

## THE CASE OF SABARIMALA: ANALYZING JUDICIAL AND CULTURAL ASPECT

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### **ABSTRACT**

The main goal behind writing this research paper was to clarify the point of view that Justice Malhotra has in this particular case. The case of Sabarimala is a widely discussed issue, it has become a household discussion. We see people around us, in buses, in trains discussing the Sabarimala issue and debating on whether women should be allowed or not, we see varied opinions and strong beliefs. I have discussed the historical background of the Sabarimala case as well as the history of the temple. From how it was discovered by the then prince to the present hustle between the respondents and the petitioners. We have also discussed Justice Malhotra's viewpoint on the issue. My sole purpose to write this research paper was to present the voice of dissent, to present that section of the society that was against granting permission to women's entry inside the temple. In my opinion, Justice Malhotra presented her points very clearly and the way she argued was remarkable. Being a lady it was expected that she would support the petitioners, but she has proved that laws are the same for all and one has to keep the personal bias aside while passing a judgement because these judgements are something which the whole community, the whole society looks up to. I have discussed the judicial aspect of the case as well as the cultural aspect as the judiciary is also a part of the society even if it is not a societal concept, it is pertinent to discuss the cultural aspect to discuss the legal aspect because The case of Sabarimala is an issue of national interest.

### **INTRODUCTION**

India is home to all the major religions of this world and is often regarded as the 'land of religious toleration.' The grand historic past dating back over 4000 years of our nation has no less to cite the same. However, at the same time, it has also faced the scar of partition which many believe was because of the conflict of interest and anxieties between various religious communities. Keeping such perspectives in mind, the framers of the Indian Constitution provided the right to equality, freedom of religion and later in 1976, the 42nd constitutional amendment declared India a secular, democratic republic.

Our forefathers were very much aware of the fact that there is a need to build social rapport among people from different ethnicities and cultures and also to ensure that progressive ideas are not thwarted based on freedom and religion. Therefore the concept of secularism was introduced for a progressive and egalitarian society so that the sanctity of the religious relationship that a man has with God is maintained and left to the individual's discretion.

The case of Sabarimala is one such case whose history dates back to an era when even the constitution of India wasn't in the picture. The bone of contention between the respondents and petitioners in the Indian young lawyers association & others VS state of Kerala and others was the denial of women's entry inside the Sabarimala temple. With a 4-1 verdict, the Supreme Court lifted the ban on women's entry.

We will be discussing the historical background of the Sabarimala temple because we cannot study the case laws without knowing its historical background. After all, it is linked with the present. The main objective of writing this research paper is to present the views of the voices of dissents that was advocated by justice Malhotra, in a bench of five judges, surprisingly she was the only judge who heard the voice of dissent.

This research paper is advocating the thought process of Justice Indu Malhotra who was against the decision of allowing women's entry inside the temple.

### **OBJECTIVES**

1. To define and clarify
2. What was the Sabarimala case all about?
3. What are the various laws while pursuing differences between the same?
4. To understand the historical background of the Sabarimala temple.
5. To understand what was the actual reason behind the denial of women's entry into the temple.
6. To study the effects of the Sabarimala issue and gender justice.
7. To interpret the directive and conclude the same.

**SCOPE OF WORK**

Although I have done this project with the utmost sincerity and attention to detail, there are a few limitations present, without which this research could have been enhanced.

Firstly the issue of time constraint did not allow me to research to the full extent and had to resort to only a few immediately available resources.

Secondly, the object of the research paper is to analyze the various aspects of the Sabarimala issue and provide a new source of information and knowledge to the readers about it. However, the critical analysis of the same is a topic, which has already been established in various journal papers. But this paper talks about the constitutional perspective and the personal law plea to understand both pros and cons of the subject.

**RESEARCH METHODOLOGY**

This research project is descriptive and doctrinal. It does not in any way or by any means intend to plagiarize any material or violate an individual's copyright. Accumulation of the information on the topic includes wide use of secondary sources like books, newspapers, e-articles etc. The matter from these sources has been compiled and analyzed to understand the concept from the grass-root level. Websites and articles have also been referred to.

The structure of the project, as instructed by the faculty of law has been adhered to and the same has helped give the project a fine finish off.

**HISTORICAL BACKGROUND OF SABARIMALA TEMPLE**

The Sabarimala is a very ancient temple which is having a rich history, demographically it is located near the Periyar tiger reserve in the state of Kerala. Lord Ayyapan, the god of growth, is worshipped in the temple and it is a common belief that he was the son of Lord Shiva and Mohini. Being a part of the Periyar tiger reserve it is green and surrounded by forests. The main temple is situated on the hilltop.

The temple is not open for worship except during the Mandala Pooja that is between 25th November to 15th December. Earlier the temple of Sabarimala was unreachable but in the 12th

century, a prince of the Pandalam Dynasty discovered the path to reach the main temple and made it accessible to the general public. Since he made it accessible to the general public he was considered an avatar of the Lord Ayyapa. 'The pilgrims have to observe celibacy for 41 days before going to Sabarimala. They are also required to strictly follow a Lacto-vegetarian diet, refrain from alcohol, not use any profanity and allow the hair and nails to grow without cutting. They are expected to bath twice a day and visit the local temples regularly. They wear black or blue clothes, do not shave until the completion of the pilgrimage, and smear vibhuti or sandal paste on their forehead.'<sup>1</sup> Lord Ayyapan is believed to be a Bramhachari and that could be one of the reasons for the denial of women's entry inside the temple.

### **WHAT WAS THE REASON BEHIND ABSTAINING WOMEN'S ENTRANCE?**

It's one of the few, if not as it were a sanctuary, that transparently invites individuals of all beliefs and castes. So, why confine women? For the reply, we got to go back to the legend. Concurring to the Puranas, Ayappa was born to crush a female evil spirit who, much appreciated to a boon, seems as if it was vanquished by a child born of both Shiva and Vishnu. When Ayappa satisfies his predetermination by murdering her, a wonderful lady rises from the body. She had been reviled to live as an evil spirit, but her murdering switched the revile.

Presently free, she inquires Ayappa to wed her. He denies, clarifying to her that his mission is to go to Sabarimala where he would reply to the supplications of his aficionados. Be that as it may, he guarantees her, he will wed her when Kanni-swamis halt coming to Sabarimala. She presently sits and waits for him at a neighbouring sanctum close to the most sanctuary and is revered as Malikapurathamma. With hundreds of thousands of new lovers pouring in every year, hers will be a long wait. And that's why ladies don't go to Sabarimala.

I feel that it should be on the description of women whether to go to the temple or not. Because ultimately it's their viewpoint and their will to decide where they want to go or not to go.

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<sup>1</sup> NDTV.com/Story of Sabarimala Origin, beliefs and controversy on women's entry

**THE SABARIMALA CASE (INDIAN YOUNG LAWYERS ASSO. & ORS.VS STATE OF KERALA & ORS.)**

Case Name: Indian Young Lawyers Association & Ors vs. The State of Kerala &Ors.

Citation: 2018 SCC OnLine SC 1690

Parties name: Indian Young Lawyers Association (petitioner)

Travancore Devaswom Board (respondent)

State of Kerala (respondent)

Pandalam Royal Family (respondent)

Chief Thanthri (respondent)

Bench: Deepak Mishra, A.N. Khanwilkar, Rohinton Nariman, InduMalhotra, D.Y. Chandrachud<sup>2</sup>

**JUDGEMENT**

In 2018, a Constitutional bench uplifted the ban on women's entry to the Sabarimala temple irrespective of their age, iterating that it violates Article 25 of the Indian Constitution which states that 'subject to public order, morality and health, every person shall have the right to freely profess, practice and propagate the religion of his own choice.'

The constitutional bench of the supreme court also iterated that it violates Article 17 of the Indian Constitution which deals with the abolition of untouchability. An ensuing appeal was documented out in the open interest in 2006 challenging the established legitimacy of Rule 3(b) of the Kerala Hindu Spots of Public Love Rules, 1965 (that limit the passage of ladies into the Sanctuary). This enactment was instituted by the state government to direct the passage of various areas of Hindus into spots of public love. The request expressed that the boycott force (limiting section of ladies) be eliminated as it was ultra vires (past the forces) of the Constitution. In 2018, a Constitution Seat permitted the passage of ladies regardless old age into the Sanctuary because the boycott disregarded the central right of the opportunity of religion according to Article 25 of the Constitution. The arrangement limiting the section of ladies in the state enactment was struck down and considered unlawful.

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<sup>2</sup> <https://lawcirca.com/sabarimala-case-summary>

A resulting appeal was recorded in broad daylight interest in 2006 challenging the established legitimacy of Rule 3(b) of the Kerala Hindu Spots of Public Love Rules, 1965 (that limited the section of ladies into the Sanctuary). This enactment was sanctioned by the state government to direct the passage of various areas of Hindus into spots of public love. The appeal expressed that the boycott forced (limiting the section of ladies) to be eliminated as it was ultra vires (past the forces) of the Constitution. In 2018, a Constitution Seat permitted the section of ladies regardless of old age into the Sanctuary because the boycott abused the essential right of the opportunity of religion according to Article 25 of the Constitution. The arrangement limiting the section of ladies in the state enactment was struck down and considered unlawful.

CJI Dipak Misra, talking for Khanwilkar J. and himself saw that religion is a lifestyle characteristically connected to the poise of an individual and male-centric practices dependent on the prohibition of one sex for another couldn't be permitted to encroach upon the essential opportunity to rehearse and declare one's religion. He expressed that the avoidance of ladies between the ages of 10-50 years rehearsed by the Sabarimala Sanctuary stripped ladies of their opportunity of love, ensured under Article 25(1).

Further, he held that the aficionados of Ayyappa didn't breeze through the established assessment to be pronounced a different strict personality. He said that they are Hindus. Along these lines, he held that the sanctuary's denominational option to deal with its interior issues, under Article 26(b), was dependent upon the State's social change order under Article 25(2)(b). Article 25(2)(b) gives that the State can make laws to change Hindu groups. In particular, Article 25(2)(b) permits the State to make any law that opens a public Hindu foundation to all 'classes and segments' of Hindus. Equity Misra deciphered 'classes and segments' to incorporate the gendered classification of ladies. He reasoned that the Sabarimala custom of barring ladies is liable to State commanded change.

He also held that the exclusion of women between ages 10-50 by the Sabarimala Temple cannot be an essential religious practice. He held that if the Ayyappans are Hindus, the practice of excluding women cannot be held to be an essential religious practice.

**AN INSIGHT INTO JUSTICE INDU MALHOTRA'S VIEWPOINT**

Justice Indu Malhotra was the sole voice of dissent in the Sabarimala case. The 4-1 verdict held that not allowing women to enter the temple is discriminatory. The court of the law tried its best to prove that the Indian Judicial system is progressive as well as liberal and it has left no stone unturned. Being a Supreme Court judge, they tried their best to keep the general public's faith in the Indian Judiciary. Whereas Justice Malhotra was the sole voice that iterated that not allowing women is a religious matter and the court should not interfere, any interference from the judiciary's side would lead to utter chaos and disturbance in the society.

Justice Malhotra pointed out the fact that to keep secularism alive in the nation, societal viewpoint should be given more preference than the constitutional viewpoint. And it is a common belief that has been iterated many times by the eminent social reformers of the nation. Reformers like Mahatma Gandhi and Swami Vivekanand have said that social reform cannot take place without considering societal needs and values. Because it is the society for whom the laws are made, for whom the laws are framed.

Justice Malhotra highlighted that every person as well as the religious institutes have the right to have their own belief and practices, and nobody has the right to question unless it is highly unethical or immoral. Public morality is something that shouldn't be ignored. Article 25 states that every person shall have the right to freely profess and practise the religion of their own choice.

In her judgement, she said that PILs which are filed on religious interests shall not be entertained because doing so will lead to many conflicts among the different communities in the country. In a democratic country people have a different faith, they belong to different castes, they practice different religions and follow different customs and traditions, entertaining PILs in such religious cases could cause serious damage to the integrity as well as to the secularism of the nation, to avoid such conflicts the court of law shall not entertain PILs on these bases.

She also iterated that a religion has the right to form its code of ethics and also prescribe rituals and customs that are to be followed by the concerned deities. The religious practice of not allowing women of age 10-50 is an 'essential religious practice' and keeping in mind that lord

Ayyapan is portrayed as a Naishtika Brahmachari in Sabarimala, unlike other Ayyapan temples such religious practices ought to be followed. Because every religious institute has the right to have its customs and beliefs.

The restriction has been followed in the temple since the time immemorial when even the constitution of India did not come into the picture. These restrictions were prevalent and keeping that in mind we should not hurt the feelings of the concerned deities of that particular religion or the community.

### **ANALYZING THE JUDICIAL ASPECT**

When we are discussing a suite of national interest, we cannot ignore its legal aspect, because it provides a better understanding of the matter. Let's look upon the judicial aspects of the case; Further, she calls attention to that the solicitors are not fans of Ayyappa and thusly the court is settling on a strict question at the command of solicitors who don't buy into the confidence, which doesn't fulfil the condition to move the High Court under Article 32:

"The option to move the High Court under Article 32 for infringement of Key Rights, should be founded on arguing that the Applicants' privileges to venerate in this Sanctuary have been disregarded. The Applicants don't profess to be lovers of the Sabarimala Sanctuary where Master Ayyappa is accepted to have shown himself as a 'Naishtika Brahmachari'. To decide the legitimacy of long-standing strict traditions and uses of a group, at the example of an affiliation/Intervenors who are "engaged with social formative exercises particularly exercises identified with the upliftment of ladies and causing them to become mindful of their privileges", would require this Court to choose strict inquiries at the command of people who don't buy into this confidence".

"The admirers of Ruler Ayyappa at Sabarimala Sanctuary comprise a strict division, or order thereof, as the case possibly, following the 'Ayyappan Dharma'. They are assigned by a particular name wherein all-male enthusiasts are called 'Ayyappans'; all-female enthusiasts under the age of 10 a long time or more the age of 50 years, are called 'Malikapurnams'. A pioneer 52 on their lady excursion to Sabarimala Sanctuary is known as a 'KanniAyyappan'. The lovers are alluded to as

'Ayyappa Swamy'. An enthusiast needs to notice the 'Vratham', and follow the implicit rules, previously setting out upon the 'Pathinettu Padigal' to enter the Sanctuary at Sabarimala... The strict works on being continued in this Sanctuary are established on the conviction that the Master has shown himself as a 'Naishtika Brahmachari'. It is because of this Nishtha, that ladies between the ages of 10 to 50 a long time are not allowed to enter the sanctuary." The disagreeing judge had the option to get a handle on the point that the limitation is just on ladies of a particular age bunch in Sabarimala owing basically due to the brahmacharya part of the divinity and the fans' vratham and doesn't add up to segregation as it's anything but a sweeping restriction on ladies' entrance. She likewise perceives the way that there numerous different sanctuaries of ladies of all ages bunch at all: "The privilege to sexual orientation correspondence to offer love to Ruler Ayyappa is secured by allowing ladies, all things considered, to visit sanctuaries where he has not shown himself as a 'NaishtikBrahamachari', and there is no comparable limitation in those sanctuaries. It is appropriate to specify that the Respondents, in this setting, have presented that there are more than 1000 sanctuaries of Master Ayyappa, where he has shown in different structures, and this limitation doesn't have any significant bearing." allowed section, it would bring about changing the very character/nature of the god, which would straightforwardly encroach on the privilege of the enthusiasts to rehearse their religion ensured by Article 25(1) of the Constitution. The privilege of the fans under Article 25(1) can't be made subject to the case of the Applicants to enter the sanctuary under Articles 14 and 15 of the Constitution, since they don't pronounce confidence in the divinity of this Sanctuary, yet guarantee only to be social activists."

The appointed authority alludes to the previous decision of the Kerala High Court which held that the limitation on the passage of ladies between the ages of 10 to 50 years was as per the training common since days of yore, and was not violative of Articles 15, 25, and 26 of the Constitution and that this judgment had accomplished absolution and was not tested further. Subsequently, she asserts that this issue ought not to have been resumed under Article 32. While different adjudicators habitually looked at the Sabarimala issue with social wrongs, for example, the sanctuary section of Dalits, unapproachability and so on Equity Malhotra varied and pointed that these are altogether various issues: "In the current case, ladies of the told age bunch are permitted passage into any remaining sanctuaries of Master Ayyappa. The limitation on the

passage of ladies during the informed age gathering in this Sanctuary depends on the special quality of the divinity, and not established on any social rejection. The similarity tried to be drawn by contrasting the privileges of Dalits and reference to the passage to sanctuaries and ladies is entirely misjudged and impractical. "Article 17 alludes to the act of Distance as submitted in the Hindu people group against Harijans or individuals from discouraged classes, and not ladies, as fought by the Applicants. "Legal survey of strict practices should not be embraced, as the Court can't force its ethical quality or sanity regarding the type of love of divinity. Doing so would discredit the opportunity to rehearse one's religion as per one's confidence and convictions. It would add up to legitimizing religion, confidence and convictions, which is outside the ken of Courts.

### **CONCLUSION**

The case of Sabarimala has a widely discussed issue, it has become a household discussion. We see people around us, in buses, in trains discussing the Sabarimala issue and debating on whether women should be allowed or not, we see varied opinions and strong beliefs. I have discussed the historical background of the Sabarimala case as well as the history of the temple. From how it was discovered by the then prince to the present hustle between the respondents and the petitioners. We have also discussed Justice Malhotra's viewpoint on the issue. My sole purpose to write this research paper was to present the voice of dissent, to present that section of the society that was against granting permission to women's entry inside the temple. In my opinion, Justice Malhotra presented her points very clearly and the way she argued was remarkable. Being a lady it was expected that she would support the petitioners, but she has proved that laws are the same for all and one has to keep the personal bias aside while passing a judgement because these judgements are something which the whole community, the whole society looks up to. I have discussed the judicial aspect of the case as well as the cultural aspect as the judiciary is also a part of the society even if it is not a societal concept, it is pertinent to discuss the cultural aspect to discuss the legal aspect because The case of Sabarimala is an issue of national interest.