Common Resources	Public Goods

<sup>9</sup> N. Gregory Mankiw, *Principles of Economics*, (5ed.)

**Before the Supreme Court Judgement:**

Before 1995:

The temple of Sabarimala was accessible to all the men, women and children irrespective of the gender. Hence, it was a Public good as it was Non- excludable and Non- rival in nature.

After 1995:

The temple of Sabarimala was accessible to all men, women below the age of 10 and above the age of 50. Hence, it was a Natural Monopolies as it was Excludable and Non- Rival in nature.

**After the Supreme Court Judgement:**

- a. The temple of Sabarimala was accessible to all men, women, and children irrespective of the gender, caste and nationality. Hence, it was a Public good as it was Non-excludable and Non- rival in nature.

	Rival	Non- Rival
Excludable	Private Goods	Natural Monopolies <u>Sabarimala Temple after</u> <u>1995</u>
Non- Excludable	Common Resources	Public Goods <u>Sabarimala Temple before</u> <u>1995</u> <u>Sabarimala Temple after</u> <u>2018</u>

\*\*\*\*\*

**VI. BIBLIOGRAPHY****Acts/ Regulations/ Rules Referred**

1. Kerela Hindu Places of Public Worship (Authorization of Entry) Act, 1965
2. *Constitution of India, 1950*

**Books**

1. *N. Gregory Mankiw, Principles of Economics, (5ed.)*

**Websites Referred:**

1. <https://www.ncbi.nlm.nih.gov/pubmed/9867266>
2. <http://travancoredevaswomboard.org/>

\*\*\*\*\*