

YOUNG INDIAN LAWYERS ASSOCIATION V. STATE OF KERALA- JUDGEMENT ANALYSIS

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Abstract

The case commentary is about the Indian Lawyers Young Association v. State of Kerala case, famously known as the Sabarimala case. Sabarimala Temple is a temple of Lord Ayappa. Traditionally, women of the age group 10 to 50 years were barred from entering the temple and worship. This case is about the fight for the rights of women to worship, their right to equality and, on the other hand, the belief of devotees in traditions that were being followed for ages uninterrupted. The case went in favour of the petitioners with a majority of four is to one, with honourable Justice Indu Malhotra expressing her dissenting opinion. Thus, the women were granted permission to enter the temple and worship. There was anger among people after the judgement, and the state witnessed widespread protests. However, eventually, the condition came under control, and the verdict was happily welcomed by the people. This case comment highlights the facts of the case, what were the main arguments and how they were put forward by both parties, the observations and findings of the Court, what dissenting views were given honourable Justice Indu Malhotra, the final verdict of the Court and the effects of the judgement on the society and the challenges that were faced by the Supreme Court and the State.

Introduction

Sabarimala temple is a Hindu temple situated at Sabarimala in Pathanamthitta district, Kerala. It is dedicated to Lord Ayappa. The temple is maintained and administered by Travancore Devaswom Board, a statutory body created under Travancore - Cochin Hindu Religious Institution Act, 1950. In the past, women of the age group 10 to 50 years were restricted from entering the temple. This restriction was justified on the ground that Lord Ayappa was a 'Naishtik Brahmchari', and the limitation is essential to maintain the character. Gender right activists, on the other hand, believed that based upon the biological factor, this practice was discriminatory and violated various fundamental rights of women guaranteed under the Indian constitution.

Bench

Chief Justice of India Dipak Misra, Justice Rohinton Fali Nariman, Justice A.M. Khanwilkar, Justice Dr D.Y.Chandrachud, Justice Indu Malhotra

Lawyers

Petitioner's Counsel:

R.P. Gupta, Raju Ramachandran(Amicus Curiae), K. Ramamoorthy (Amicus Curiae)

Respondent's Counsel:

Jaideep Gupta; Liz Mathew, Venugopal(Travancore Devaswom Board), V.Giri(State of Kerala), Rakesh Dwiwedi, K. Radhakrishnan

Intervenor:

Indira Jaising, V.K. Biju

Parties involved

Petitioners:

Indian Young Lawyers Association and others

Respondents:

State of Kerala; Travancore Devaswom Board, Chief Tanthri of Sabarimala Temple, District Magistrate of Pathanamthitta, Nair Service Society and others

Intervenors:

Nikita Azad Arora; D.V. Ramana Reddy, K.K. Sabu, KantaruRajeevar, Rekha Ratheethnam, Athma Divine Trust, Rahul Easwar, Chetna Conscience of Women¹

Facts of the case

Seeking a ban on the entry of women inside the Sabarimala temple, a petition was filed in the Kerala High Court in 1990. The Kerala High Court gave a judgement banning the entry of women of age 10 to 50 years inside the Holy sign of Lord Ayyappa. In 2006 another petition was filed in the Supreme Court, under article 32 of the Indian constitution, by a registered Association of Indian young lawyers which seek allowance to the entry of women between the age of 10 to 50 years.

¹ Indian Young Lawyers Association v. State of Kerala, 2018 SCC OnLine SC 1690

It was then, in 2008, that is, after two years, referred to a bench of three judges. Supreme Court questioned the restriction, saying that such limitation is not by constitutional morality. In 2016, Kerala High Court replied to it, stating that it is under obligation to protect the right to practice the religion². Next year, in 2017, the case was referred to the constitutional bench by the Supreme Court. Created under section 4 of the Kerala Hindu Places of public worship (authorization of entry) act, 1965 (hereinafter referred to as 1965 Act), Rule 3(b) of Kerala Hindu Places of public worship (authorization of entry) rules, 1965 (hereinafter referred as 1965 rules), it was argued in the writ petition, is unconstitutional because it violates article 14, 15, 25 and 51A(e) of the Indian Constitution.

Contentions

1. Whether the practice of restricting a particular age group of people due to biological factors is discriminatory and violates Articles 14,15, and 17 and raises the issue of morality as used in Articles 25 and 26 of the Indian constitution?
2. Whether this practice is an essential religious practice as defined under Art 25 of the Indian constitution?
3. Whether the temple is Religious denomination under Art 26 of the Indian constitution? If yes, then whether such denomination administered by a statutory body and financed under Art 290A of the Indian Constitution is permitted to get involved in such derogatory practices violating constitutional morality/principles guaranteed under Articles 14,15(3),39(a) and 51A(e).
4. Whether Rule 3 of 1965 Rules permits religious denomination to prohibit women's entry between the age of 10 to 50? And if so, would it not be against the Articles 14 and 15(3) of the Indian Constitution?

Whether rule 3(b) of the Rules of 1965 is ultra vires to the Act of 1965? If it is considered intra vires, whether it will be violative of the provisions of Part III of the constitution?³ arguments of petitioners

- It was argued before the honourable Court by the petitioner that the practice is discriminatory against women as a class, as a particular section of people, that is,

² Article 25 and 26 of The Indian Constitution

³ A brief analysis of Sabarimala Temple case Indian Young Lawyers Association v/s Kerala, 2021

women of age group 10 to 50 years. Petitioner also trusted on impact test articulated in Bennett Coleman and Co. &Ors. v.Union of India &Ors.⁴ and alleged that the discrimination is solely based on sex because the biological feature of menstruation highlights the characteristics of a particular sex.⁵

- It was also argued that a practice that is based on gender violates Article 15(1) of the constitution along with Article 15(2)(b) as the temple concerned is a public place.
- It was also argued that the classification lacked constitutional object and thus violated Article 14. Codified in Rule 3 (b) of 1965 rules, the customary practice was not by Article 14, 15 and 21.
- An argument was further raised that the practice violates the right of an individual to worship and follow any religion. Petitioners claimed that the 1965 Act was passed as a measure of social reform and to achieve the goals described in Article 25(2)(b). Besides, the Act of 1965 contains no such provision of prohibition of women of specific age group to enter the temple. Thus, Rule 3(b) Is also not by the Act of 1965.
- Being the ground of the practice of barring women of age group 10 to 50 to enter the temple, Rule 3(b) mentions explicitly “at any such time” when women, according to customs, should not enter a place of worship. Petitioners, here, condemned that the phrase “at any such time” does not entirely put a bar on women.
- Arguments were further raised that the followers of Lord Ayappa cannot be considered as a different ‘religious denomination’ as defined in Article 26 of the Indian Constitution. This is because a mere difference in tradition and rituals, along with the fact that they don’t have a common faith, cannot make them a separate religious denomination. They further argued that even if the followers are considered a different denomination, their rights under Article 26(b) must be subject to Article 25(2)(b).⁶
- Restricting women cannot be considered an essential practice to be protected under Article 26(b) even if they are a religious denomination.
- They condemned the practice to be violative of Article 21 as it describes the women as polluted.
- Besides, it is a clear and lucid representation of untouchability against women, thus, violating Article 17 as the temple is a public place.

⁴ 1973 AIR 106, 1973 SCR (2) 757

⁵ A brief analysis of Sabarimala Temple case Indian Young Lawyers Association v/s Kerala

⁶ Sri Venkataramana Devaru & Ors. V. State of Mysore & Ors. 1958 AIR 255, 1958 SCR 895

- Worshipping is the fundamental right of women, which cannot be ignored to give effect to a social reform under Article 25(b). And the temple is obligatory to protect the fundamental right as it is managed by a statutory authority and financed through the consolidated fund of India.

Arguments of Respondents

- The expression “throwing open to all” in Article 25(2)(b) criminalizes discrimination based on caste. The respondents argued that the term should not be interpreted to override the customs that have been in existence since time immemorial. The article has no significance here because the ban is not absolute but for a certain period, and thus it cannot even be considered as social discrimination because the restriction is solely related to Sabarimala temple, that too to maintain the entity, and not to other temples of Lord Ayappa.
- Respondent argued that the practice is a pre-constitutional custom for it is being practised for ages without interruption, and Article 13(3)(b) states that law includes customs.
- Respondents argued that only health, public order and morality are subjected to Article 26, and the rights of a religious denomination cannot be subjected to Article 14 and 15. The rights of people can be protected only if the entity of Lord Ayappa of being a Naishtik Brahmin is preserved.
- Respondents argued that the case contains the questions of both facts, and the competent civil Court should examine the facts.
- The respondents argued that the followers of Lord Ayappa should be considered a religious denomination because the male followers are called Ayappans, and the female followers are called *malkapuram*.
- The High Court of Kerala had already held that the Ayappans are a religious denomination in the case, *S. Mahendran v. The Secretary, Travancore Devaswom Board & Others*⁷. The judgement is a judgment *in the remand* that was not challenged by any of the parties during the trials, and thus, it is binding on both parties, including that of petitioners.
- Respondents argued that Article 17 criminalizes caste-based discrimination amounting to untouchability, and no such discrimination is practised in the temple.

⁷ AIR 1993 Ker 42

Judgement

Findings of the Honourable Apex Court were as follows:

- The Apex court held that Article 25 provides the right to worship to everyone irrespective of their gender. Restricting women to enter the temple violates women's right to worship.
- Various evidence provided in the Court proved that the Ayappans were not a different religious denomination as per Article 26. Having different practices doesn't make one a separate religious denomination, but the different methodology does. Ayappans practices have many commonalities with that of Hindu Religion; it is thus, another form of Hindu religion.
- The Court believed that in the absence of textual evidence, the Court would not accept the restriction on women as an essential practice. Allowing women in the temple won't mean an alteration in the fundamental concept of the Hindu religion.
- The Court thought the morality in Article 25 means constitutional morality and not societal or individual morality, especially when it comes to the violation of fundamental rights.
- Court held that a mere glance at Rule 3(b) also shows that it is ultra vires of section 3 of the 1965 Act.

Justice Indu Malhotra's dissenting opinion

- Justice Indu Malhotra believes that Ayappans are a religious denomination, thus are entitled to protection under Article 26.
- This case involves both questions of facts and question of laws; thus, it should be examined by a competent civil court as facts cannot be looked into in a writ.⁸
- To plead in the Apex Court under Article 32 for violation of Fundamental Right to worship, the petitioner's personal right to worship should be violated.
- The restriction on women is implemented for the benefit of a religious denomination; thus, Rule 3(b) is intra vires of section 3 of the 1965 Act and not ultra vires.
- She believed that the right to equality as defined in Article 14 does not overpower the right stipulated in Article 26. The religious community has the right to decide what religious practices are essential ones.

⁸ Paragraph 12.10, Justice Indu Malhotra's Judgement, Pg.53

- Ayappans are a separate religious denomination because they have their own set of customs, beliefs, and code of conduct that they follow since time immemorial.
- She also believed that the restriction on women was a partial and essential religious practice. Any interference in it would mean a violation of their right to worship Lord Ayappa as a Naishtik Brahmchari defined in Article 25(1).

Final verdict

On 28th September 2018, the Honourable Apex Court banned the practice of restricting women from entering the Sabarimala temple and legalized their entry with the majority of 4:1, Justice Indu Malhotra expressing her dissenting opinion.

Conclusion

The Sabarimala judgment was welcomed by some who saw this as progressive and greasing the wheels of the feminist movement in India, whereas some criticized it as their faith had got trampled challenged by the Court. After a month, when the doors of the temple were opened for the first time, the hill shrine and the surrounding region soon turned to a battlefield witnessing immense violence all around. Thus many review petitions were filed, along with some writ petitions filed by the chief temple priest and the Nair Service Society. A bench of five judges that was led by Chief Justice Ranjan Gogoi heard these petitions in an open court on 6th February. The bench gave a split judgement of 3:2 majority just two days before the pilgrim had to open for the seasonal worship. The state government thus needed to be cleared upon whether the 2018 judgment was still valid. Thus, the Court came to a peaceful solution asking the state government to comply with the previous judgement and ensure its implementation. The chief priest, the Nair Service Society, the Royal family, along with other organizations which earlier fueled the agitation, had all welcomed the final verdict this time. The opposition leaders were all contended with the final judgement and the fact that the pleadings of the devotees were taken into consideration.

REFERENCES

Indian Young Lawyers Association v. State of Kerala, 2018 SCC OnLine SC 1690

Article 25 and 26 of The Indian Constitution

1973 AIR 106, 1973 SCR (2) 757

Sri VenkataramanaDevaru&Ors. V. State of Mysore &Ors. 1958 AIR 255, 1958 SCR 895

AIR 1993 Ker 42

Scobserver.in. 2021. *Supreme Court Observer - Sabarimala Temple Entry*. [online] Available at: <<https://www.scobserver.in/court-case/sabrimala-temple-entry-case>> [Accessed 16 April 2021].

Legalserviceindia.com. 2021. *Brief analysis of Sabarimala Temple case Indian Young Lawyers Association v/s Kerala*. [online] Available at: <<http://www.legalserviceindia.com/legal/article-4872-brief-analysis-of-sabarimala-temple-case-indian-young-lawyers-association-v-s-kerala.html>> [Accessed 14 April 2021].

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