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

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INTRODUCTION

The Sabrimala temple is situated in the Pathanamthitta district of the State of Kerala. This temple is devoted to Lord Ayyappa and is managed by Travancore Devaswom Board. In the case *Indian Young Lawyers Association & Ors. v State of Kerala & Ors*¹, popularly known as the Sabrimala case, the Supreme Court ended the prohibition of women belonging to the age group of 10-50 to enter the Sabrimala temple which is dedicated to Lord Ayyappa on the ground that such practice is unconstitutional as per Article 14, 15 and 17. The Constitution bench was headed by J. Deepak Mishra and delivered judgment with a 4:1 majority. The dissenting opinion was given by J. Indu Malhotra.

BACKGROUND AND FACTS OF THE CASE

In Sabrimala temple, there is a prohibition on entry of women belonging to the age group between 10 and 50. This ban is based on the belief that Lord Ayyappa who is the chief deity of the temple, is a celibate deity and follower of “Naisthik Brahmacharya”(“eternal

¹ *Indian Young Lawyers Association & Ors v State of Kerala & Ors* Writ Petition (Civil) No. 373/2006

Brahmacharya”) which maintains distance from the opposite sex (women). Such a ban on women is considered to be part of the “essential religious practice” of the temple by the Travancore Devaswom Board itself.

The issue of Sabarimala temple was first attracted in 1991 in the case *S. Mahendran v The Secretary, Travancore Devaswom Board, Tiruvananpuram, and others*² when the main devotees of the temple approached Kerala High Court against the Temple Board and the state government on the ground that they are violating the traditions on the practice of temple by accommodating VIPs and breaking customs of entry of women. The dual bench of the Kerala High Court upheld the ban on women belonging to a certain age group.

In 2006, a writ petition was filed in Supreme Court by Indian Young Lawyers Association whereby they called into question the judgment of the Kerala High Court and challenged Rule 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 which bars entry of women belonging to age group 10-50. In 2016, a three judge-bench was constituted to hear the matter which was later transferred to a constitutional bench of five judges.

LEGAL ISSUES

- Whether the exclusionary practice which is based upon a biological factor exclusive to the female gender amounts to “discrimination” and thereby violate the very core of Articles 14³, 15⁴, and 17⁵ and is not protected by “morality” as used in Articles 25⁶ and 26⁷ of the Constitution?
- Whether the practice of excluding such women constitutes an “essential religious practice” under Article 25⁸ and whether a religious institution can assert a claim in that regard under the umbrella of the right to manage its affairs in matters of religion.

² *S Mahendran v The Secretary, Travancore Devaswom Board, Tiruvananpuram & Ors* AIR (1993) Ker 42

³ Constitution of India 1950, art. 14

⁴ Constitution of India 1950, art. 15

⁵ Constitution of India 1950, art. 17

⁶ Constitution of India 1950, art. 25

⁷ Constitution of India 1950, art. 26

⁸ Constitution of India 1950, art. 25

- Whether Ayyappa Temple has a denominational character and if so, is it permissible on the part of a 'religious denomination' managed by a statutory board and financed under Article 290A⁹ of the Indian Constitution out of the Consolidated Fund of Kerala and Tamil Nadu to indulge in such practices violating constitutional principles/morality embedded in Articles 14¹⁰, 15(3)¹¹, 39(a)¹² and 51-A(e)¹³.
- Whether Rule 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules permits 'religious denomination' to ban entry of women between the age of 10 and 50 years? And if so, would it not play foul of Articles 14¹⁴ and 15(3)¹⁵ of the Constitution by restricting the entry of women on the ground of sex.
- Whether Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 is ultra vires the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 and, if treated to be intra vires, whether it will be violative of the provisions of Part III of the Constitution.

JUDGMENT OF THE COURT

ABOUT ARTICLES 14, 15, 17 AND 25

As far as the first issue is concerned, the Court held that the practice to exclude women due to biological factors violates Article 14¹⁶ of the Indian Constitution which provides the Right to Equality to every person. This practice is also violative of Article 15¹⁷ which prohibits discrimination on the ground of religion, caste, gender, etc. J. Chandrachud observed, " To exclude women from worship by allowing the right to worship to men is to place women in a position of subordination."

⁹ Constitution of India 1950, art. 290A

¹⁰ Constitution of India 1950, art. 14

¹¹ Constitution of India 1950, art. 15(3)

¹² Constitution of India 1950, art. 39(a)

¹³ Constitution of India 1950, art. 51A(e)

¹⁴ Constitution of India 1950, art. 14

¹⁵ Constitution of India 1950, art. 15(3)

¹⁶ Constitution of India 1950, art. 14

¹⁷ Constitution of India 1950, art. 15

The Court also held that banning women to enter the temple on the ground that they are “polluted and impure” is a clear violation of Article 17 which abolishes any kind of untouchability. The Court also held that Article 25 provides freedom to manage religious affairs which include regulating entry into temples. However, such a right is gender-neutral as it uses the term “all persons”.

ABOUT ‘ESSENTIAL RELIGIOUS PRACTICE’

The Court held that the ban on women entering the temple does not come within the ambit of “Essential Religious Practice” as every person is entitled to enter such religious places under the Hindu religion. The Court further observed that such barring practice is not consistent and not followed for long, therefore, it cannot be regarded as religious belief towards a particular deity. The Court has also referred to the second Ananda Marga case¹⁸, wherein the same Court held that under the Hindu religion if any exclusionary practice is not followed and as a consequence to it, it does not change the true nature of religion, it would not be considered as an essential practice.

ABOUT ‘RELIGIOUS DENOMINATION’

As far as Denominational character is concerned, the Court referred Shurur Matt case¹⁹ and S.P. Mittal case²⁰, wherein the same Court mentioned the requisites of a religious denomination. In both cases, the Court observed that for a religious denomination, there must be common faith, common organisation, and a distinctive name. The Court observed that in the present case, Lord Ayyappa cannot be regarded as a denominational character because it is not fulfilling the first requisite i.e; common faith. The people who do not believe in Lord Ayyappa or who belong to other religions are also allowed to enter the temple. Therefore, Lord Ayyappa is not a “religious denomination” under Article 26²¹ of the Constitution.

¹⁸ *Commissioner of Police & Ors v Acharya Jagdishwarananda Avadhuta & Ors* C App No 6230/1990

¹⁹ *The commissioner, Hindu Religious Endowments, Madras v Shri Lakshmindar Tirtha Swamiyar of Sri Shirur Mutt* AIR (1954) SC 282

²⁰ *SP Mittal v Union Of India & Ors* AIR (1983) SC 729

²¹ Constitution of India 1950, art. 26

ABOUT VALIDITY OF RULE 3(b)

As far as the validity of Rule 3(b)²² of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, the Court held that Rule 3(b) of the Act violates the Act itself because Section 3 and 4 of Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 clearly states that no rules/regulations can be made under this Act which discriminates based on any class/ section of the society. Moreover, Rule 3(b) is also ultra vires the Constitution as it violates the provisions of Part III of the Constitution.

DISSENTING OPINION

J. Indu Malhotra gave a dissenting opinion and observed that the Courts should not intervene in matters of religion unless it is very essential as it is the job of a particular faith to decide its limits. She further stated that Lord Ayyappa satisfies the requisites of denomination character and hence, it is a “religious denomination” as per Article 26²³ of the Constitution. She also stated that in the conflict between Articles 14²⁴ and 25²⁵, Article 25 must prevail over Article 14²⁶. She also observed that the exclusion of women belonging to a certain age is not violative of Article 17²⁷ because such practice is performed to maintain the sanctity of a particular temple and it has nothing to do with the impurity of women.

ANALYSIS

In the Sabrimala Judgment, the petitioners contended purely on the ground of Constitutional rights while the respondents contended on Constitutional as well as on cultural rights of the temple. The petitioners were of the view that such practice is unconstitutional as it violates

²² Kerala Hindu Places of Public Worship (Authorisation of Entry) Act 1965, r 3(b)

²³ Constitution of India 1950, art. 26

²⁴ Constitution of India 1950, art. 14

²⁵ Constitution of India 1950, art. 25

²⁶ Constitution of India 1950, art. 14

²⁷ Constitution of India 1950, art. 17

Articles 14²⁸, 15²⁹, 17³⁰ and Temple rules³¹ itself as applicable in the State of Kerala while the respondents were of the view that such practice is a matter of religion and hence, Intra vires the Constitution as per Article 25³² and 26³³ of Indian Constitution. In my opinion, this judgment has somewhere overreached its limitations by entering into the ambit of religious matters on the following grounds:

Exclusion is not equivalent to discrimination: The exclusion of women belonging to a certain age group is justified as the exclusion is purely based on the celibate character of the deity, Lord Ayyappa. Such exclusion may equally apply to the male gender as well in the case of a female deity who has a celibate nature. Thus, it cannot be considered as discrimination under Articles 14 and 15 of the Indian Constitution.

Denominational Character of Lord Ayyappa: The Sabrimala temple fulfills the requisites of a “religious denomination” as mentioned in the case *S.P. Mittal v Union of India*³⁴. In the Sabrimala case, The Supreme Court observed that Lord Ayyappa does not have a denominational character as there is a lack of common faith in the institution. In my opinion, if we apply the same rationale throughout, every religious denomination would come out within the purview of religious Denomination of Article 26 because every religious denomination is visited by those people as well who do not have absolute faith in that particular institution.

Celibacy Character of Lord Ayyappa: There are a thousand temples in the Kerala State which belong particularly to Lord Ayyappa and all such temples can be freely accessed by the women except the Sabrimala temple. The Sabrimala temple is the only temple of Lord Ayyappa wherein the entry of women is restricted due to the celibate nature of Lord Ayyappa in that particular

²⁸ Constitution of India 1950, art. 14

²⁹ Constitution of India 1950, art. 15

³⁰ Constitution of India 1950, art. 17

³¹ Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules 1965

³² Constitution of India 1950, art. 25

³³ Constitution of India 1950, art. 26

³⁴ *SP Mittal v Union of India* AIR (1983) SC 729

temple. In other words, such deities have a “Naisthik Brahmacharya” (eternal Brahmacharya) character which means maintaining distance from persons belonging to the opposite gender.

Judicial Precedents: In the case *Sri Venkataramana Devaru v The State of Mysore*³⁵, the Supreme Court observed that all rules/regulations related to worship or management of temples are matters of religion and the Court cannot decide such matters.

In another case, *Ratilal Panachand Gandhi v The State of Bombay and Others*³⁶, the held that the religious denomination or organization has the absolute right to decide religious essential practices. There are several other judgments of the Supreme Court that indicate that the Sabrimala judgment is in contradiction with the finding of those cases.

Restriction in other temples³⁷: There are several temples in the country where the entry of men or all persons is prohibited strictly or on certain days. A few of them are as follows:

- **Attukal Bhagavathy Temple, Kerala:** In this temple, the entry of men is strictly prohibited during the Pongal festival and on a few other occasions.
- **Kamrup Kamakhya Temple, Assam:** This temple is dedicated to Goddess Parvati. On certain occasions particularly during Ambubachi Fair at this temple, the men are not allowed for a few days.
- **Brahmaji Temple, Rajasthan:** This temple is dedicated to Lord Brahma. The entry of men is strictly prohibited throughout the year due to certain beliefs.
- **Trimbakeshwar Temple, Nashik (Maharashtra):** In this temple, the entry of men and women as well is prohibited in the sanctum sanctorum of the temple.
- **Mata Temple, Bihar:** In this temple, the entry of men is restricted during a certain period as it is believed that the Mata used to go through her periods during this period.

³⁵ *Sri Venkataramana Devaru v The State of Mysore* AIR (1958) SC 255

³⁶ *Ratilal Panachand Gandhi v The State of Bombay & Ors* AIR (1954) SC 388

³⁷ ‘5 Temples in India where men are not allowed’ (*India Times*)

<<https://www.indiatimes.com/travel/destinations/5-temples-in-india-where-men-are-not-allowed>> accessed 22 December 2022

CONCLUSION

In the aftermath of the Sabrimala Judgment, society was seen as diversified into two groups. On one hand, the people celebrated it as a great triumph as it opened the doors of the temple for all women irrespective of age while the other group organized protests against this judgment. The interesting thing aftermath of this judgment was that several women too in Kerala protested and campaigned against this judgment. If we see it from a Constitutional point of view, this judgment, no doubt, protects and upheld the principle of equality and equal protection of laws ie society. However, if we see it from the cultural point of view, this judgment curtailed the freedom of a particular faith to manage their affairs by intervening in their matters of religion.

Hence, it somewhere disregards and neglects the scriptures which provide the rituals of a particular faith as was seen in this case that the nature of Lord Ayyappa was oversight despite presenting various scriptures as documentary evidence by the respondents. Moreover, this judgment has created mayhem in society by opening doors for other temples and other religions as well as wherever there is the prohibition of entry of particular gender. Later, review petitions were filed against this judgment which was referred to the 7-bench and then later to the 9-judge bench. The 7-judge bench upheld the judgment delivered by 5-bench judges while the 9-judge bench petition is pending in the Court.