



Research Paper

## Entry of Women in Sabarimala Temple

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### ABSTRACT

The prohibition of women's access into Sabarimala Temple is one of the most contentious issues we have heard about in recent years. Sabarimala Temple, located in Kerala, is one of the few temples globally that welcomes people of all faiths, castes and religion without discrimination. After the Islamic Holy Site of Mecca in Saudi Arabia, Sabarimala Temple is the second most popular seasonal pilgrimage destination. Unlike all the other temples in India, this one is quite particular about its worshippers' attire, which signifies that all devotees are equal in front of Lord Ayyappa. In this research work, the author would like to discuss the historical backdrop of the pilgrimage, the reasons why females of this age are not permitted to enter the religious places, and the practicality of the restriction.

**KEYWORDS:** Sabarimala, religion, historical backdrop, women, restriction.

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### I. INTRODUCTION

One of the "Fundamental Rights" protected by the Indian Constitution is the freedom to practice one's religion. The Right to Freedom of Religion is included in this category. Due to the fact that India is a secular country, every individual who lives inside its borders has the freedom to practice whichever religion they want. Most people associate India with spiritual ideas, intellectual thinking, and culture, which is not far from the truth. "Religion" is a question of personal preference, perception, and conviction. When exercising one's religious beliefs, India is entirely neutral, unbiased, and uncompromising in its approach.

The Indian Constitution provides that no person is denied the freedom to freely practice the religion of his or her choice within the boundaries of Indian Territory. Our Constitution places a great value on the notion of secularism and accords it with the highest priority possible. In the perspective of the law, secularism is of considerable relevance, and it also receives a high level of respect. The 42nd Amendment<sup>1</sup>, passed in 1976, added the term "Secular" to the Preamble of the Constitution. The freedom of religion guaranteed by the Constitution, according to Thomas Jefferson, is "the most fundamental and precious of all human liberties."

Sabarimala (also known as "the Sabari hill") is a hilly place in Kerala's southern state of Pathanamthitta, home to the world's most prominent Hindu temple devoted to worshipping Ayyappan. Sabarimala is the world's second most significant pilgrimage destination after Mecca<sup>2</sup>, attracting between six and ten million pilgrims during the pilgrimage time period and forty to fifty million over the year.

<sup>1</sup> The 42nd Amendment changed the description of India from a "sovereign democratic republic" to a "sovereign, socialist secular democratic republic", and also changed the words "unity of the nation" to "unity and integrity of the nation".

<sup>2</sup> Rumi Bandyopadhyay, and Kushagra Rajendra, 'Religious Tourism: The Beginning of a New Era with Special Reference to India', in Shin Yasuda, Razaq Raj, and Kevin Griffin (eds.) *Religious Tourism in Asia: Tradition and Change Through Case Studies and Narratives*, (Cabi (Centre for Agriculture and Bioscience International), 2018), 67-76.

Sabarimala's greatest distinguishing attribute is that its guests are virtually entirely male. Therefore as a result, the shrine and its grounds are intended to be an all-male atmosphere, and pilgrimage is intended to be a "masculinity-defining activity"<sup>3</sup>. There was a formal restriction prohibiting women between the ages of 10 and 50 — that is, women of reproductive age — from entering the temple at any time until the Court's judgment in September 2018.

Discriminatory admittance was permissible under the "Kerala Hindu Places of Public Worship (Authorization of Entry) Act (KHPPWA) of 1965" if religious custom required it. In 1991, the Kerala High Court ruled on a case, afterwards renamed Public Interest Litigation, claiming that some young females had entered the shrine/temple<sup>4</sup>. The court upheld the temple board's ban on women (aged 10-50) trekking the slope to visit the holy site, citing the following reasons: the restriction had existed since ancient period; it did not violate the constitutional principles of non-discrimination (Article 15)<sup>5</sup>, freedom of religion (Article 25), and the right of religious denominations to manage their religious affairs (Article 26)<sup>6</sup>; and it did not threaten the constitutional principles of non-discrimination (Article 15), freedom of religion (Article 25)<sup>7</sup>. According to the court, it was not discriminating because it did not affect all women, but only a subset of them (aged 10-50).

### RESEARCH QUESTIONS

- (1) What do the legal implications of the Sabarimala Temple Case entail?
- (2) Were women's rights violated in the Sabarimala Temple Case?
- (3) Is it permissible for women between the ages of ten and fifty to enter the Sabarimala temple at any time of year or during any of the temple's festivals or poojas?
- (4) Whether the refusal of entrant only to category of women constitutes discrimination and a violation of Articles 15, 25, and 26 of the Indian Constitution?

### STATEMENT OF RESEARCH PROBLEM

Contemporary issues of women's entry prohibitions in religious institutions such as Shani Shingnapur, Sabarimala, and Haji Ali have recently refocused attention on the argument between religious tradition and social equality.

"Keeping women out of the temple is a flagrant violation of their fundamental rights and freedoms to equality (Article 14), non - discrimination (Article 15), and religious liberty (Article 25)."<sup>8</sup>

Not entry, but equality is the primary concern. The religious exemption has a public character, and it is a matter of civil and human rights and substance and equal symbolic status, not just a sacred tradition.

Unfortunately, the authorities have become the sole arbiter of what makes up authentic religion. This situation has arisen due to the Indian Government's role as a reformer and manager of the Hindu religion and its establishments.

Devotees' faiths and customs cannot be altered through the judiciary system. Reforms should be initiated from within the societal structure. As long as it does not happen, religious issues are expected to be litigated in trial on a regular basis.

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<sup>3</sup> Filippo Osella, and Caroline Osella. *Ibid.*

<sup>4</sup> *S. Mahendran v. The Secretary, Travancore Devaswom Board, Thiruvananthapuram and Others* (AIR 1993 Ker 42). <https://indiankanoon.org/doc/1915943/>

<sup>5</sup> **Article 15-** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

<sup>6</sup> **"26. Freedom to manage religious affairs.**—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law."

<sup>7</sup> **"25. Freedom of conscience and free profession, practise and propagation of religion.**—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

<sup>8</sup> *Ibid.*

### OBJECTIVES OF THE STUDY

1. To examine women's rights in light of this decision.
2. Assessing the Religion, Equality, and Constitutional Morality in the context of the Sabarimala Temple verdict.
3. Examine Sabarimala's prejudices, misconceptions, and ignorance.
4. An evaluation of the verdict and its implications for the people of India's fundamental rights.

### SIGNIFICANCE OF THE STUDY

Many observers have found it difficult to reconcile this perception of Kerala with the protests that shook the state throughout most of 2018 and 2019. The issue at the heart of the controversy was the customary ban on women between the ages of ten and fifty entering the shrine, which the Supreme Court declared illegal in a landmark ruling in September 2018. The Sabarimala issue brought to light Kerala's deep religious roots in a way that had not previously been seen. Sabarimala's worship has been a contentious issue. The outburst was sparked by a historic Supreme Court ruling in September 2018. Sabarimala's worship has been a contentious issue. The outburst was sparked by a historic Supreme Court ruling in September 2018. This order overturned the long-standing prohibition on women of childbearing age entering the temple. A larger Supreme Court bench effectively overturned the order in November 2019, ruling that the entire spectrum of women's rights, particularly within minority religious practices, would be heard by a seven-member bench. The situation in Sabarimala is currently in legal limbo, with the ban on women in effect until the Supreme Court issues clarifying orders. This order represented a complete judicial retreat from the previous position. The Sabarimala agitation, like opening the lid of a dusty chest to reveal items stored but long forgotten, lifted the lid on a slew of buried issues pertaining to Kerala's social and historical past, as well as its future trajectory.

This paper attempts to investigate some of these issues. They include the origins of the temple and the worship of Ayyappa – an early tribal/folk deity who was absorbed over time into the Vedic pantheon; the origins and antiquity of the taboo on menstruating-age women in the shrine; the Sanskritisation of temple worship and ritual over the centuries; the impact of Kerala's anti-caste social reform movement on ritual, religiosity, and women's self-awareness; the legal dimensions to these questions; and, finally, the impact of Kerala's Left movement on shaping and transforming ideas of social justice and equality.

Configurations such as caste and patriarchy may be ideologically part of the superstructure. However, they are also entrenched in economic processes that constitute the base, becoming part of a society's fundamental structure of exploitation. This necessitates a critical examination of religion, patriarchy, and caste and the approaches of various political and social movements to confronting them.

### RESEARCH METHODOLOGY

For conducting research, there are primarily doctrinal and non-doctrinal methods of study. The doctrinal method emphasizes conducting research through the analysis of materials available in the library. In contrast, non-doctrinal research necessitates the researcher going out into the field to conduct the research. The doctrinal method is appropriate for the current study because the research involves conceptual analysis of various complexities associated such as case laws, the impact of women's exclusion from temples on fundamental rights, and so forth. Analytical, descriptive, and critical methodologies are employed to conduct research and derive conclusions. The study examines the concepts of religion and gender equality.

### SOURCES OF DATA

There consist majorly two types of data collection sources: primary data and secondary data. This research primarily focuses on analyzing available primary and secondary data. Primary data sources include various nations' constitutions and legislation, judicial decisions, conventions, Commission Reports, etc. The researcher also relies on secondary sources such as textbooks, commentaries, articles in various national and international journals, and internet-based materials.

## II. REVIEW OF LITERATURE

### 1. “Sabarimala and Women’s Identity in Kerala Parvathi Menon”<sup>9</sup>

This paper reconstructed and analyzed the case. The writer speaks about the background of the temple, such as the history, locale, and pilgrimage. Talks about the transition of Lord Ayyappa to Sastha. Includes in his paper about the “Legal and Dharmic Sanction for a Customary Practice.” The reviewer studies the different social reform movements in Kerala. He creates a contrast between the early traditions, customs, among others,

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<sup>9</sup> Menon, Parvathi. “Sabarimala and Women’s Identity in Kerala.” *Social Scientist*, vol. 48, no. 3/6 (562-565), *Social Scientist*, 2020, pp. 3–24, <https://www.jstor.org/stable/26979095>.”

followed by people in Sabarimala Temple and the progressive changes that were done eventually in a matter of time. The author concludes by stating, "It is my argument that the mature and clear-sighted stand of the Left on this question only added to the credibility of its leadership at a difficult turn in Kerala's social transition."

**2. "AYYAPPAN SARANAM:1 MASCULINITY AND THE SABARIMALA PILGRIMAGE IN KERALA FILIPPO OSELLA & CAROLINE OSELLA University of Sussex & SO"<sup>10</sup>**

This article, written by Filippo Osella & Caroline Osella, considers the "role of religious activities and devotion in the construction of male identities, focusing specifically on the annual pilgrimage to Sabarimala, the main temple of Ayyappan, visited every year by millions of male devotees from Kerala and South India as a whole." To conclude, the author highlights the "current political overtones of the Ayyappan pilgrimage and its masculinity themes, particularly among adherents of the so-called Hindutva ('Hinduness') movements that have become highly active in the South Indian states since the early 1990s."

**3. "Sacred Spaces, Secular Norms and Women's Rights"<sup>11</sup>**

Kavita Krishna, the author, starts with a question "Are democratic and egalitarian norms to be left outside the door of sacred spaces, along with one's footwear?" she further expresses her concern and views by stating that the Sabarimala dilemma has exposed the flaws in our secular state, with gender being the most pronounced. It is up to progressive political forces and civil society organizations to demand that the state cease its complicity in gender discrimination in the name of "custom." Speaks about female sexuality with religious and social custom. Further states that discrimination based on gender or caste does not do not tolerate under modern democratic and citizenship norms, and neither "sacredness" nor "security" can be used to legitimize such discriminatory practices.

**4. Sabarimala Verdict: A Watershed Moment in the History of Affirmative Action<sup>12</sup>**

The Article "Sabarimala Verdict: A Watershed Moment in the History of Affirmative Action" Written by Ayesha Jamal starts by talking about the history of the Sabarimala case and where it stands currently and then it further looks into the issue of how This type of legal issue involves a complicated interrelationship between Articles 14, 25, and 26 of the Indian Constitution, which is particularly relevant in this case. When these two Articles are read together, the lengthy argument that occurs about the fundamental principles of constitutional integrity overwhelms us. Because the constitutional trinity of 'liberty,' equality, and dignity is based on an unwritten moral code that surpasses the theoretical constraints imposed by codified law, it is more profound than it looks, the article also revisits the Shah Bano and Navtej Singh Johar case to understand the same.

**5. "Sabarimala case: Supreme Court upholds referring religious questions to larger Bench, frames 7 questions of law"<sup>13</sup>**

The newspaper article "Sabarimala case: Supreme Court upholds referring religious questions to larger Bench, frames 7 questions of law" written by Krishnadas Rajagopal talks about A nine-judge panel of the Supreme Court has posed seven questions for consideration by a larger panel of judges. S.A. Bobde, the Chief Justice of India, presided over the bench. In the first week of February, the Supreme Court will hear opinions on the extent and scope of religious freedom. It has been decided by the Gogoi Bench that the appeal to reconsider the Sabarimala judgment from September 2018 will be dismissed. Senior attorney Shyam Divan had contended that the judgment that Ayyappa worshippers did not form a different religious group was the most compelling reason for seeking a reversal of the decision.

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<sup>10</sup> Osella, Filippo, and Caroline Osella. "Ayyappan Saranam": Masculinity and the Sabarimala Pilgrimage in Kerala. *The Journal of the Royal Anthropological Institute*, vol. 9, no. 4, [Wiley, Royal Anthropological Institute of Great Britain and Ireland], 2003, pp. 729–54, <http://www.jstor.org/stable/3134708>."

<sup>11</sup> Kavita Krishnan. "Sacred Spaces, Secular Norms and Women's Rights." *Economic and Political Weekly*, vol. 41, no. 27/28, Economic and Political Weekly, 2006, pp. 2969–71, <http://www.jstor.org/stable/4418425>.

<sup>12</sup> Ayesha Jamal, Sabarimala Verdict: A Watershed Moment in the History of Affirmative Action, T.L. Constitution first, October 30, 2020.

<sup>13</sup> Krishnadas Rajagopal, Sabarimala case: Supreme Court upholds referring religious questions to larger Bench, frames 7 questions of law, T.H., February 10, 2020.

**PART: 2**

➤ **BACKGROUND**

According to Sabarimala Temple laws, menstruating women aged 10 and 50 were prohibited from entering the Sabarimala temple. According to the limits and their roots, menstruating women are not permitted to visit the temple because Swami Ayyappa's god is a "Naisthik Bhramachari (celibate)". The temple is an epitome of purity that they should not damage. As a result, under "Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965"<sup>14</sup>, which was enacted in reaction to this limitation, women are prohibited from accessing the Sabarimala temple grounds.

In the case of the *Indian Young Lawyers Association vs. The State of Kerala*<sup>15</sup>, a Constitution bench overturned the practice earlier this year; allowing women of any age to visit the Sabarimala Temple because it infringed their constitutional right to freedom of religion under Article 25 of the Constitution (refer Appendix). The rule barring women from voting on state legislation was declared unconstitutional and overturned by the courts.

A group of five female attorneys has filed a lawsuit against Rule-3(b)<sup>16</sup>, which allows for the limitation of women of menstrual age. They filed a petition with the Supreme Court when the Kerala High Court upheld the century-old restrictions, stating that only "priests" could decide on ancient practices. Senior Advocate Indira Jaising responded on behalf of the petitioners, claiming that the restrictions violated Articles 14<sup>17</sup>, 15<sup>18</sup>, and 17<sup>19</sup> of the Indian Constitution. She says that because the ritual is discriminatory and stigmatizes women, women should pray anywhere they choose.

➤ **LEGISLATION AND REGULATIONS THAT ARE BEING CHALLENGED**

In 1955 and 1956, two notifications were issued under "Section 31 of the Travancore Cochin Hindu Religious Institutions Act, 1950"<sup>20</sup>. According to temple tradition and practice, females between the ages of ten and fifty were prohibited from attending Sabarimala Temple.

Women were barred from providing worship in any place of public worship or from visiting places of public worship at any time when they were not authorized to do so according to local tradition or practice, according to the Kerala Hindu Places of Worship (Authorization of Entry) Rules, 1965<sup>21</sup>.

The British largely followed a policy of "non-regulation of personal law" throughout colonial periods, enabling community members to manage their affairs without interference from the authorities.

The respondents argued that the Supreme Court was intruding on the domain of particular religious clergypersons and that only the clergy members should be defining the norms and practices of their respective faiths.

Aware of the hazards of theological interpretation in the courts, J. D.Y. Chandrachud was likewise a vocal opponent of it. He argued that the Court should refrain from engaging in biblical or dogmatic exegesis and instead should assess merely whether a behavior constitutes an infringement of a person's fundamental right or not.

An "Anti Exclusion test" is required to do this. As a result of this approach, the courts would maintain religious liberty while also striking down practices that deny people access to their fundamental civil rights under the Constitution.

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<sup>14</sup> States that "Women at such time during which they are not by custom and usage allowed to enter a place of worship."

<sup>15</sup> *Indian Young Lawyers Assn. v. State of Kerala*, (2017) 10 SCC 689.

<sup>16</sup> *Supra* note 14.

<sup>17</sup> "**Article 14- Equality before law.**—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

<sup>18</sup> *Supra* note 5.

<sup>19</sup> "**Article 17- Abolition of Untouchability.**—"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law."

<sup>20</sup> "Section 31 states that - Subject to the provisions of this Part and the rules made there under the Board shall manage the properties and affairs of the Devaswoms, both incorporated and unincorporated, as heretofore, and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage."

<sup>21</sup> *Supra* note 14, and 16.

The Indian courts will unavoidably play a role in filling up the gaps in the legislation about religion. While it is undeniably true that the State can regulate solely secular activities, the Indian Constitution protects religious acts from state intrusion in religious affairs.

Last but not least, the judiciary has the authority to intervene in questions of religious belief and religious practice. The ERP (Essential Religious Practice) examination, developed by the Indian judiciary, is one of the contributions made in that subject. The necessary religious practice test suggests that all religious acts deemed "essential" to religion or constituting its foundation will fall under the protection of Articles 25<sup>22</sup> and 26<sup>23</sup> and should be safeguarded due to their inclusion.

J. Chandrachud remarked to the seminal ruling in the case of *Narasu* ("Narasu Appa Mali versus the State of Bombay"<sup>24</sup>), in which the Bombay High Court determined that personal law was not included in the words "laws in force" used in Article 13(1)<sup>25</sup> of the Constitution. It further established that personal law is not subject to constitutional review. The ruling was widely panned and regarded as legally questionable.

When the Constituent Assembly was debating religious freedom, B.R. Ambedkar clarified that despite the fact that minorities and groups had rights protected by the Constitution; the fundamental unit of the Constitution was the individual.

"For what purpose are we exercising this liberty?" he said during the debate on freedom of religion clauses, to put it another way. The Constituent Assembly acknowledged Ambedkar when he stated, "It is not just the State, but the welfare structure, i.e., the society, whose acts conflict with individual rights and must, as a result, be modified."

The decision in the matter of *Indian Young Lawyers Association vs. Kerala State*<sup>26</sup> is being looked upon (28 September 2018) - (4 votes for, one vote against)

Former Chief Justice of India Dipak Mishra (speaking for himself and AM Khanwilkar J.):

He relied on general legal theories to defend his ruling in favor of the petitioners while giving his decision. Following Lord Ayyappa's teachings, he concluded that Lord Ayyappa's followers do not constitute a religious denomination as defined by Article 26<sup>27</sup> of the Constitution because they do not meet the three-fold requirement (as initially set down in the case of *S.P. Mittal vs. UOI*<sup>28</sup>), which are: a collection of people who share a common belief that is strange to themselves; a typical institution that different users can identify; and a standard institution.

Articles 25<sup>29</sup> and 26<sup>30</sup> employ "morality" to refer to constitutional principles, not public or social moral standards, as is commonly assumed.

As a result, Rule 3 (b)<sup>31</sup> is unconstitutional and capricious, and it also violates Section 3 of the 1965 Act<sup>32</sup>, which forbids discrimination against female followers under Article 25<sup>33</sup> of the Constitution.

The Former Chief Justice of India, Dipak Mishra, and Justice A.M. Khanwilkar also expressed their opinions "Women are not treated as second-class citizens or inferior to males. The patriarchy of religion cannot be allowed to take precedence over faith, and biological or physiological causes cannot be tolerated in the name of religious tolerance. Religion is fundamentally a way of life, yet certain rituals are incompatible with this way of life." He went on to say that the Sabarimala Temple's restriction of females between the ages of ten and fifty could not be regarded as an essential religious practice because the Ayappans were Hindus in their religious beliefs and practices.

Former Chief Justice Dipak Mishra declared "Rule-3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules of 1965"<sup>34</sup> unenforceable. He states that this is a breach of our Constitution and a violation of Sections 3 and 4 of the Parents Act of California. Sections 3 and 4 of the legislation were created with the explicit goal of modernizing public Hindu venues in order to make them more accessible to people of

<sup>22</sup> Supra note 7.

<sup>23</sup> Supra note 6.

<sup>24</sup> *State of Bombay v. Narasu Appa Mali*, 1951 SCC OnLine Bom 72.

<sup>25</sup> It states that "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

<sup>26</sup> *Indian Young Lawyers Assn. (Sabarimala Temple-5J.) v. State of Kerala*, (2019) 11 SCC 1.

<sup>27</sup> Supra note 6, and 23.

<sup>28</sup> *S. P Mittal v. Union of India*, 1983 SCR (1) 729.

<sup>29</sup> Supra note 7, and 22.

<sup>30</sup> Supra note 6, 23, and 27.

<sup>31</sup> Supra note 14, 16, and 21.

<sup>32</sup> It states that "Places of public worship to be open to all sections and classes of Hindus."

<sup>33</sup> Supra note 7, 22, and 29.

<sup>34</sup> Supra note 14, 16, 21, and 31.

all Hindu faiths and backgrounds. On the other hand, rule 3(b) allows women to be excluded from visiting public Hindu sites of worship due to religious tradition. Because of this, Former Chief Justice Mishra concluded that this provision not only violates the Indian Constitution but also runs counter to what was intended by the Parent Act.

As the country's highest and final judicial institution, the Supreme Court is known as the apex court. It is the last judge of our Constitution's interpretation. As a result, asserting that the Supreme Court, in adjudicating cases under Articles 25<sup>35</sup> and 26<sup>36</sup>, reinforces itself in the realm specified as "reserved" for the respective clerics will be erroneous.

According to the judgment, the followers of Lord Ayyappa could not meet the legal conditions to be recognized as a "Separate Religious Identity" because they belong to Hindus who follow Lord Ayyappa's teachings. Later, the Court ruled that the "temple's denominational right to regulate its internal affairs under Article-26(b)"<sup>37</sup> was subject to the State's social reform mission under Article-25(2)<sup>38</sup>, which was upheld (b).

"Article 25(2) (b) of the Constitution specifies that the State may pass legislation to reform Hindu denominations. In particular, Article-25(2) (b) empowers the State to enact any regulation that permits all "classes and sections" of Hindus to participate in a public Hindu institution of higher learning." According to Justice Mishra's interpretation, women were included in the gendered category of 'classes and divisions.' according to Justice Mishra's interpretation. He concluded that the habit of banning women from Sabarimala is amenable to state-mandated modification.

In the opinion of Former Chief Justice R.F. Nariman, the limitation on women accessing the temple effectively rendered their right under Article 25<sup>39</sup> of the Constitution invalid. The Minister emphasized that Article-25(1) protects women between the ages of ten and fifty who wish to visit the Sabarimala shrine and exercise their right to religious freedom. He concluded that there was sufficient evidence to indicate that the exclusion of females from Sabarimala violated Article-25 of the Constitution (1).

He focused his emphasis on Article 25's harmonic structure (2) (b). He focused his emphasis on Article 25's harmonic structure (2) (b). The fundamental right to freedom of expression (refer appendix) is only concerned with the most fundamental part of religion instead of secular activities. It is not possible to view superstitious beliefs as vital components of religion since they are superfluous and needless accretions to a religion.

The term "Social morality" is used in Articles 25 and 26<sup>40</sup> to describe the concept of morality. Hindus of all varieties, Muslims, Christians, and others, come to the temple as worshipers, without in any way relinquishing their identities as Hindus, Christians, or Moslem. Consequently, every individual who idolizes him does so as part of the Hindu mythology style of devotion, rather than members of a particular sect. As a result, his followers cannot form a religious denomination in accordance with Article-26<sup>41</sup>.

By breaching women's rights, Justice D.Y. Chandrachud held that the Sabarimala temple's women were excluded aged ten to fifty years which breached the constitutional morals and corrupted the ideas of autonomy, freedom, and dignity. It was also emphasized that women's philosophical characteristics, such as menstruation cycles, have no impact or influence upon the rights granted to them by our Constitution.

The humiliation connected with a woman's menstrual State cannot be utilized as a legitimate jurisdictional foundation for restricting her respect. It has no place in a constitutionally governed society. He went on to add that Article-17<sup>42</sup> is a vital anti-exclusion safeguard and that it cannot be read exempting women who have been subjected to the most significant kinds of social exclusion based on concepts of purification and contamination.

He stressed that the phrase "morality," as stated in Articles 25 and 26, refers to the moral law, not societal and public ethics.

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<sup>35</sup> Supra note 7, 22, 29, and 33.

<sup>36</sup> Supra note 6, 23, 27, and 30.

<sup>37</sup> "It states that Subject to public order, morality and health, every religious denomination or any section thereof shall have the right (b) to manage its own affairs in matters of religion."

<sup>38</sup> It states that "Nothing in this article shall affect the operation of any existing law or prevent the State from making any law (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."

<sup>39</sup> Supra note 7, 22, 29, 33, and 35.

<sup>40</sup> Supra note 6, 23, 27, 30, and 36.

<sup>41</sup> Ibid.

<sup>42</sup> Supra note 19.

He relied heavily on the “Anti-Exclusion Test,” which allows authorities to find a reasonable and equitable solution to thorny conflicts between equality and freedom while keeping true to the language and history of the Constitution.

He emphasized that, in the perspective of the law, this discriminatory behavior translates to untouchability under Article 17<sup>43</sup>. The concepts of purity and contamination used to stigmatize people have no place in a democratic society.

As a result, the majority decision found that both the notices and Rule 3 (b) violate the Constitution's Articles 14, 25 (1), and 21<sup>44</sup>. (Menstruating as offended to dignity). In addition, J. Chandrachud found a breach of Article 17 of the Constitution. The restriction did not constitute a necessary religious practice.

Despite the fact that the petitioners do not claim to be devotees of Lord Ayyappa, the single female judge on the Bench concluded in favor of the petitioners' limitation on temple admission based on their “Locus”. Justice Indu Malhotra (Dissenting): As a result, the petitioners lack legal standing, according to Justice Indu Malhotra (dissenting).

Due to the fact that religious groups and worshippers of Lord Ayyappa are exempted from the provisions of Section 3 of the Act of 1965, Rule 3 (b)<sup>45</sup> is not in violation of that provision.

### ➤ THE ROAD AHEAD

If a rational person were a dictator, they would keep religion and state apart. They vow allegiance to their faith. They would be willing to die for it. However, this is a personal matter for individuals. It has absolutely nothing to do with the state. It is the state's responsibility to care about the secular well-being (such as health and communications) as well as international relations, money, and among others, but not your or my religious beliefs. Gandhi said that everyone's interest is that of the nation.

The entry of a temple is open to any criminal (rapist, murderer, thief, or delinquent), but a menstrual lady is barred from entering since that is the sole offense she has done.

*Kantaru Rajeevaru vs. Indian Young Lawyers Association*<sup>46</sup> (14 November 2019) was the majority opinion in the Sabarimala review petition in which Former Chief Justice of India Ranjan Gogoi recommended that three other cases pending in the Supreme Court, which were, like Sabarimala, be clubbed together when a larger Bench takes up the review petition at a later date.

Among the issues raised in the three lawsuits are Muslim women's admission to mosques and durgas, the presence of Parsi women married to non-Parsis in the Agyari, and the Dawoodi Bohra community's practice of female genital mutilation.

Citizens' confidence in the court has been reaffirmed by decisions such as the Sabarimala case, the criminalization of triple talaq, and the decriminalization of “Section 377<sup>47</sup> of the Indian Penal Code”. The Supreme Court has taken a reforming approach, and that it is not only there to “cross the Ts and dot the Is” is a daring story.

Consequently, on the one hand, it constitutes a substantial leap further in the evolution of women's rights toward parity with males, and on the other, asserting the constitutional morality's supremacy over customary laws, rites, and conventions, as well as social morality.

It is hoped that the conversation will now shift away from taboos surrounding menstruation and toward important issues like menstrual hygiene practices, longer-lasting sanitation and hygiene protection, and ensuring that all women and girls have access to quality education, sporting activities, travelling, social interactions, and other regular activities.

## PART: 3

### ➤ CONCLUSION

Sabarimala embodied the aspirations of pious women seeking access to the temples, as well as the ambitions of those hoping to establish a firm, unequivocal constitutional precedent for the future. The Supreme

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<sup>43</sup> Supra note 19, and 42.

<sup>44</sup> “**Article 21- Protection of life and personal liberty.**—No person shall be deprived of his life or personal liberty except according to procedure established by law.”

<sup>45</sup> Supra note 14, 16, 21, 31, and 34.

<sup>46</sup> *Kantaru Rajeevaru (Right to Religion, In re-9 J.) v. Indian Young Lawyers Assn.*, (2020) 3 SCC 52, 10-02-2020.

<sup>47</sup> “Section 377 states the Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”



Court was given an excellent opportunity to set a precedent in the Sabarimala case that solidified constitutional integrity in our political vernacular and freed rights of the individual from the constraints of community rights.

People can observe that this ruling's jurisprudential component is in line with Jeremy Bentham's Utilitarian theory. The philosophy of utilitarianism is based on providing "the greatest amount of pleasure to the greatest number of people." Second, we can draw parallels with John Stuart's Damage Theory, which maintains that only activities that cause harm to others should be avoided. To put it another way, a person has complete freedom to do what he or she wants as long as it does not cause harm to others.

Finally, we may connect this and Sir Henry Maine's Status of Contract Theory. The "trend of the progressive societies has traditionally been a movement from status to contract," he said several times. Individual status is a predetermined state in which an individual is placed without regard to his or her own volition and from which he or she cannot be extricated via personal efforts. With the development of civilization, this state is progressively replaced by a social order based on contracts.

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