IS RELIGION ABOVE LAW: A STUDY OF SABARIMALA CASE VIS-A-VIS WOMEN RIGHTS IN INDIA

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Abstract

Post-independence, India was founded on the principles of sovereignty, socialism, democracy, and secularism. However, secularism in our country does not imply the absence of religion. Instead, it aims to foster religious liberty and avoid favouring one religion over another. Religious women are a broad group that includes women of all classes, ethnicities, and nationalities. However, problems of religious women's independence and rights are still being contested. Is religion and its strict rules oppressing and discriminating against women, or are religious women discovering their real selves by practising their culture? In India, this question is one of competing fundamental rights that pits the equality those who practice religions versus the equality of women. This research paper looks into whether religion is above the law in India, with a focus on the Sabarimala case and women's rights in the country.

Keywords: Women’s rights, religion, right to equality, feminist jurisprudence

Introduction

The modern, democratic state has an institutionalised justice system in which judges enforce the rule of law and, on occasion, fill policy gaps that the legislature has inadvertently left unresolved or are creatures formed by vicissitudes. However, in a culture as deeply rooted in religious views as India, the fact that judges of constitutional courts decide on matters of faith has always been a source of conflict.

Such legal difficulties in India include a complicated interplay between Articles 14[1], 25[2], and 26[3] of the Constitution. When these Articles are contrasted, we are overwhelmed by the lengthy argument that arises as we consider the fundamentals of constitutional integrity. The constitutional trinity of "liberty," "equality," and "dignity" is more than meets the eye; it is an unwritten moral code that extends beyond the theoretical confines of codified legislation.

The Sabarimala judgement embodied not only the desires of devout women seeking entrance to the temple, but also those who wished to establish a strong, persuasive constitutional precedent for the future. It presented the court with a golden opportunity to set a decision that solidified constitutional morality in our political lexicon and freed individual rights from the constraints of collective rights.

Judicial history of the Sabarimala case

The Sabarimala Sree Dharma Sastha Temple, dedicated to Lord Ayyappa, is a well-known temple in Kerala. In 1990, a ban on women of menstrual age (between 10 and 50 years) entering the Temple was proposed. By way of its ruling in S. Mahendran vs. The Secretary, Travancore, the High Court of Kerala prohibited their admittance on the grounds that the aforementioned exclusion was constitutional and reasonable because it was a long-standing custom prevailing from time immemorial (1993).

In 2006, a public interest petition was filed challenging the constitutional validity of Rule 3(b) of the Kerala Hindu Places of Public Worship Rules, 1965. (that restricted the entry of women into the Temple). The state government passed this law to limit the admittance of different groups of Hindus into places of public worship. The petition demanded that the restriction (restricting women's admittance) be lifted since it was "ultra vires" (outside the Constitution's authority). In 2018, a Constitution Bench ruled that the ban on women of any age entering the Temple violated their fundamental right to freedom of religion under Article

[1] Article 14 in The Constitution Of India 1949.
[2] Article 25 in The Constitution Of India 1949.
[3] Article 26 in The Constitution Of India 1949.

25[4] of the Constitution. The provision restricting entry of women in the state legislation was struck down and deemed unconstitutional.[5]

The Constitution's Transformative Nature

The shifting socio-political fabric of a contemporary, democratic, and secular nation necessitates a constitutional interpretation that is intellectually liberal. The same shouldn't be restricted to the "legislative intent" argument alone, and it shouldn't go against the essential values of constitutional worth. The modern approach to constitutional interpretation is that of a 'living tree,' with judges responsible for amending the Constitution to ensure that it keeps up with changing circumstances.

The Sabarimala decision is a landmark point in affirmative action history, as it has greased the wheels of social integration and given feminist jurisprudence new life. The condition of the vertical relationship between the State and its subjects has been evaluated by the judicial attitude expressed in this judgement. By doing so, it expresses the belief that the Constitution recognises but does not create rights under Part III. These rights are inalienable, unalienable, and essential to constitutional integrity. The fact that in both of the cited cases, the consideration of a religious institution's rights and a religious custom's "essential character" took precedence over the right to equality and non-discrimination – the rights of women to be treated with dignity and equal participation in society – is astonishing.

"Test for Laws in Force"

Due to the focus placed by courts on the identification of "essential practises of religion," women's equal rights and dignity are undermined in preserving religious organisations' rights. Instead, an effort must be made to identify the customs that are discriminatory and disparaging toward women and to hold them in violation of our Constitution's rights. This can

[4] Article 25 in The Constitution Of India 1949

[5] VipinMalviya, https://lexcliq.com/sabarimala-temple-entry-by-vipin-malviya/ (30 October, 2021)

be accomplished by recognising customs as "law" under Article 13(3)(a)[6] of the Constitution, and thereby declaring them void under Article 13(1) if they are found to be in violation of Fundamental Rights (hereafter referred to as "the test for laws in force").

Two decisions are pertinent to the idea of a "test for laws in force." The Bombay High Court ruled in Noorjehan v. State of Maharashtra[7] that women should be permitted unrestricted access to the Haji Ali Dargah's sanctum sanctorum. The Bombay High Court held that once a public character is attached to a place of worship, Articles 14[8],15[9], and 25[10] of the Constitution come into play, and that as a result, a religious trust cannot discriminate against women's entry under the guise of 'managing the affairs of religion' under Article 26.[11] The Bombay High Court, on the other hand, did not rule on whether traditions have legal power under Article 13(3)(a) for the simple reason that the respondent did not allege the existence of any custom that barred women from entering.[12]

Even the Supreme Court, in its recent Triple Talaq decision[13], failed to apply the current 'standard for laws' to declare that the practise of triple talaq falls under Article 13(3)(a), and hence must be repealed under Article 13(3)(a) (1). Although Justice Nariman and Justice U.U. Lalit used the test for laws in effect to acknowledge the practise of Triple Talaq as falling under Article 13(3)(a), they found it illegal on the narrower grounds of being "manifestly arbitrary" in violation of Article 14. In contrast, Justice Kurien didn't delve into the violation of women's rights under Articles 14 and 15 of the Constitution, instead declaring triple talaq as unlawful because it contradicts the teachings of the Holy Quran - firmly applying the Supreme Court's decision in ShamimAra v. State of U.P.[14]

Women's religious rights have seen incremental progress, but courts have yet to make a concerted attempt to declare discriminatory religious practises unlawful. While there is a rising recognition of the function of women priestesses, the sole Supreme Court decision that

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[6] Article 13(3)(a) in The Constitution Of India 1949 , (a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
[7]2016 (5) ABR 660.
[8]Supra.
[9]Supra.
[10]Supra.
[11] Ibid note 1, Para 36.
[12]Id, Para 19.
[13]ShayaroBano v. Union of India &Ors., (2017) 9 SCC 1.
[14] Para 26 of Justice Kurien's ruling. Justice Kurien heavily relied on and ruled in terms of ShamimAra v. State of U.P., (2002) 7 SCC 518. Hereinafter referred to as 'ShamimAra'.

recognises a Hindu female's inherited right to succeed to the priestly office of a pujari does so only in the narrow context of such post's administrative tasks.[15] Her equal right or skill to perform religious rites as a pujari is not recognised.[16]

It is important that courts establish universal standards that make it clear that discriminatory and regressive religious practises are illegal. Article 13(3)(a) is broadly worded to include ordinance, order, bye-law, rule, regulations, notification, custom or usage... within the meaning of laws in force, therefore the emphasis on Article 26(2) and even Article 25 may be misplaced. Religious practises and usages will be recognised as laws in effect, ensuring that those that violate Fundamental Rights be overturned under Article 13(1) of the Constitution.

The Other Side of the Coin

In a 4:1 majority, the Supreme Court of India decided to lift the ban on women between the ages of 10 and 50 entering the Sabarimala temple. Chief Justice of India DipakMisra and Justices AM Khanwilkar, RF Nariman and DY Chandrachud struck down provisions of The Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, lifting the ban.

The lone dissenter, Justice InduMalhotra, disagreed with the other judges when it came to allowing women of all ages' entry into the Sabarimala temple. Some of her arguments include:

The petitioners: In her dissenting judgement, Justice InduMalhotra said that the petitioners, the Indian Young Lawyers Association, were not directly affected by this and were not devotees. Therefore, the court was being made to decide on the entry of women into the temple "at the behest of persons who do not subscribe to this faith".

[15] The Hindu, "Wife, Mother, Lawyer, Priest". Published on August 11, 2015. Accessible at: http://www.thehindu.com/opinion/op-ed/wife-mother-lawyer-priest/article7522954.
[16]Raj Kali Kuer v. Ram Rattan Pandey, 1955 SCR (2) 186.

Rationality: In her judgement, Justice InduMalhotra stated that under Article 25, equality in matters of religion “must be viewed in the context of the worshippers of the same faith,” and that a judicial review of religious practices must not be undertaken.

Gender discrimination/Article 14 & 15: Article 14 of the Constitutions gives everyone equality before the law and Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. While the majority judgement maintained that the practice of banning women was discriminatory in nature, Justice Malhotra said that it doesn’t override Article 25, which allows one to practice a religion of their choice. She maintained that what constitutes an “essential religious practice” is for the religious community to decide, and not the court.

Untouchability: While the majority judgement said that barring women between the ages of 10 and 50 amounted to untouchability, Justice Malhotra said that all forms of exclusion “would not tantamount to untouchability”. Stating that Article 17 of the Constitution pertains to caste prejudice and “untouchability was never understood to apply to women as a class”, she between the ages 10 and 50 are allowed into all other Ayyappa temples, and that the ban in Sabarimala was because of the deity, not social exclusion.

Religious denomination: The judgement stated that Devaswoms were Hindu temples, and follows the rules pertaining to Hindu temples. To be considered as a separate religious denomination, it must be a collection of individuals who have a common faith, common organisation, and are designated by a distinctive name.

Justice Malhotra disagreed with the majority judgement, and said that they are a separate denomination entitled to the benefits of Article 26 (Freedom to manage religious affairs). Differing from the majority judgement, she said that the Article 26 not only applies to religion but also sects.

Speaking of dissenters from the general public, they’ve argued that while the ban on women to enter the Sabarimala temple was called a case of discrimination on the basis of patriarchal rules, the fact that numerous temples exist that don’t allow men to enter due to faith that’s been passed down through generations was completely ignored. Comparing Hinduism to new age religions like Christianity which are codified was considered a very imprudent act, since

the temples in Hinduism rather than being considered a place of worship for the devotees are the place of residing for the Gods in a lot of cases and this leads to their own unique set of rules. Audaciously stating that the very restrictions are nothing but discrimination was viewed to be plain neglect of the Hindu culture that's been prevalent since millennia.

Additionally, this case being set right after the Triple Talaq judgment seemingly played a major role in the judgment. This was viewed unfavourably by a lot of people as the people of Delhi were raging for the Court's interference in Muslim personal law and in a sense implying it to be equivalent for Hindus; to give off a sense of secularism while destroying the very foundation of the same.

Religion & Women's Rights in India

India is known around the world for its cultural diversity. Women in our country deserve a lot of credit for the rich cultural assets we have. However, there are a couple of ironic stories that mustn't be overlooked. Among the many citations, there are a handful that have a direct bearing on the legislation of our country. In India, certain religious norms restrict women's access to places of worship. These rituals should be contested in court or possibly made obsolete by suitable legislation, as they discriminate against women through regressive practices that are clearly unconstitutional.

Indian Young Lawyers Association vs. State of Kerala[17] (popularly known as the Sabarimala case) is a landmark case connected to the development of progressive female jurisprudence in our country.

However, there are instances where the courts have taken a more regressive stance. For example, in **Goolrokh Gupta**[18]'s case, the Petitioner was refused the right to enter the Parsi institutions in her hometown, and the right to perform the last rites of her parents if they passed away. Applying the archaic doctrine of coverture, the Gujarat High Court held that by

[17]Indian Young Lawyers Associationvs The State Of Kerala on 28 September, 2018.
[18]Goolrokh M. Gupta v. Mr.BurjorPardiwala (Dead) &Ors. SLP (C) No. 18889/2012. Order dated 14.12.2017

marriage to a Hindu man, a Parsi woman ceased to be a Parsi, unless a competent court declares that she has continued to be a Zoroastrian after marriage.[19]

The Petitioner claimed that the Gujarat High Court has created a legal fiction where a woman marrying a person of a different religion has renounced her own, or changed it. She further contended that if a male Parsi Zoroastrian marries to a non-Parsi or a non-Zoroastrian family, he continues to enjoy all rights as available to a born Parsi whereas if a female Parsi Zoroastrian marries to a non-Parsi or a non-Zoroastrian male, such rights are not recognized or permitted by the respondents and therefore, she contends that there is a discriminatory treatment being given by the Respondents (trustees of ValsadParsiAnjuman Trust) as compared to Parsi males which violates Articles 14 and 25 of the Constitution of India.[20]

When Goolrokh appealed to the Hon'ble Supreme Court, the Valsad Trust gave into the Court's suggestion that Goolrokh and her family be allowed to attend rituals, which order operates merely in the interim and is not rendered in rem.[21]This case continues to remain pending in the Supreme Court.

However as far as an individual’s right to worship is concerned Courts have also protected the right to worship as a civil right and the freedom to do so according to one’s own belief; however, such worship should not affect the right of other persons and has to be *bona fide*. Two brief examples illustrate the impact the courts’ assessment of this condition may have.

The Punjab and Haryana High Court in **Rattan Singh and Ors.v. Beli Ram and Ors. (1951)[22]** had to deal with a conflict between bareheaded devotees and covered-headed ones in a mandir which Lahore High Court had previously declared not to be a Sikh Gurdwara. Bareheaded devotees complained they were prevented by the covered-headed ones from entering the mandir and worshipping there. The High Court, quoting precedents, underlined the general principle according to which the right to worship a deity according to one’s own belief is of a civil nature. The judge decided in favor of the plaintiffs because according to him, coming bareheaded could not be seen as affecting others’ right to worship:

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[19] https://www.scobserver.in/reports/goolrokh-gupta-burjor-pardiwala-parsi-excommunication-special-leave-petition-summary/.

[21]Goolrokh M. Gupta v. Mr.BurjorPardiwala (Dead) &Ors. SLP (C) No. 18889/2012. Order dated 14.12.2017.
[22]Rattan Singh AndOrs. vsBeli Ram And Ors. on 26 July, 1951, AIR 1952 P H 163

"whether a man goes bare-headed or otherwise is not a form of ritual and even if he goes into the temple and begins to worship without anything on his head it may be good or bad manners according to the notions of the people but this has no reference to the ritual." (*Rattan Singh and ors.* 1951:§5).

It should be noted that this power of the courts does not concern Hinduism alone—which reinforces the idea that this form of legal action in religious matters is beyond any particularities regarding policies or persons. For instance, the Allahabad High Court ruled in **Syed Farzand Ali v. Nasir Beg and Ors. (1980)**[23] that Muslims of the AheleHadis sect had the right to speak the word "Aameen" aloud in response to the recital of Alhumd by the Imam during the prayer in Shabina Masjid or in any other mosque in the district of Mathura without being hindered by Muslims of the Hanafi tradition who tried to oppose this practice. This was a long-standing conflict and judgments to decide the same question already existed by the end of the nineteenth century (*Queen Empress* 1885; *Ataullah* 1890).

The lower Appellate Court was of the opinion that that the defendants and other Mohammadans of the Hanafi sect should be restrained from obstructing the plaintiffs from offering 'Namaz' and reciting the word "Aameen" loudly in Shabina Masjid and in any other mosque in the district of Mathura where the plaintiffs could offer the 'Namaz' by virtue of their being Mohammadans and this order was held by the Allahabad High Court as well.

The cases mentioned above bring us back to how the Sabrimala Judgment has been a step in the right direction trying make our nation and it's religions a more inclusive and equal space for all.

Conclusion

Women in society are discriminated against on the basis of gender and sex, and they are continued to be perceived as submissive to men due to the persisting patriarchal mindset of the general public. Women's rights have come a long way thanks to feminist movements, but

[23] Syed Farzand Ali vsNasir Beg AndOrs. on 28 February, 1980 AIR 1980 All 342,

there is still much more to be done. Religion is a hard issue to discuss in India because of the country's diverse people and culture. This is evident from the unease felt by Courts when they must decide between religious customs and Fundamental Rights guaranteed under the Constitution.

Indeed, the margin between legitimately deciding on religious issues (when civil rights are deemed to be at stake) and unduly interfering in religious matters is rather narrow. As was stressed in *Gopanna*, “it may not always be easy to draw the line between what is merely a part of the ritual of worship and what is a right to conduct the worship itself” (*J. Gopanna* 1944).

The judgment of the Supreme Court in the Indian Young Lawyers Association v. State of Kerala was widely celebrated. It allowed for the entry of women aged between 10 and 50, who were earlier prohibited on account of age-old taboos relating to menstruation in Sabarimala temple. The Sabarimala decision marks a turning point in the battle between religious beliefs and rituals and notions of equality for all individuals. The Sabarimala choice is unique in that it is both daring and humane. There are many different concepts of morality, customs, and religions, but via this case, the Supreme Court underlined the most important concept of morality, which is Constitutional Morality.