

INDIAN YOUNG LAWYERS ASSOCIATION V. THE STATE OF KERALA: A CASE ANALYSIS

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INTRODUCTION

Historically, religion has played an important role in the history of India. It has governed the social, economic, and even political aspects of the life of the Indians. Right from the beginning, religion has determined the “way of life” for the Indians. From describing the four goals of human life in the form of *Purushartha*¹ to hiding the division of labourers under the veil of division of labour², India has been largely governed by religion since the beginning. The Guptas, notably, considered themselves to be divine in nature³ and the codification of Manusmriti during their period, led to the creation of such a rigid hierarchical system, that it led to the unprecedented exploitation of the lower caste Indian people⁴. Women in India, were “relatively” treated well in Indian history, with the misogyny and chauvinism being so dominant that a woman, undergoing menstruation would be told to seclude themselves and not engage in any religious activities as they were considered to be “unclean”⁵. Surely, it seemed that with the evolution of the Indian society and especially, after India’s Independence in 1947, the conditions of Women would improve and that religion would stop interfering with their basic rights. However, Ambedkar was proved right, when he said that social revolution should precede political revolution⁶, for the Sabarimala case and the denial of entry to the women in the Sabarimala Temple, in the name of religion, stands as a testimony to the fact that women in India still have to fight for their basic rights even when the Constitution of India, in its Fundamental Rights chapter, gives everyone, The Right to Equality and The Right Against Discrimination⁷. The Indian Young Lawyers Association vs the State of Kerala, is a landmark case which

¹Patrick Olivelle, *The Asrama System: The History and Hermeneutics of a Religious Institution* 216-219 (1993).

²Dr. B.R Ambedkar, *Annihilation of Caste* 44-46 (1st ed. 2021).

³The Gupta period (article) | South Asia |, Khan Academy www.khanacademy.org/humanities/art-asia/south-asia/x97ec695a:1000-b-c-e-500ce-indo-gangetic-plain/a/the-gupta-period.

⁴Caste System originated during Gupta dynasty: Study, *The Mysterious India* (Mar. 18, 2016), www.themysteriousindia.net/caste-system-originated-gupta-dynasty-study/.

⁵Manusmriti: Laws of Manu : Manu : Free Download, Borrow, and Streaming : Internet Archive, archive.org/details/manusmriti_201607/page/n19/mode/2up.

⁶Dr. B.R Ambedkar, *Annihilation of Caste* 28-37 (1st ed. 2021).

⁷Indiankanoon.Org, indiankanoon.org/doc/237570/.

reasserts the notion, by the highest chamber of Judiciary, that equality must not be divorced from liberty and fraternity.⁸

FACTS

Women were refused entry from the Lord Ayyappa Sabarimala Temple in Kerala owing to their gender, according to 6 female members of the Indian Young Lawyers Association who filed a writ petition with the Supreme Court of India under Article 32⁹. The Supreme Court was urged in the current writ petition to direct the Kerala Govt, Chief Thanthri of the Sabarimala Temple, Pathanamthitta District Magistrate, as well as Devaswom Board of Travancore to allow entry of women who are greater than 10 and younger than 50 years old. The Kerala Hindu Places of Public Worship(Authorisation of Entry) Rules, 1965, which were created under Section 4 of the Kerala Hindu Places of Public Worship(Authorisation of Entry) Act, 1965, were challenged as being unconstitutional in the writ petition. The petition alleged that Rule 3(b) violated both the basic duty established by Article 51A and the fundamental rights granted by Articles 15, 14, and 25 of the Indian Constitution. In the writ petition, the Supreme Court was urged to adopt rules to guarantee the safety of female tourists to Kerala's Lord Ayyappa Sabarimala Temple. When S. Mahendran filed petition claiming that women between the ages of 10 and 50 were attending the Sabarimala Temple in 1990, the Kerala High Court looked into the case concerning the same subject. In that case, the Kerala High Court forbade women from entering the Lord Ayyappa Temple.¹⁰

ARGUMENTS

❖ ARGUMENTS BY THE PETITIONER

- Young Indian Lawyers' Association filed the petition in this case. The petitioners argued that because a Devaswom Board was established to oversee the temple under the

⁸Meera Emmanuel, If hereafter things go wrong, we will have nobody to blame, Dr. Ambedkar's final speech in Constituent Assembly, Bar & Bench (Apr. 14, 2018), www.barandbench.com/columns/dr-ambedkar-1949-constituent-assembly-speech.

⁹Indiainkanoon.Org, indiainkanoon.org/doc/163639357/.

¹⁰Indiainkanoon.Org, indiainkanoon.org/doc/1915943/-S.

Travancore-Cochin Hindu Religious Institutions Act of 1950, the temple cannot be considered a separate religious denomination under Article 26 but should instead be considered a part of the State under Article 13.

- Second, discrimination against women in relation to temple access is against Hinduism's fundamentals and should be illegal because the Lord Ayyappa Temple is a Hindu temple.
- Third, after reading Rule 3(b) of the Kerala Hindu Places of Public Worships(Authorization of Entry) Rules, 1965 and referring to Sections 3 and 4 of the aforementioned Act, the Petitioners argued that Rule 3(b) is "ultra vires" or "beyond the power" of both Sections 4 and Section 3 of the aforementioned Act because Rule 3(b), which stipulates the exclusion on the entry of females in any temple in

❖ ARGUMENTS BY THE RESPONDENT

- The State of Kerala, Respondent No. 1, adopted several positions throughout time. According to an affidavit submitted on November 13th, 2007, the government does not condone any form of discrimination against women. In another affidavit, filed on February 5, 2016, the government's position was altered. In this affidavit, the government claimed that its 2007 statement would be in conflict with the Kerala High Court's ruling respecting the Sabarimala Shrine and implied that it opposed women entering the temple. When the Supreme Court questioned the State Government's senior attorney on this matter on November 7, 2016, he or she said that the State preferred that the first affidavit be relied upon rather than the second.
- The Respondent No. 4 has claimed that the tradition forbidding women between the ages of 10 and 50 from entering the temple constitutes the temple's fundamental tenets. According to Respondent No. 4, Lord Ayyappa established the protocol for Sabarimala pilgrimage and stated that the fulfilment of a 41-day Vruthum is a crucial component of the spirit refining, which is crucial when one embarks on the pilgrimage. Thus, the Respondent has argued that since women would experience their periods during the 41-

day period, they would not be allowed to participate in the Vruthum since the Hindu faith forbids women from visiting temples or engaging in religious activities during the same time.

- . The Respondent No. 4 also claimed that the same ritual was used to discover that the deity, Lord Ayyappa, does not want young women to enter the temple. In addition, the Respondent No. 4 backed up his position by citing the Kerala High Court's ruling in the S. Mahendran case, wherein one of the key witnesses—at the time, the Thantri of the Sabarimala Temple—told the High Court that he learned that women were not permitted to enter the temple before the 1950s from his paternal uncle, KantaruShankaru, who was also the Thantri, and that his paternal uncle had told him and the temple'

ANALYSIS

When S. Mahendran, a lawyer, learned that young women were attending the Sabarimla temple, he brought the same issue before the Kerala High Court. He filed a plea with the Kerala High Court, arguing that it was improper for women to enter the temple in accordance with its traditions. The Kerala High Court upheld the requirement that women between the ages of 10 to 50 cannot access the shrine in its 1991 ruling¹¹. In contrast to the Kerala High Court's ruling, which stated that women between the ages of 10 to 50 must not be permitted to access the Sabarimala Temple, the Supreme Court issued a ground-breaking decision in this case, which allowed women of all ages to access the Temple¹². The case was heard by a 5-member court, which returned a 4-1 decision. It was ironic that the only female judge on the bench dissented from the judgment. Chief Justice DipakMisra, Justice D.Y. Chandrachud, Justice A.M. Khanwilkar, and Justice R.F. Nariman were the four justices who ruled in favour of the majority. They took into account the rulings made by the Supreme Court in the S.P. Mittal case¹³, which established the requirements for a religious institution to be recognized as a religious denomination, and the Shirur Mutt case, which established the doctrine of the "essential religious practice test," according to which only essential religious practices are protected by the

¹¹Indiankanoon.Org, indiankanoon.org/doc/1915943/.

¹²Indiankanoon.Org, indiankanoon.org/doc/163639357/.

¹³Indiankanoon.Org, indiankanoon.org/doc/312939/.

Constitution. Ayyappa devotees are Hindus, and the Sabarimala Temple is a Hindu temple, so the practice of restricting the entry of women in the Sabarimala Temple cannot be protected. The court held, taking the Shirur Mutt case into consideration, that not allowing women (of the 10 to 50 age group) in the temple is not a fundamental, basic, and essential tenet of Hinduism. According to the court's ruling in the S.P. Mittal case, Lord Ayyappa's followers do not constitute a separate religious group because they lack any distinctive beliefs or customs that they believe to be beneficial to their spiritual well-being. This Supreme Court interpretation would have been fantastic if Hinduism had been an Abrahamic religion. Though it is crucial to remove any kind of discrimination against women, the case failed to take into consideration the history of Hinduism. Hinduism never originated as a religion per se¹⁴. Hinduism had six schools of philosophy, all of which, considered themselves as different from each other¹⁵, much like how Islam considers itself different from Christianity. There was never one umbrella under which the Hindus united and called themselves as adhering to a particular religion¹⁶. It was only due to the external influences¹⁷ and the foreign invasions of India by the Islamic invaders¹⁸, that the concept of "religion" became dominant. Hinduism in the current form was actually the coming together of various traditions¹⁹. In short, Hinduism is nothing but different sets of religions and practices, considering themselves to be part of a super-structure known as "Hinduism"²⁰, with the virtue of being present and followed in the same subcontinent. However, the Sabarimala temple would not have been able to satisfy the essential religious practice test, since even if the worshippers of Ayyappa were considered to be a separate religious group, still restriction on the entry of women would have not been considered an essential religious practice as the legend of Ayyappa does not mention that Ayyappa prohibits women from entering the temple but the legend mentions that Ayyappa leaves it at the discretion of his worshippers²¹, as to whether they intend to worship him by entering the shrine or not and also the fact that there were many instances which were

¹⁴Joseph Kitagawa, *The Religious Traditions of Asia: Religion, History, and Culture* 12 (2021).

¹⁵Wendy Doniger, *On Hinduism* 46 (1st ed. 2014)

¹⁶Dr. B.R Ambedkar, *Annihilation of Caste* 47-53 (1st ed. 2021).

¹⁷Why Hinduism isn't an "ism" but a Way of Life, isha.sadhguru.org/us/en/wisdom/article/hinduism-not-religion.

¹⁸Tanvir Anjum, *The Emergence of Muslim Rule in India: Some Historical Disconnects and Missing Links*, 46 *Islamic Studies* 234 (2007).

¹⁹Gavin D Flood, *An Introduction to Hinduism* 226 (1996).

²⁰Julius Lipner, *Hindus: their religious beliefs and practices* 8 (2nd ed. 2009).

²¹India Today, *Legend of Sabarimala: Love story that kept women from Lord Ayyappa*, *India Today* (Sept. 28, 2018), www.indiatoday.in/india/story/sabarimala-legend-women-lord-ayyappa-1351674-2018-09-28.

recorded, wherein women have entered the temple for various purposes like for the first rice-feeding ceremony for their children²². For example- The Maharani of Thiruvithamkoor paid a visit to the temple in 1940²³; in 1990, a former Devaswom commissioner had a rice feeding rite of his granddaughter performed, surrounded by female relatives²⁴; and in 1995, the local press claimed that two VIPs' wives had entered the temple²⁵. Additionally, it has been discovered that women between the ages of 10 and 50 were formerly permitted to enter the temple for the customary rice-feeding ceremony of their children²⁶; this practice was only abolished after the temple received notice of it in 1955. All of this supports the argument that, even if Ayyappa devotees were thought to practice a different religion, the ban on women visiting temples is not a fundamental part of their faith. The majority also cited Article 25(1), which states that "all persons" have an equal right to profess, practice, and spread their religion; as a result, "women" are included in the scope of the article. The exclusionary practice of preventing women from entering the Sabarimala Temple violates their fundamental right under Article 25(1) because that provision of the Constitution prohibits gender discrimination. Rule 3(b)²⁷ of the Kerala Hindu Places of Public Worship(Authorisation of Entry) Rules, 1965, which were created in accordance with The Kerala Hindu Places of Public Worship(Authorisation of Entry) Act, 1965, was found to be in violation of the Fundamental Right to Religion of Women, guaranteed to them under Article 25. In addition to being in breach of Article 25, the rule 3(b) that forbade women from entering Hindu temples if there is a custom against it was also overturned because it was in conflict with Sections 3 and 4(1) of the aforementioned 1965 Act²⁸. Discrimination against any group or category of Hindus in relation to access to a Hindu temple is prohibited by Section 3 of the Act. The Rule breached the aforementioned provision since women were perceived as

²²Indiainkanoon.Org, indiainkanoon.org/doc/1915943/.

²³Kerala for allowing women of all ages into Sabarimala temple, The Hindu (Feb. 7, 2008), www.thehindu.com/todays-paper/tp-national/Kerala-for-allowing-women-of-all-ages-into-Sabarimala-temple/article15160720.ece.

²⁴Sabarimala temple: Women entry issue first came up in Kerala High Court 28 years ago, India News, The Indian Express (Sept. 29, 2018), indianexpress.com/article/india/sabarimala-templewomen-entry-issue-first-came-up-in-kerala-high-court-28-years-ago-5378916/.

²⁵India Today, Ban on women of prohibited age group visiting Sabarimala shrine comes under scrutiny, India Today (June 14, 2013), www.indiatoday.in/magazine/religion/story/19950115-ban-on-women-of-prohibited-age-group-visiting-sabarimala-shrine-comes-under-scrutiny-806703-1995-01-14.

²⁶Indiainkanoon.Org, indiainkanoon.org/doc/163639357/

²⁷www.financialexpress.com/india-news/the-constitutional-and-legal-bases-of-the-sabarimala-verdict-october-17-2018/1352605/.

²⁸Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, bareactslive.com/KER/ker080.htm.

belonging to a "section" of Hindus. Clause 1 of Section 4 of the 1965 Act which consists of discussion of developing rules for managing Hindu Temple matters states that no such regulations must discriminate "in any manner" against any Hindu. Therefore, the said Rule is also inconsistent with the Sec.4 and hence, was struck down by the majority. The majority bench also held that the word "public morality" in Article 25(1) does not refer to morality, as interpreted by a particular section or group of the society, but it rather refers to "constitutional morality". It would be "constitutionally unethical" to forbid women from entering the Sabarimala Temple because the Constitution forbids any kind of discrimination based on gender. As a result, the majority bench declared Rule 3(b) of the 1965 Rules to be illegal and permitted the entrance of women of all ages to the temple. Ironically, given that she was a woman, Justice InduMalhotra was the only one to express dissent. Her verdict contained several crucial arguments that cannot be disregarded. She asserted that the Sabarimala Temple met the criteria for "religious denomination" established in the S.P. Mittal case and constituted a distinct religious denomination. First off, those who follow the "Ayyappan Dharma" and worship Lord Ayyappa are referred to as "Ayyappans." Male followers are referred to as Ayyappans, while female devotees are referred to as Malikapurnams. A "KanniAyyappan" is a traveller making their first pilgrimage. Second, since they see Lord Ayyappa as a "NaishtikaBrahmachari" and believe that the rituals they observe are passed down by the god himself, the devotees also adhere to a recognizable set of beliefs and practices that are necessary for their spiritual fulfilment. Third, the temple is not funded by the Consolidated Fund of India (according to Justice InduMalhotra), which would exclude it from the "concept" of "State," although being run by the Travancore Devaswom Board because the Temple already owned large swaths of land which are now under the Government of India and the Government of India is compelled to pay to the temple for the possession of its lands. Justice InduMalhotra's argument highlights a very significant flaw in the majority's reasoning: the temple does not meet the third requirement that would give it the character of a State under Article 12²⁹ because, while it is administratively and functionally controlled by the State, it is not "financially" controlled by the State. Similarly, her analysis of the first criteria is also correct, given the fact that the worshippers of Ayyappa also have a distinct name. Her analysis of the second criteria is however flawed for a crucial reason—The Legend of Ayyappa, mentions that Lord Ayyappa never explicitly restricted the women

²⁹Indiankanoon.Org, indiankanoon.org/doc/237570/.

from entering the temple. Moreover, there are many Lord Ayyappa temples across South-India wherein there is no restriction on the entry of women and hence, if it was a distinct practice followed by the Ayyappa followers, then it would have been followed in all Ayyappa temples and not just the one in Sabarimala. He left it at the discretion of his worshippers to decide whether they want to pay their respects for him or not. This would render the second criteria's interpretation of Justice Malhotra to be flawed and given the fact that all three criteria must be satisfied for the fulfilment of the test, Justice Malhotra's argument does not satisfy the 'religious denomination test'. In her judgement, she also said that "morality" mentioned in Article 25, should be understood in the context of a "pluralistic" Indian society, as opposed to the "constitutional morality", which was the interpretation given by the majority bench. Though she is not wrong, she is not right too. Her argument here, is based on a "moral" framework rather than a legal framework. As far as the Constitution is concerned, it is a living document which is sacrosanct with respect to its basic structure³⁰. Morality, if determined on the basis of the attitudes of particular group (in this case, the Ayyappa worshippers) with respect to a particular issue (the prohibition on the entry of women), would be tragic, since morality is different for different people and groups, and this would lead to a arbitrariness in the society. With regards to Rule 3(b), she said that the said rule is not in conflict with the parent act, that is, the Kerala Hindu Place of Public Worship Act, 1965 because it is a mere "exception". This was another strong argument in her judgement, however, should the exception be such, that even if it is against the very essence of the Act, it should be valid? The Article 15 also makes exceptions in favor of depressed classes of the society however, the exception exists only because the exception is needed to fulfill the essence of Article 15. The depressed classes would not have gotten the required opportunities, if exception for them, was not mentioned in Article 15 and hence they would be subject to further discrimination (which is exactly what the Article 15 prohibits), this means that the exception harmonizes with the Article 15, as opposed to contradicting it, which is not the case in Rule 3(b)³¹ of the 1965 Rules. The exception in Rule 3(b), directly contradicts the very essence of the 1965 Act³², and hence, it violated the 1965 Act. Justice Malhotra also says that the contention made by the petitioners that the denial of entry to

³⁰Indiakanon.Org, indiakanon.org/doc/257876/.

³¹www.financialexpress.com/india-news/the-constitutional-and-legal-bases-of-the-sabarimala-verdict-october-17-2018/1352605/.

³²Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, bareactslive.com/KER/ker080.htm.

the women in the temple, also violates Article 17, is incorrect because Article 17 was inserted, only in the context of caste. Though Justice Malhotra is not wrong in her judgement, she has only considered the technical aspect of the Article rather than its essence and purpose. It is true that the Article 17 was inserted in the context of caste only, however why was it inserted in the Constitution, in the first place? So, that no person belonging to one group should be allowed to consider the anyon, as so inferior to him/her, which would make the another, unworthy of being touched and that every human being is equal and there is no inherent “uncleanliness” that exists in the human beings. The women in India have historically been “unclean” during their menstrual cycle³³. They are considered to be “unclean” to the extent that they are not allowed to enter the temple and pray the very God or Goddess who supposedly created something such as menstruation. This discrimination against women, in essence, is like the discrimination against the “untouchables”³⁴, for both, women during their menstruation and untouchables, were and are still considered to be “unclean” and hence, denied entry in the temples. In essence, Article 17 was inserted to remove and illegalize such practices that considered Indians to be “unclean” and hence, Article 17 is violated in its very essence, when women are denied entry just because they menstruate.

CONCLUSION

The case is a landmark case as it satisfies all the criteria needed for a case, to not be as simple as a case where the distinction between right and wrong is as clear as the difference between black and white. Important arguments were received from the side of petitioners as well as respondents. While the former wants secularism and equality to prevail, the latter considers secularism itself as a concept which must rescue its religious practice. The judgement delivered by the majority bench as well as the dissenting Justice Malhotra, is a representation of the battle between religion and secularism in India. Justice Malhotra gave a very strong interpretation of the issue, which cannot be neglected. The question boils down to this-what is correct? Stopping a religious practice which lays down restrictions on women or letting it to be continued in the interest of its followers? This question can be considered by the French interpretation of

³³Manusmriti: Laws of Manu : Manu : Free Download, Borrow, and Streaming : Internet Archive, archive.org/details/manusmriti_201607/page/n19/mode/2up.

³⁴Dr. B.R Ambedkar, Annihilation of Caste 28-37 (1st ed. 2021).

secularism wherein they consider secularism not only a mere separation of State and Church but going beyond it and paying absolutely no heed to religion and essentially ignoring it³⁵. If religion in India is given a free pass by the Judiciary even when it violates constitutional morality, then India would never be able to rise above the clutches of religion. The Judiciary must interpret the Constitution in a way, that gives primacy to the Constitution. Justice Indu Malhotra's interpretation is crucial and can be used as a point of contention in the future. The Supreme Court must be clear while representing its stand for it can lead to more disastrous consequences such as the overturning of this landmark and noble decision, which would ultimately, be harmful for the society as a whole. God can be worshipped but he must not be allowed to govern. God must remain at the temple but the moment he tries to enter the Court, he must be stopped.

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³⁵Nicolas Cadne, *French Secularism Isnt Illiberal*, (Apr. 7, 2021), foreignpolicy.com/2021/04/07/french-secularism-isnt-illiberal/.

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