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## Religious Pluralism analysed with Sabarimala Case

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*Indian society is diverse in nature and culture. India changes its culture, language, and religion within every 200 km which means within various geographical borders. Diversity of religious faith has existed in the country for a very long time. Various cultural groups or immigrants brought their religious faith, customs, and cultures into this land. This laid to bringing people together of different religious faith and became the basis of religious pluralism in India. Religious pluralism indicates the right to choose religion and all religions are equal in front of the court of Law. Some religious faiths or customs are evil and should be banned, but some of the customs have come under essential religious practice and maybe the court cannot intervene between them as India is a secular country and all religions have their laws. Religious pluralism was defined by Justice Indu Malhotra in the recent verdict of the Sabarimala case. The five-judge bench declared the judgment with a 4:1 majority, Justice Indu Malhotra is the only woman in the five-judge bench and the one who is against the entry of the women in the temple of lord ayyappa swami (Sabarimala temple). The article aimed to access religious pluralism in India and analyzed the recent and landmark judgment of the Sabarimala case.*

**Keywords:** *religious pluralism, diversity, faith, freedom, sabrimala.*

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### INTRODUCTION

Religion is the practice of faith, belief, and worship and existed since the archaic times of humanity. Religion is something an individual has personal feelings for and for the same

purpose Indian constitution gives the “right to freedom of religion” and gave the value of fundamental rights under article 25 of the Indian constitution.<sup>1</sup> Most of us only know that India is a secular country or we have different religions but still exactly don’t know the concept of religious pluralism. Religious pluralism in simple language represents “the many religions living under one roof”. Even though India is a secular country and all religions are equal in the eyes of the law, it's not present as a problem to Hindus but yes, it does show the adjustments in the behavior of every individual as a primary fact.<sup>2</sup>

According to scholars, religious pluralism is “an attitude or policy regarding the diversity of religious belief systems co-existing in society”. It claims that all religions are equal and respect the otherness of others. Supporters of religious pluralism believe that all religions lead to one god and the god revealed itself in various locations, in the name of various entities, and various circumstances. They believe that all religions are equal and want to say the same things but interpret things differently from diverse religions.<sup>3</sup> Religious pluralism can be the opportunity to make the world a better place. Because when multiple religions or religious beliefs co-exist it allows for a greater exchange of ideas and views. It enables people to choose their religion or personal faith and it also prevents political leaders to become vassals of religious leaders.

Religious pluralism can also be a problem, as not all religions are true and when people say all roads lead to the same god this is incorrect. Because some religions are based on historical facts and some are not.<sup>4</sup> To understand the relationship between law and religion in the modern-day judiciary (supreme court) came up with the Sabarimala judgment i.e. *Indian Young Lawyers Association v State of Kerala*.<sup>5</sup> Religious pluralism is explained by Justice Indu Malhotra in the recent judgment of Sabarimala. She disagrees with entertaining such kinds of Public Interest Litigations (PIL) which involve religious matters or matters regarding any specific religion. Because entertaining PIL like this will harm the nature of the secularity of our country and

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<sup>1</sup> Constitution of India 1950, art. 25

<sup>2</sup> *Ibid*

<sup>3</sup> Rajan Zed, ‘Faith Forum: Is religious pluralism an opportunity or a problem?’ (*Reno Gazette Journal*, 12 February 2016) <<https://www.rgj.com/story/opinion/columnists/2016/02/12/faith-forum-religious-pluralism-opportunity-problem/80314456/>> accessed 04 December 2022

<sup>4</sup> *Ibid*

<sup>5</sup> *Indian Young Lawyers Association v State of Kerala* (2018) SC 1960

constitution. In this paper, the dissenting judgment of justice Indu Malhotra explains the two main highlighted points mentioned in the judgment which are the maintainability of the PIL in religious matters and how the doctrine of equality under article 14 does not override the fundamental right under Article 25.

## RELATION BETWEEN LAW AND RELIGION

Religion and law are different but both have sentimental values and maintain balance in society. Even though both are different still have dependent on each other as the 'essence of law' comes from religion and according to scholars or researchers, religion is itself law i.e. Hindu religion which is age-old religion and evolved around the way of life and plays a vital role in making of modern laws.<sup>6</sup> However, in today's world, religious principles have no legal status unless they back up with law and so religion can't be used as an excuse for disobeying the law. The other reason is as the India is world's largest democracy with pluralistic religions and has a secular fabric of the constitution, so demands to respect all religions hence law and religion go hand in hand.<sup>7</sup> Even in *S.R.Bommai v Union of India*, the Supreme Court clears that, even though the law does not base on religion, it must be acknowledged by the law.<sup>8</sup> Similarly, Narasa Appa Mali's judgments, state that 'customs are not subject to fundamental rights.'<sup>9</sup>

## WHY THE CASE CAME UP??

Women have been treated with inequality since ancient times and always fighting for their rights in every field and been discriminated against based on gender.<sup>10</sup> But now we cannot discriminate against women based on gender as they have empowered themselves in almost every field like Law, economics, sports, education, politics, etc. it is clear that the state or any individual cannot make a discrimination but some of the researchers have a question as when

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<sup>6</sup> Yash Telgote & Pranjal Gupta, 'Religion And The Law: The Sabarimala Debate' 2019) 1(4) Law Audience

<sup>7</sup> *Ibid*

<sup>8</sup> *S.R.Bommai v Union of India* (1994) SC 1918

<sup>9</sup> *State of Bombay v Narasu Appa Mali* (1952) Bom 84

<sup>10</sup> 'Freedom of Religion and Sabarimala Judgement' (*Legal Service India*, 2018)

<<https://www.legalserviceindia.com/legal/article-418-freedom-of-religion-and-sabarimala-judgement-2018-.html>> accessed 04 December 2022

god can discriminate based on the gender of human beings then why we the common people can't make discrimination between men and women.

The question was arise from banning the entry of women into the temples and from the recent judgment given by the supreme court in the year 2018 in the Indian young lawyers association v the state of Kerala (Sabarimala Case). Temples like Shani Shingnapur, Lord Karthikeya temple, Haji Ali dargah had banned the entry of women in a temple under the name of "Essential religious practices" and the same has been done by the devswom board of Lord ayyappa temple which is situated at the village of Sabarimala. Sabarimala case is all about not allowing women between the age of 10-50 years old in the temple. A group of women lawyers filed a petition against this restriction violating the fundamental rights of women under articles 14-15 (equality & non-discrimination), 17, and 25 (freedom of worship). The petitioner argued that the custom is discriminatory and women should be allowed to practice and pray to any religion of their choice and at the place of their choice.

## **HISTORY OF THE TEMPLE**

Sabarimala temple is one of the popular shrines in the Kerala state which is located at Sabarimala village in the eastern part of Kerala near the border of Tamilnadu.<sup>11</sup> The village name is dedicated to "shabari" from Ramayana who is a devotee of Shri ram and waiting for them to meet. Sabarimala temple is dedicated to lord Aayappa. lord aayapa is born as the unification of lord Shiva and lord Vishnu. According to folk stories and Puranas, lord Parashurama placed the deity there for the purpose to destroy a female demon, who only could be destroyed by a child born from both Shiva and Vishnu. But when lord ayyappa killed the demon, her curse is reversed and the demon's body emerges into a beautiful lady. Later she asks aayappa to marry her, but he refuses and explains his purpose of listening to the prayers of devotees. But even though he assures her that he will marry her, when devotees (Kanni swamis) stop coming to Sabarimala.

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<sup>11</sup> *Ibid*

She now sits and waits for lord ayyappa for thousands of years beside the main temple which is now known and worshipped as “Malika purathamma.”

The temple is open to all religions and another unique thing about the temple is, that temple is not open for the whole year. It's only open during the days of Mandal-pooja, Makarvillakku, and Vishu. As the deity is celibate (Brahmachari) in nature, so the pilgrims have to observe celibacy (vratham) for forty-one days before going to Sabarimala. The penance period includes no alcohol, no smoking, no sexual relations, no non-veg food, simple living, not sleeping in bed and wearing black or blue clothes, and many more.

### **WHY WOMEN BETWEEN THE AGE OF 10-50 ARE NOT ALLOWED**

The question is who imposed the ban on entering the women in the temple? So the answer is lord Aayappa himself because it's celibate and focuses on listening the prayers of Kanni-swamis. There is no reason related to the menstruation period or the impurity of women etc. It all myths which stopped women from entering the temple. But women are not allowed it is the only part of empathy towards Malika purathamma and her eternal wait and also out of the respect for lord aayapa's commitment towards the devotees.

Another reason is that he celibate (Brahmachari) and should not be distracted. This custom is protected by the temple board under the essential religious practice and does not intend to violate any fundamental rights of women. The custom was sanctioned by the government under rule 3(b)<sup>12</sup> of Kerala Hindu places of worship(Authorization of Entry Act, 1965). As per rule 3(b) “Women at such time during which they are not by custom and usage allowed to enter a place of public worship”.

### **JUDGEMENT: THE VIEW OF JUSTICE INDU MALHOTRA**

The petition was filed by the Indian young lawyer association against the Travancore devaswom board on the 4<sup>th</sup> of august,2006 seeking to ensure entry of women between the age of 10-50 at

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<sup>12</sup> Kerala Hindu Places of Public Worship (Authorization of Entry) Act 1965, s 3(b)

the Lord Ayyappa temple at Sabarimala.<sup>13</sup> On 28<sup>th</sup> September 2018, the supreme court passed a judgment in favor of the petitioner by allowing entry of women to the temple. The judgment has been passed by the five judges bench comprising justice D Y Chandrachud, R F Nariman, A M Khanwilkar, Indu Malhotra, and chief justice of India Dipak Misra who is also head of the bench. Judgment is passed by a 4:1 majority, justice Indu Malhotra the only woman on the bench penned a dissenting judgment with the view of a petition like this does not deserve to be entertained.

Justice Indu Malhotra wrote that “the notions of rationality cannot be brought into matters of religion. She added that the shrine and deity are protected under Article 25 of the Constitution and that it was not up to the court to decide which religious practices should be struck down, except in issues of social evil like 'Sati'.”<sup>14</sup> In her judgment, she opined, “Present judgment won't be limited to Sabarimala, it will have wide ramifications, and issues of deep religious sentiments shouldn't be ordinarily interfered into. Religious practices cannot solely be tested based on the right to equality. What constitutes essential religious practice is for the religious community to decide, not for the Court.”<sup>15</sup>

In her judgment, she raised two main points, by which she strongly disagrees with others' points of view or decisions. The two main points in her judgment are about the maintainability of PIL and the right to equality not coming where the right of religion or essential practices comes.

## MAINTAINABILITY OF PIL

According to justice Indu Malhotra, the petition is filed by an association of young lawyers who is not worshippers of lord ayyappa. The association acts as the intervener in the PIL, they are

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<sup>13</sup> Indian constitution-historical underpinnings, evolution, features, amendments, significant provisions and basic features, <https://www.insightsonindia.com/wp-content/uploads/2018/07/Womens-Entry-into-Sabarimala-Temple.pdf>

<sup>14</sup> Bhadra Sinha, 'Justice Indu Malhotra cautions against judicial review of faith in Sabarimala case' (*Hindustan Times*, 28 September 2018) <<https://www.hindustantimes.com/india-news/not-allowing-women-in-sabarimala-temple-discriminatory-supreme-court-ends-age-old-practice/story-5QgGNjxsRQXd9C0CNFTvzM.html>> accessed 04 December 2022

<sup>15</sup> 'Religious practices cannot be tested solely on Right to Equality' (*Business Standard*) <[https://www.business-standard.com/article/news-ani/religious-practices-cannot-be-tested-solely-on-right-to-equality-118092800999\\_1.html](https://www.business-standard.com/article/news-ani/religious-practices-cannot-be-tested-solely-on-right-to-equality-118092800999_1.html)> accessed 04 December 2022

working as gender rights activists around & in the state of Punjab, focusing on gender equality, sexuality, justice, and menstrual discrimination.<sup>16</sup> Justice Indu Malhotra opined that, as the petitioner is not a directly aggrieved party to the issue raised in PIL, they have learned about the practice of restricting the entry of women in the age group of 10 to 50 years in Sabarimala temple from three newspapers articles written by Barkha Dutt & vir sanghavi in Hindustan Times and shravani pandit in Times of India.<sup>17</sup>

The petitioner challenged the constitutional validity of Rule 3(b) of Kerala Hindu places of public worship rule, 1965 under which temple restricting the entry of women between specific age groups as being ultra vires. according to the petitioner's rule, 3(b) is violating the fundamental rights of women contained in articles 14, 15, and 21. Article 25 provides the freedom of religion for the people of India, freedom of religion means to practice, profess and propagate any religion and this is subject to public order, morality and health. There is another reason behind the view of justice Malhotra for not entertaining such a petition which is based on religion because Article 14 has only been invoked for the people in the same situation as in the Sabarimala case all have to judge based on the same faith or creed or sects. so the petitioners can't say that they are devotees of aayappa. According to her, the right to equality in the religious matter has to view differently.

The right of an individual to worship a specific manifestation of a deity with faith is protected by article 25(1) of the Indian constitution and in the Sabarimala case the devotees believe in the manifestation of the deity as "Nashtik Brahmachari". but they have not challenged this practice as they think this is an essential practice based on the character of the deity. Then how can any other who is not even a devotee of lord aayappa raise a question about essential religious custom or faith and whether it has been entertained by a court of law?<sup>18</sup>

*Justice Indu Malhotra quoted in her judgment: -*

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<sup>16</sup> *Indian Young Lawyer Association & Ors vs State of Kerala & Ors* Writ Petition (Civil) No. 373/2006

<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*

7.2. *The right to move the Supreme Court under Article 32 for violation of Fundamental Rights must be based on a pleading that the Petitioners' rights to worship in this Temple have been violated... To determine the validity of long-standing religious customs and usages of a sect, at the instance of an association/Interveners who are "involved in social developmental activities, especially activities related to the upliftment of women and helping them become aware of their rights", would require this Court to decide religious questions at the behest of persons who do not subscribe to this faith.*<sup>19</sup>

7.3. *The absence of this bare minimum requirement must not be viewed as a mere technicality, but an essential requirement to maintain a challenge for impugning practices of any religious sect, or denomination. Permitting PILs in religious matters would open the floodgates to interlopers to question religious beliefs and practices, even if the petitioner is not a believer of a particular religion or a worshipper of a particular shrine. The perils are even graver for religious minorities if such petitions are entertained.*<sup>20</sup>

7.4. *In matters of religion and religious practices, Article 14 can be invoked only by persons who are similarly situated, that is, persons belonging to the same faith, creed, or sect.*<sup>21</sup>

And the main point of her judgment by which she is not agreed with the PIL to be entertained by the court is, in a pluralistic society means a society full of diversity with different castes, creeds, and religions, to entertain PILs challenging religious matters followed by any religion or religious denomination could have a serious effect on the constitutional and secular fabric of the country.

## ARTICLE 14 IN RELIGIOUS MATTERS

The petitioner filed the petition against the Sabarimala temple based on the entry of the women in the temple for the age group of 10-50 years, which is banned by the temple authority many years ago. So, the petitioners filed the petition stating that the custom which is practicing for many years is violating the fundamental rights of women. They are connecting the right to equality with the freedom of religion, as the freedom of religion is for everyone then why

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<sup>19</sup> *Ibid*

<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid*



women's don't have that right in the case of the Sabarimala temple? So the question raised by the petitioner according to their issue and thinking that does the article 14 overrides article 25 which is a fundamental right. They are all thinking it's not only the custom but the reason behind the menstruating period of women. but the priest and the other authority already declare that it's nothing related to women's menstruation for banning the entry of women but it's related to the nature of the deity, the celibacy of lord aayappa.

After the question of equality is raised by petitioners and the conflict goes on between the two fundamental rights, justice Indu Malhotra state in her judgment that, the equality doctrine enshrined under article 14 does not override the fundamental right guaranteed by article 25 because religious practices cannot be solely tested based on the doctrine of equality under article 14 and the principle of rationality.<sup>22</sup> Even article 25 provides equality to every individual to practice and profess any religion of their choice and it is conditioned with religious beliefs or faith and religious practices. When the conflict raises between the fundamental rights contained in article 14 and article 25 then it would compel the court to take a judicial review of article 14 to explain the reasons or logic behind the religious faith which is outside the court limits, "but it's not the court's job to determine which practice to be struck down except they are oppressive or evil in the nature like sati" and it is the subject of "essential religious practice of the shrine" which is the right of the devotees of a religious denomination to practice their religion with their religious faith and beliefs which is contained in the Article 25(1).

There is no question of equality has to raise because it is an essential religious custom that is only applicable to the Sabarimala temple cause of the celibate nature of the deity and the right of equality of women is protected by permitting them to the other temples of lord ayyappa where he is not manifested in the form of "Nashtik Brahmachari". The temples of aayappa are all over India and there are no restrictions regarding banning entry of women. If the female devotees don't have any issue related to banning entry of women then how can the court intervene in a religious matter because of the mere petition filed by an activist association and as per the petitioner's demand if the petition is to be entertained by the court for the judicial

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<sup>22</sup> *Ibid*

review of article 14 and for determining the validity of religious belief which is the issue of religious communities or denominations then it is would be fall out of the limits of the court.<sup>23</sup>

The customs or religious practices are decided by the temple authority and the practice of banning women's entry is based on the decision of the devaswom board which is mentioned under section 3 of the 1965 Act and protected under article 25(2)(b) "to religious denominations, or sect(s) thereof, to protect their right to manage their religious affairs without outside interference" & so section 3 of 1965 act is not ultra vires in nature.<sup>24</sup> "The right to worship in the Sabarimala Temple under Article 25(1) in accordance with their beliefs and practices as per the tenets of their religion. These practices are considered to be essential or integral to the Temple. Any interference with the same would conflict with their right guaranteed by Article 25(1) to worship Lord Ayyappa in the form of a 'Nashtik Brahmachari'."<sup>25</sup>

The role of courts in the religious matter is observed in *Bijoe Emmanuel & others v State of Kerala* and other by justice chinnappa Reddy, Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. This has to be borne in mind in interpreting Article 25..."<sup>26</sup> Justice Indu Malhotra state that, "Constitutional Morality in a pluralistic society and secular polity would reflect that the followers of various sects have the freedom to practice their faith in accordance with the tenets of their religion. It is irrelevant whether the practice is rational or logical. Notions of rationality cannot be invoked in matters of religion by courts."

## CONCLUSION

Sabarimala judgment brings a lot of change concerning the entry of women but created more controversy because most of the devotees and even the priest of the temple is not in the favor of judgment and even not happy with the court entertaining PIL which is not even filed by the

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<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

<sup>26</sup> *Ibid*

devotees and filed by one of the social activist group who is known about the practice from the newspapers and the interviews and even they are not in favor that court intervenes in the religious matter and made their old custom invalid which is purely the question of religious denomination. In my opinion supreme court has no right to intervene in the religious matter and agree with justice Indu Malhotra's judgment. because article 25 gives us the right to choose and profess and propagate religion and the thing which come under the religious faith. Even though other judges said that article 14 is being violated but it stands violated cause of the internal matters of the religious institution and every religious institution has the right to manage its affairs which is mentioned under article 26. Hence, article 14 is not being violated by the devaswom board.

As India is a secular democratic country and has religious pluralism, it cannot intervene in religious matters. Religion is based on faith and worshipping which is the most sentimental part of the individual's right and no one can take away their religion or things related to religion from them, so there is no question about violation because religious laws are divine. so let people enjoy their freedom of religion. And if the court wants to interfere in religious matters then there should be a restriction about who can file the petition so it makes less controversy in the matter, also justice Indu Malhotra preferred the same and states that the 'locus standi' needs to apply again in religious matters.