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

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INTRODUCTION

“To put it in the terms of St. Thomas Aquinas: An unjust law is a human law that is not rooted in eternal law and natural law.”

- Martin Luther King, Jr.

Natural "law theories" are critical, reflective explanations of the fundamental aspects of human well-being and happiness, as well as the cultures they generate. The principles that emphasise fundamental aspects of human well-being are directive (that is, prescriptive) in our reasoning about what to do and what not to do (our realistic reason)—they are more than just instrumental explanations for behavior and self-control. When these fundamental notions of rational reflection are considered collectively (that is, intricately), they suggest rules that might prohibit such alternatives and require alternate possibilities in ethically important decision-making settings." "According to natural law theories, the fundamental and most general notion of morality is that one should choose and conduct in ways that are compatible with a desire for

integral human fulfillment."¹ Among these principles is a reverence for the freedom that people have just by their humanity—rights that others are bound to respect and that governments are expected not only to honour but also to safeguard to the greatest extent possible.²

JOHN LOCKE'S DOCTRINE OF NATURAL LAW AND RELIGIOUS FREEDOM

Locke's "theological, juridical, and political philosophy is predicated on the notion that people are intellectual beings."³ Individuals are autonomous, self-determining creatures equipped with reason, capable of directing their thoughts and actions and pursuing their pleasure or good.⁴ They must learn about themselves and the environment in order to realise what is beneficial. "In terms of power, Locke defines religious liberty." Individuals and the religious groups they form must vote on their philosophy and practise, and the state has no authority to intervene. Similarly, churches and believers cannot legally use faith to deny people fundamental rights like life, liberty, or land, because these are the jurisdiction and security of the democratic society. This limitation on the extent of religious behavior derives from Locke's moral law and social contract concept, which culminates in the constitutional separation of faith and state."⁵

CASE LAW DESCRIPTION⁶

Bench: Deepak Mishra, A.N. Khanwilkar, Rohinton Nariman, Indu Malhotra, D.Y. Chandrachud.⁷

The Supreme Court delivered its verdict in the Sabarimala Temple Entry case on September 28, 2018. The temple's rule prohibiting women was declared unconstitutional by a 4:1 majority.

¹ On the first principle of morality and its specifications, see John Finnis, Joseph M Boyle, Jr. & Germain Grisez, Nuclear Deterrence, Morality and Realism 281-87 (1987)

² *Ibid*

³ For a fuller exploration of Locke's views on religion and toleration, see Steven J. Heyman, The Light of Nature: John Locke, Natural Rights, and the Origins of American Religious Liberty, 101 Marquette L Rev 705 (2018)

⁴ See John Locke, An Essay Concerning Human Understanding bk II, ch XXI, ss 1-73 (Peter H Nidditch ed, Oxford Univ Press 1975) 233-87

⁵ *Ibid*

⁶ *Indian Young Lawyers Association & Ors v The State of Kerala & Ors* 2018 SCC OnLine SC 1690

⁷ *Ibid*

It decided that the ceremony infringed the constitutional right of female worshippers to religious freedom. (Article 25(1))⁸. Rule 3(b)⁹ of the Kerala Hindu Places of Public Worship Act was declared unconstitutional. Rule 3(b) permitted Hindu denominations to exclude women from public places of worship if the ban was based on custom.¹⁰ Chief Justice Misra, Justice Nariman, Justice Chandrachud, and Justice Malhotra delivered different opinions. Chief Justice Misra's view was shared by Justice Nariman and Justice Chandrachud. The case's dissenting opinion was released by justice Indu Malhotra.

BACKGROUND

S Mahendran petitioned the Kerala High Court in 1990, requesting that women be barred from accessing the Sabarimala shrine. In a judgment delivered on August 5, 1991, the Kerala High Court upheld the prohibition on women of certain ages accessing the sacred shrine. The Indian Young Lawyers Association petitioned the Supreme Court in 2006 to allow women aged 10 to 50 to enter the ancient temple. In 2007, the then-LDF (Left Democratic Front) administration, led by Chief Minister V.S. Achuthanandan, submitted an affidavit in court in support of a PIL (Public Interest Litigation) contesting the admission prohibition on female devotees.¹¹ In the year 2016.

On January 11, a supreme court division bench of two judges addressed the issue of female devotees being barred from entering the historic temple." On April 11, 2016, the then-UDF (United Democratic Front) administration, led by Chief Minister Oomen Chandy, informed the Supreme Court that it was required to "defend these devotees' freedom to practice their faith." The court noted in its answer that a restriction on female pilgrims jeopardizes gender justice. Hind Navotthana Pratishtan and Narayanashrama Tapovanam submitted a petition in support of women's entrance into the temple on April 21. Following the formation of the state assembly, the LDF government, led by Chief Minister Pinarayi Vijayan, was created. The

⁸ Constitution of India, art 25, cl 1

⁹ Kerala Hindu Places of Public Worship Act 1965, rule 3(b)

¹⁰ *Ibid*

¹¹ The Wire Staff, 'Sabarimala Verdict: A Timeline of Temple Entry Issue' (*The Wire*, 14 November 2019)

<<https://thewire.in/law/sabarimala-review-petition-verdict>> accessed 15 October 2021

administration declared in a new affidavit that it supports the entrance of women of all ages.¹² The Supreme Court assigned the matter to the Constitution bench in 2017. Hearings on the case commenced in 2018 before a five-judge Constitution bench led by then-CJI Dipak Misra. On September 28, the Supreme Court delivered a judgement by a vote of 4 to 1, permitting women to enter the temple. There were several reports of confrontations between protestors and police in the aftermath of the judgement. Nonetheless, following the Supreme Court's ruling, a sizable number of supporters banned the entrance of women aged 10 to 50."

ISSUES RAISED

- Prohibition of women based on biological reasons contradicts Articles 14¹³ (Right to Equality), 15¹⁴, (Discrimination), and 17¹⁵ (Untouchability) and also contradicts Jean Rousseau's theory of natural law and social contract, on equality, freedom, and sovereignty.
- Any other activity that is simply violative of the other listed rights cannot be covered by "morality" under Article 25¹⁶. (freedom to practise and propagation of religion), which contradicts John Locke's theory of religious freedom.¹⁷
- Does Rule 3 of the Kerala Hindu Places of Public Worship¹⁸ (Authorisation of Entry) Rules permits 'religious denomination' to ban entry of women between the ages of 10 to 50 years?
- Or if it does then is it a violation of Articles 14 and 15(1) of the constitution by prohibiting entry of women on the ground of sex, also violating the theories in feminist philosophy of law.
- Is the tradition of not including women an "essential religious practice" under Article 25, and should a religious organization argue that it falls under the shield of the right to conduct its affairs in religious matters?¹⁹

¹² *Ibid*

¹³ Constitution of India, art 14

¹⁴ Constitution of India, art 15

¹⁵ Constitution of India, art 17

¹⁶ Constitution of India, art 25

¹⁷ *Ibid*

¹⁸ Kerala Hindu Places of Public Worship Act 1965, rule 3

DISCUSSION AND ANALYSIS

"Religion, just like a tribe is an expression of our beliefs. It's not a war scheme to negate, discriminate or judge each other."

- Dr. Jacent Mpalyenkana

RELIGIOUS PRACTICE VERSUS CUSTOM

In *Adi Saiva Sivachariyargal Nala Sangam and others vs Government of Tamil Nadu*²⁰ and others "What constitutes an important component of a religious or religious practice must be decided by the courts with reference to the theology of a specific religion and include practises considered by the community as a part of its religion," it was said. "The Sabrina case, which discriminates against women between the ages of 10 and 50 in matters of temple entry, is neither a rite nor a ceremony associated with Hindu religion because this religion does not discriminate against women; however, the Hindu religious places women on a higher pedestal than men, and such sexism is completely anti-Hindu, because restricting women's entry is not the core of Hindu religion."²¹

In *Durgah Committee, Ajmer vs Syed Hussain Ali*²², There may be numerous ill-practices like superstitions that may, in due order, become simple accretions to the core subject of that religious sect, it was observed. Even if any accretion made for historical reasons has become an essential part of the stated religious denomination, it shall not be included by Article 26(b)²³ if it is so repulsive and opposes the fundamental concept of our Constitution.²⁴ Furthermore, if one has taken an oath of celibacy, the mere sight of women cannot damage one's chastity; otherwise, such an oath has no meaning; furthermore, devotees travel to the Sabarimala temple to seek Lord Ayyappa's blessings, not to take an oath of celibacy. Maintaining celibacy is only a ritual for those who want to practice it, and the temple management has not been

¹⁹ *Ibid*

²⁰ *Adi Saiva Sivachariyargal Nala Sangam & Ors v Government of Tamil Nadu* (2016) 2 SCC 725

²¹ *Ibid*

²² *Durgah Committee, Ajmer v Syed Hussain Ali* 1962 SCR (1) 383

²³ Constitution of India, art 26(b)

²⁴ *Ibid*

explained. On the contrary, the temple management argues that although women are unable to walk through perilous hilly terrain in dense forest for many weeks during their menstrual cycle, this practice of not permitting them has arisen.

EQUALITY, RATIONAL CRITERIA, AND GENERATIONS

In the case of *Anuj Garg and others v. Hotel Association*,²⁵ when discrimination is attempted to be established on the alleged ground of categorization, such classification must be grounded on logical grounds," it was said. In the lack of any constitutional requirement, and it bears repeating, with reference to the socio-economic conditions that prevailed in the early twentieth century, the criteria may not be a sensible criterion in the twenty-first century. For example, the pickle myth and mensuration." People in the United States and the United Kingdom used to think that if a menstrual woman touched a vegetable before or after the pickling phase, the produce would not pickle and would become sour, and she would release any fragrance or rays throughout her period. Which, in today's world, is deemed absurd. Similarly, many behaviors that previously had no scientific justification were turned into customary practise, with no logic and making it obligatory to follow.²⁶

Putting forth Jean Rousseau's idea of natural law and social compact, with a focus on equality, freedom, and sovereignty. Where the jurist stated that true sovereignty is not only the will of those in authority but the will of the people as a whole. Sovereignty has the authority to override an individual's will or even the collective will of a certain group of people. However, because the public will is infallible, it should only interfere when it is in the best interests of society. Proper Sovereign action is thus best defined as one that ensures people's rights and equality than one that limits them. Finally, the precarious balance between the sovereign authority of the state and the interests of individual individuals is based on a social contract that protects democracy against factions and huge inequalities in wealth and status among its members.²⁷

²⁵ *Anuj Garg & Ors v Hotel Association* AIR 2008 SC 663

²⁶ *Ibid*

²⁷ Jean-Jacques Rousseau, *Internet Encyclopedia of Philosophy* (James J Delaney ed, 1712-1778)

In a similar vein to Rousseau's principle and the right to equality (Article 14), the state is intervening in religious matters in the name of the general population. Securing women's equality rights is a step toward sustainable change. Such discriminatory policies breed more discriminatory and untouchability practises. Natural law, therefore, serves the common benefit of humanity. When the tiny population of Ayyappa temple devotees is compared to all the women who wish to worship at Ayyappa Temple, women would outnumber them, making this step beneficial to society.²⁸

IS THE RELIGIOUS PRACTICE ESSENTIAL?

A harmonious construction of Articles 25 and 26²⁹ of the Constitution shows that Neither Article 26 nor any custom that discriminates against women enables the State to pass legislation prohibiting any woman from worshipping in any public temple, and so such exclusion destroys the rights of women to practise religion guaranteed by Article 25. Drawing attention to the Convention on the Elimination of All Kinds of Discrimination Against Women (CEDAW)³⁰ and the fact that India is a party to this Convention in order to emphasize that the State must eliminate menstrual taboos based on norms or practises, and that the State should refrain from utilising custom or practise to avoid their responsibilities.³¹

In Article 2, part I of CEDAW, it is stated that 'States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.' Article 2(d) asks the parties to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices which constitute discrimination against women {Article 2(f)}. The law regulating darshan entry into temples differs from the legislation governing religious affairs

²⁸ *Ibid*

²⁹ Constitution of India, art 26

³⁰ UN General Assembly, 'Convention on the Elimination of All Forms of Discrimination Against Women' (United Nations, 18 December 1979) UNTS vol. 1249, p. 13 <<https://www.refworld.org/docid/3ae6b3970.html>> accessed 20 October 2021

³¹ *Ibid*

management." The former is governed by Article 25, whereas the latter is governed by Article 26. Furthermore, religious organizations that seek rights under Article 26 cannot restrict access to anybody for darshan, and the exclusion of women aged 10 to 50 years breaches Articles 14, 15, 21, and 25 of the Constitution.

CONSTITUTIONAL MORALITY & NATURAL RELIGION PHILOSOPHY BY LOCKE

In *Government of NCT of Delhi vs Union of India and others*³² "When a country is blessed with a Constitution, there is an associated commitment that mandates that every member of the country, right from its inhabitants to the highest constitutional officials, must worship the constitutional foundations," the court remarked. The word "morality" in Article 25(1) of the Constitution cannot be seen through a narrow prism, limiting the scope of morality to what a person, apart, or a religious sect perceives the term to mean. We must remember that when there is a violation of fundamental rights, the term "morality" naturally refers to constitutional morality, and any view necessarily held by the Constitutional Courts must be in accordance with the values and essential doctrines of the Constitution's definition of constitutional morality.³³

Religious rights are severely restricted. Locke defends religious liberty by claiming that religion necessitates a link between humans as intellectual creatures and God. This connection is shielded from interference by other individuals, churches, or the state by the law of nature and reason. However, although the constitution guarantees people the right to religious liberty, it also forbids them from using that liberty in a way that infringes the inherent rights of others (for example, by performing rituals involving child sacrifice). Locke uses natural religion philosophy to establish the foundation and limits of religious liberty in two ways: by separating the domains of state and religion and by basing religion on reason.³⁴ Locke also utilises the idea to argue that other religious perspectives should be completely rejected. To begin, this is true of faiths whose adherents think they have the right to dominate or impose

³² *Government of NCT of Delhi v Union of India & Ors* (2018) 8 SCC 501

³³ *Ibid*

³⁴ Steven J Heyman, 'Reason and Conviction: Natural Rights, Natural Religion, and the Origins of the Free Exercise Clause' 2021 (23) U Pa J Const L 1

their own beliefs on others. Such ideas are contrary to human society, or to certain moral norms that are necessary to the safeguarding of Civil Society" because they deny others equal position and rights.³⁵

FINDINGS AND SUGGESTIONS

"A criminal can go to the temple... but a bleeding woman can't!!"

- anonymous

IRRATIONAL CRITERIA OF PURITY

Everything boils down to women's civil rights. All of the clauses referenced in the decision come from the constitution." The first statement concerns democracy, the second non-discrimination, and the third equality. Non-discrimination, in general, equates to untouchability-purity. The discrimination against women is based on a violation of a human right. Sri Amritananda Natha Saraswati (Guruji), founder of Devipuram, an Andhra Pradesh temple devoted to the Devi, and informed us how at his temple, the majority of the priests are women, who are free to stay at the temple throughout their period (though it is not forced). At this temple, there is a Kamakhya Peetham, which is a natural formation in the shape of a yoni (vagina), and devotees come here whether or not they have their period.³⁶

Such proof emphasizes the point of how irrationally a woman is judged unclean at one location although scientifically a woman is preparing to deliver life to the world, which is believed to be a gift of God, a criminal may freely go up to the temple to worship and his misdeeds and impurities are overlooked. Another argument to be presented is what about women over the age of 50 who are still experiencing menstruation? Will this have any effect on the diety's celibacy, or will pregnant women who will not be able to menstruate for 9 months be permitted to enter the temple?

³⁵ *Ibid*

³⁶ Nithin Sridhar, 'Hindu View of Menstruation- III: Menstruation as a period of Rest and Sacred Celebration' (*India facts*, 2016) <<http://indiafacts.org/hindu-view-menstruation-iii-menstruation-period-rest-sacred-celebration/>> accessed 21 October 2021

EVIDENCE OF WOMEN ENTERING THE TEMPLE

Sabarimala, on the other hand, is a question of gender equality rather than religious freedom. Many of those who oppose women's admission does not even have the support of tradition, because the restriction on women of a particular age entering the temple dates only back to a 1992 High Court judgement. Even after that, there is enough evidence to show that young people arrived at the temple knowing everything about Thantri, the main priest. If the custom continues, it undermines the gender equality provided by the Constitution and should be eliminated.³⁷

Surprisingly, a 25-year-old affidavit submitted by the Travancore Devaswom Board and Ayyappa Seva Sangham has surfaced, claiming that women were formerly permitted to visit the temple. According to the document, which was filed before the Kerala high court in 1990, the temple has attracted a large number of young ladies and newlyweds. KPS Nair, the then-secretary of Ayyappa Seva Sangham, testified in the case brought by Changanassery resident S Mahendran. During his visit to the temple, Nair said definitely that he witnessed ladies ranging in age from 10 to 50 climbing the 'Pathinettam Padi' (the eighteen stairs leading to the shrine).³⁸ Chandrika, a former Travancore Devasom Board commissioner, whose granddaughter participated in her maiden rice-eating ritual in Sabarimala.³⁹ The child's mother and grandmother were among those who attended the event, which was photographed and published in the August 19, 1990 issue of the newspaper Janmabhoomi.⁴⁰

There are also allegations that in 1986, a Tamil film was shot on the steps leading to the shrine. Malayalam writer NS Madhavan stated on Twitter that the Devasom Board paid Rs 7,500 for shooting rights. The Maharaja of former Travancore is believed to have visited the shrine with the Maharani in 1939. There have been several reports of women visiting the shrine without

³⁷ *Ibid*

³⁸ Aishwarya Kumar, 'Were Women Allowed in Sabarimala? 25-Year-Old Affidavit by Travancore Devaswom Board Says Yes' (*News 18 India*, 12 October 2018) <<https://www.news18.com/news/india/were-women-ever-allowed-in-sabarimala-debate-rages-on-amid-protests-by-true-believers-1907159.html>> accessed 15 October 2021

³⁹ *Ibid*

⁴⁰ Jaikrishnan Nair, 'The photo that took a devout to court' (*The Times of India*, 2018) <<https://timesofindia.indiatimes.com/city/kochi/the-photo-that-took-a-devout-to-court/articleshow/66001604.cms>> accessed 18 October 2021

restriction. It is stated that the practise of excluding women from entering the temple cannot be called a tradition.”⁴¹

30 YEARS BECAME TIME IMMEMORIAL

According to Salmond, “custom is the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility”.⁴² A custom is a special norm that has existed either really or presumptively from time immemorial and has gained the power of law in a particular region,⁴³ despite being contradictory to or inconsistent with the general common law of the realm, according to Halsbury statutes.⁴⁴⁴⁵

Here neither we can observe justice nor the practice of custom from time immemorial. in Venkata Subbarao vs Bhujangarrya⁴⁶ that a custom being in existence for 40 years is an enforceable custom.⁴⁷ The Supreme Court, however, finally in Gokul Chand vs Parvin Kumari,⁴⁸ decided that it has been claimed in India that a custom must be old, but there is no such definite period for which it must have existed. The Supreme Court must provide a specific description of the time span for a customary practise. And, given that the last time women were seen in the temple without limitations was 30 years ago, when did 30 years become the everlasting time period criterion?⁴⁹

CONCLUSION

The "Sabrimala case" is today regarded as one of the most important legal decisions of all time. It has filled the gap left by gender discrimination and inequity. Even though individuals are

⁴¹ *Ibid* note 37

⁴² Diva Rai, 'Customs as a Source of Law' (*ipleaders*, 2019) <<https://blog.ipleaders.in/customs-as-a-source-of-law/#:~:text=%E2%80%9CCustom%20is%20the%20embodiment%20of,force%20of%20law%20in%20itself.&text=The%20authority%20of%20a%20local,than%20that%20of%20general%20custom>> accessed 19 October 2021

⁴³ *Ibid*

⁴⁴ *Bhimashya & Ors v Smt Janabi @ Janawwa* (2006) 13 SCC 627

⁴⁵ See *Halsbury* (4th edn, Vol 12) para 401, p 2 & para 406, p 5

⁴⁶ *Venkata SubbaRao v Bhujangarrya* AIR 1960 AP 412

⁴⁷ *Ibid*

⁴⁸ *Gokul Chand v Parvin Kumari* AIR 1952 SC 231

⁴⁹ *Ibid*

filing review petitions and many are opposed to the supreme court's reasonable action, it has set an example of how the court respects justice and equality. The lawsuit had a significant influence by elevating women's standing. We, the citizens of India, are governed by the Indian Constitution. Purity and waste concepts that degrade individuals have no place in a secular society like ours. Menstruation is considered filthy or unclean, and imposing exclusionary dysfunctions based on menstruation state runs counter to the Constitution's pledge of women's honour.

Since the verdict of the Nine Judge Bench in Puttaswamy's case⁵⁰, dignity as a function of Article 21⁵¹ is boldly etched in the Constitution. The menstrual cycle of a woman is a feature of her privacy. "Women have the civil right to be free of social and religious traditions that perpetuate apartheid and sexism in their biological processes. In terms of procedural morality, the Sabarimala trial served as a litmus test for the Supreme Court. The result was a social plan based on the assumption that religion and tradition will bow to modernity's diktats. It has forced major transformations in a Hindu culture that is both ageless and flexible.⁵²

Inadvertently, the Supreme Court may have set the stage for hardening of views in favour of the Constitution's primacy. This well-known decision trumps all other laws of the nation, as well as any traditional, practises, beliefs, and rituals of other religions/faiths that are in contradiction with it. Thus, it displays the victory of women's rights toward equality with males on the one hand, while maintaining the supremacy of constitutional morality over customary laws, conventions, and practises on the other. As the world goes on, the far-reaching social and political ramifications of this momentous judgement will become evident.

⁵⁰ *Justice KS Puttaswamy v Union of India* (2017) 10 SCC 1

⁵¹ Constitution of India, art 21

⁵² *Ibid*