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Email: journal@lawyersgyan.com

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“CONSTITUTIONAL VALIDITY AND REASONS BEHIND PROHIBITION OF WOMEN IN SABARIMALA”

Author-

Barathkumar K M

II year B.B.A., LL.B.(Hons.)

Sastra Deemed to be University

E-mail: k.m.barathkumar@gmail.com

Co-Author-

Palani Selvi M

E-mail: murugansselvi97@gmail.com

EDITED BY-

Lawyers Gyan

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ABSTRACT:

On 28th September 2018, the Supreme Court lifted the restriction on women to enter into the Sabarimala Temple and open the doors of the Sabarimala Temple to women of all age groups. The judgment by the Supreme Court led the people to lift their eyebrows and many protests were outburst. In this article, the authors discussed the historical and scientific background for the restriction. We also discussed the protocols followed by the pilgrims. It is a debatable issue whether the restriction on the women to enter into the Sabarimala Temple violates Articles 14, 15(3), 17, 25 and 26 or not? We analyzed the pros and cons of this issue and gave a full stop to this issue by analyzing some High Court and Supreme Court cases. While women are prohibited to enter into the Sabarimala Temple there are some temples where men are prohibited to enter into it. Hence, we listed out the temples and also held down the reasons for the restriction. Finally, we concluded that the prohibition on women into the Sabarimala Temple doesn't violate Articles 14, 15(3), 17, 25 and 26 and the restriction is imposed only to follow the customs and culture and not to reduce the reputation of the women¹.



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¹ KEYWORDS:

1. Menstruation 2. Naishtika Brahmachari 3. Swadharma

INTRODUCTION:

Sabarimala temple is one of the ancient temples in India which is located on a hilltop in Kerala's Pathanamthitta district and surrounded by 18 hills in the Periyar Tiger Reserve. This temple is dedicated to Lord Ayyappa, the god of growth. Every year many pilgrims from Kerala, Tamil Nadu, Karnataka, Andhra Pradesh and various parts of the country and the world visit Sabarimala Temple. The worship in this temple opens only during the days of Mandala Pooja in November-December, Makar Sankranti on January 14 and Maha Vishuva Sankranti on April 14 and the first five days of each Malayalam month². The pilgrims have to observe fasting for 41 days and also should avoid Non-Vegetarian foods, alcohol and cutting of hair and nails. They should bath twice in a day and visit the local temple regularly. The pilgrims wear black or blue clothes and they do not shave until the completion of the pilgrimage and smear vibhuti on their forehead.

For a prolonged period, the practice of restriction on women into the Sabarimala Temple was followed. In 1991, the Kerala High Court restricted the women of age group between 10 and 50 to enter into the Sabarimala Temple as they were of the menstruating age and also held that the restriction does not violate Articles 15, 25 and 26 of the Constitution and it does not violate any provisions of the Hindu Places of Public Worship (Authority of Entry) Act. 27 years after on 28th September 2018, in India young lawyers association vs. State of Kerala³, the Supreme Court lifted the restriction on the women into the Sabarimala Temple and overruled the judgment of the Kerala High Court in 1991. Many protests were outburst due to this judgment.

REASONS BEHIND RESTRICTION:

HISTORICAL PERSPECTIVE:

Lord Ayyappa, like every God in Hinduism has his own personality. It is believed that God had taken the oath of celibacy. In History, there is a story behind the restriction of women from entering the Sabarimala temple and it is believed by his staunch devotees.

Lord Ayyappa was born out of two men deities Shiva and Vishnu (in the form of Mohini). The purpose of his birth was to defeat a female demon. After she was killed by

² Richa Taneja, The Story of Sabarimala: Origin, Beliefs and Controversy over women entry, NDTV, (Oct. 17, 2018, 04:11 PM), <https://www.ndtv.com/kerala-news/the-story-of-sabarimala-origin-beliefs-and-controversy-on-women-entry-1933477>

³ India young lawyers association v. State of Kerala, (2018) SCC ONLINE SC 1690

Ayyappa, a beautiful woman emerged from her. She had been cursed to live as a demon and her killing reversed her curse. And that young woman fell in love with the Lord Ayyappa. She asked him to marry her but he denied and told that he was bound to live as "Naishtika Brahmachari" in the forest and to answer the prayers of his devotees. And he assured that he would marry her once Kanni swamis stop coming to the temple. It is believed that still the young woman waits for him at the neighbouring shrine and she is worshipped as "Malikapurathamma" by the Ayyappa devotees. He kept himself away from all the worldly desires including contact with women. So, the temple is resided by the energy of Brahmacharya (Celibacy) and Vairagyam (Dispassion). It is the temple to the path of renunciation which is called as Nvritti marga and is not to the path of family i.e, Pravritti marga.

This is the historical reason for the imposition of restriction of women between the age of 10 and 50 into the Sabarimala temple. The devotees see the restriction as to the empathy for Maligaipurathamma's eternal wait and the respect for the Lord Ayyappa's commitment to answer the prayers of devotees in the form of celibate.

SCIENTIFIC REASON:

Women are blessed with the ability to conceive and become mothers. The ability to give birth to a child is considered a privilege. In Hinduism, it is called as Swadharma i.e, a personal duty of women. Menstruation is a biological process that occurs in women to make them capable of conceiving. The Prohibition is imposed because the energy of the temple has the power to interfere with the Swadharma of women and even it may cause an imbalance in the menstrual cycle. It should be understood that the prohibition has nothing to do with gender discrimination but it is imposed keeping in mind that entering the temple can have a negative impact on gynaecological health of women.

Sabarimala is not the only place in the world where women are restricted to enter. Mount Athos in Greece and Mount Omine in Japan impose restrictions on the women of all ages⁴. In Mount Athos, even female animals are barred from entry. Both the places are at an altitude of more than 5000 feet. The scientific research shows that high altitude affects female's fertility and it results in early menopause.

Sabarimala yatra is carried out by the devotees to experience spiritual enlightenment. This can be experienced only through certain rules and restrictions followed during 41 days of yatra. A devotee has to withhold the human seed (sperm in male and ovum

⁴ Why women are banned from Mount Athos?, BBC News, (May. 27 2016), <https://www.bbc.com/news/magazine-36378690>

or egg in female) in order to experience the spiritual process. But for women in the menstrual age, the egg is involuntarily released during menstruation. So, a woman cannot complete the 41-day vrata which is a core practice to attain spiritual enlightenment.

We have to understand clearly that every cultural practice in Hinduism is very scientific in nature and it has to be respected. Hinduism is not only a religion to follow blindly, rather it teaches the way of life one has to possess.

THE PROHIBITION DOES NOT VIOLATE ART.14:

The restriction of women into the Sabarimala temple does not violate the Art. 14 of the Constitution, it falls within the reasonable classification test and has a clear nexus to the classification made and object to be attained. In Budhan Chaudhary vs. State of Bihar⁵, the Patna High Court held that for a reasonable classification two conditions must be satisfied:

- The classification of a person from others or a group other groups should be an intelligible differentia
- That differentia must have a rational relation to the object sought to be achieved by the statute in question.

The same two conditions were held by the Bombay High Court in Ram Krishna Dalmia vs. Justice S.R. Tendulkar⁶.

The restriction of women into Sabarimala temple fulfils both intelligible differentia and reasonable relation to the object sought to be achieved. The classification made on women of menstruating age of 10 – 50 has a reasonable classification, as it does not ban all women it only restricts certain specific women. If a statutory law is arbitrary in context of Art. 14, such law should be removed. Here the classification which is made is reasonable and non-arbitrary, so it is the principle of an essential element of equality. The restriction is imposed only to protect the religious faith, custom and belief of worshippers which is very much reasonable. When a law is being tested under article 14 on the grounds of reasonableness, the objective of the law must be taken into consideration. If the objective of the law is illogical, unfair and unjust then the law is unreasonable. Here, the objective of the rule is to protect the

⁵ Budhan Choudhary v. State of Bihar, AIR (1955) SC 191

⁶ Ram Krishna Dalmia v. Justice S.R.Tendulkar, (1958) AIR 538

very character of the temple and the faith and customs followed from time immemorial which is in the light of established propositions of law interpreting Articles 14, 15 and 16, providing for appointment in women's college, of a lady principle or a lady teacher, the Court while giving judgement highlighted that the ambit and scope of equality as Article 14 does not bar rational classification. The discrimination of men and women was reasonable and would be in the form of Naistika Brahmachari. To enter into the Sabarimala temple the male worshippers should follow 41 days of fasting and celibacy and distraction from the opposite sex would cause damage to the celibacy followed. The menstruating women will not be able to follow 41 days of fasting and complete it. Thus, the prohibition of women into the Sabarimala temple doesn't violate Article 14 of the Constitution.

THE PROHIBITION DOES NOT VIOLATE ART.15 (3):

Art. 15 (3) of the Constitution is not a mandatory duty of the State to be performed. In Indra Sawhney v. Union of India⁷, Justice Thommen stated that 16(4) is an enabling provision conferring a discretionary power on the state which is equally applicable to Art. 15 (3). A government order which declared women as ineligible for the post of work in amen's jail is not violating of Article 15(1) of the Constitution which does not permit discrimination of the ground of sex, for the reason that if a woman was appointed as a warden in jail, it was difficult for her to maintain discipline among the offenders in jail. It is submitted that this discrimination seems to be reasonable because it involves the safety of a woman. The same reason is applied for the restriction of the women entry being protective discrimination for the women.

In the case of Dr. Gulshan Prakash v. State of Haryana⁸, the Honorable court had held that enabling provision is the discretionary power of the state which it may or may not exercise. There is no obligation on the part of the state to make special provisions as it's the

⁷ Indira Sawhney v. Union of India, (1992) 3 SCC 217

⁸ Dr. Gulshan Prakash & ors. v. State of Haryana, (2010) 1 S.C.C 477

state's discretion to decide whether there is any need to make special provisions. So, it's an enabling provision.

In the Sabarimala Temple restricting women and children from entering into the temple which is located in the hilly regions, with low safety measures for the women. The state makes reasonable discrimination on the part of women entry considering the physical safety of both women and children hence it does not violate Art.15 (3).

The prohibition of women from entering into the temple which is located in the hilly regions, with low safety measures for the women. The state makes reasonable discrimination on the part of women entry considering the physical safety of both women and children hence it does not violate Art.15 (3).

THE PROHIBITION DOES NOT VIOLATE ART.17, 25 AND 26:

In Appa Balu Ingale vs. State of Karnataka⁹, the Supreme Court held that "Untouchability" is a term of art that refers to the specific caste-based practise which has existed in India for a very long time. The word "Untouchability" was not capable of precise definition. Art.17 and Art.25 (2) (b) should be co-jointly read. The Constitution framers had made purposive construction on Art.17 which doesn't make any special provision for a religious institution in Art.25 (2) (b). In Art.25 (2) (b) the word persons do not specify the sex of the people of the religion. Art.14 to 18 binds on secular institutions whereas articles 25 and 26 bind on religious institutions, thus Art.17 when applied to religious institutions violates the fundamental nature of Art.25 and 26. When Art.17 extended to religious matters leads to situations of guarantee to women entry into all Hindu institutions if Art.17 is applied to religious matters, the test of rationality fails because Art.14 to 18 are applied to secular institutions on rationality whereas Art.25 and 26 are applied to religious institutions on the belief of faith.

The Constitutional framers made "Untouchability" for caste-based practices and not for practices related to customary practices of the religion. Justice Gajendran Yadkar stated that it is referred to the practice of untouchability has committed by Hindus against Harijans or lower caste people and not against sex i.e. women. In the instant case Rule 3(b) which is the restriction imposed does not expel all the women but only certain specific women, this does not amount to untouchables on the part of women, it merely comes under exclusion or separation. The prohibition of untouchability enshrined in Art.17 is inapplicable. The

⁹ Appa Balu Ingale vs. State of Karnataka, AIR 1993 SC 1126

exclusion of women constitutes an Essential Religious Practice and is in accordance with the character of the deity as a Naishtika Brahmachari.

SABARIMALA- THE PLACE OF UNITY:

Pilgrims undertake 41 days of ascetic life before going to Sabarimala temple. During those 41 days, they attend prayers and Bajans in the group. Every Ayyappa devotee has to touch every other devotee's feet irrespective of their caste and age in that group. The practice is very unique in nature and this shows that everyone is equal before God.

The Sabarimala temple is one of the few temples, which welcomes the people of all religion and faith. So it is clear that the women of menstruating age are restricted from entering the temple with valid reason and they are not discriminated.

INDIAN TEMPLES WHERE MEN ARE NOT ALLOWED:

The restriction on women into the Sabarimala temple became a burning topic. But there are some temples where men are not allowed to enter into the temple for a certain period. The temples are as follows¹⁰:

1. Kamakhya temple:

Kamakhya temple is located in Visakhapatnam where 'creative divinity' of women is worshipped. Men are restricted to enter into the temple for four to five days to observe the privacy of women during their period of menstruation.

2. Lord Brahma Temple:

This temple is located in Pushkar, Rajasthan. Married men are restricted to enter into this temple. Only the celibate priests are allowed to enter into this temple.

3. Devi Kanyakumari / Kumari Amman Temple:

This temple is located in Kanyakumari, Tamil Nadu. Only unmarried men are allowed to enter into this temple till the gate of the temple, while the married men are restricted to enter into this temple. The prohibition of men is because Kanya Maa Bhagwati Durga is worshipped by women only.

4. Mata Temple:

¹⁰ [Indian temples where men can't enter on certain days](https://www.newindianexpress.com/nation/2018/sep/28/indian-temples-where-men-cant-enter-on-certain-days-1878292.html#:~:text=The%20Kumari%20Amman%20temple%20situated,prohibited%20from%20entering%20the%20premises), The New Indian Express, Sep 28, 2018, <https://www.newindianexpress.com/nation/2018/sep/28/indian-temples-where-men-cant-enter-on-certain-days-1878292.html#:~:text=The%20Kumari%20Amman%20temple%20situated,prohibited%20from%20entering%20the%20premises>,

Mata Temple is situated in Muzaffarpur, Bihar. Here even male priests are not allowed to enter into this temple. Only women are allowed to enter during the period of their menstruation period.

CONCLUSION:

Being the citizens of India, we always cherish the diversity of our motherland. We all want diversity to be protected. The Prohibition of women of menstruating age is one of the diverse traditions which are followed by the Sabarimala temple. So, we should prefer protecting the tradition from protesting against it. We have to understand that the restriction is not based on misogyny and it does not violate any provisions of the Indian Constitution and also provisions of the Hindu Places of Public Worship (Authority of Entry) Act. It is imposed for the benefit of women and not against them. Let us not insult the age-old traditions and cultures, which actually have true meaning behind the practice, in the name of feminism and modernity.



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