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The Sabrimala Case

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ABSTRACT

Customs and traditions or statutes have always been a topic of discussion. The validity of the constitution has always been questioned majorly by the politico-religious groups. India is a diverse country consisting of different religions and all these religions follow different laws. Therefore, it puts the courts at a tough spot. Though the constitution is considered to be the supreme, it is important to understand what may be morally right may not be legally right too. Feminism and preservations of customs and traditions for the future generations are two different topics which should be practically interpreted and dealt with.

Keywords: *customs and traditions, statutes, politico-religious groups, India, diverse country, constitution, feminism, preservation.*

I. INTRODUCTION

The Indian Young Lawyers' Association vs. State of Kerala or popularly known as the Sabrimala Temple case is one of the most recent judgment to have been pronounced for the rights of women. This case too was a forever longing judgment, which was opined by the general public and the parties themselves that perhaps will never be adjudicated. It is a case which highlights the present scenario of women and where they currently stand in the society. It has helped us to understand how important it is to empower women and change the thought-process of many.

II. FACTS

The hustle began on the 4th of August 2006 when a group of five women lawyers filed a PIL against Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965. They moved to the apex court after the High Court of Kerala upheld that only the priest (tantri) was empowered to decide on the traditions. The LDF government of Kerala then filed an affidavit supporting the PIL which questioned the ban on entry of women in the temple in the year 2007. But the case was taken seriously when on January 11th, 2016 a two-judge bench of the Supreme Court questioned the practice of banning women from entering the temple during their menstruation. Following this, on February 6th of the same year a congress led UDF government takes a U-turn by making a statement that the Supreme Court is duty bound to

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protect the right to practice the religion of these devotees. This made the court realise that this case is not to be taken as casually as they thought prima facie.

III. GENESIS OF THE CONTROVERSY

This controversy of whether the women should be permitted to enter the temple during their menstruation cycle or not is not a new topic. The topic was touched upon back in the 1990 when Mr. S Mahendran, filed a PIL to ban the entry of women in the temple. On April 15 1991, the Kerala High Court upheld the century-old restriction on women by prohibiting the entry of women of a certain age group. The case again got its spotlight on 4th of August 2006 when the lawyers association filed a PIL and in 2007 the LDF government of Kerala filed an affidavit in support of the PIL. After 9 long years, on January 11th 2016 a two-judge bench of the Supreme Court questioned the age-old restriction. On February 6th the congress led UDF government took a U-turn and made a statement that the court is duty bound to protect the right to practice the religion of these devotees. It was on April 11th that the Supreme Court said that this ban on women endangered gender justice. On April 13th the Supreme Court put across a point that just due to the tradition, women can not be banned from entering the temple. The Hind Navotthana Pratishtan and Narayanashrama Tapovanam filed a plea on April 21st supporting the entry of women. The LDF government on the 7th of November filed a fresh affidavit in the Supreme Court supporting the entry of women. All these incidents proved that the case must be given equal importance and should be fought with seriousness. The fight did not just stop here.

The case again came to light on October 13th 2017, when the Supreme Court referred the case to a constitution bench. On October 27th there was a plea filed in Supreme Court for a gender neutral to hear the case. On the 17th of July 2018 the five-judge bench commenced with the hearing. It was two days later, on the 19th of July when the Supreme Court questioned the rationale behind the age group and said it is the fundamental right of women to enter the temple. It was on the 24th July that the Supreme Court in clear words stated that prohibiting women from entering the temple can be tested on the constitutional ethos. The defence counsel made it clear to the court that the Sabarimala temple's presiding deity, is protected by the Constitution. On July 16th the Supreme court made it clear again that it can not remain oblivious that women are prohibited because they were barred due to their physiological nature of menstruation. The Supreme Court, not being able to pronounce the judgment in favour of either of the parties, reserves its verdict on August 1st.

It is one month later i.e on the 28th of August that the Supreme Court with the ratio of 4:1

passed a judgment in favour of the women stating that prohibiting women to enter the shrine during their menstruation creates a gender discrimination and the practice violates the rights of the Hindu women. The National Ayyappa Devotees Association, not being able to accept and digest the fact, filed a review petition in the Supreme Court a month later on the 8th of October. On the 14th of November the Supreme Court refused to stay its verdict. The Supreme Court delayed its hearing due to the fact that Hon'ble judge Indu Malhotra was on a medical leave who was the sole woman in the bench. On February 6th the Supreme Court reserved its verdict on the review petition. It was on the 14th of November that the Supreme Court had to again refer the case to a larger bench. This seven-judge bench was referred specifically for re-examining various religious issues including entry of women into Sabarimala temple and mosques and the practice of female genital mutilation in the Dawoodi Bohra community.

IV. VERDICT OR NON-VERDICT

The court has said that the larger bench is required to answer 7 questions until which the court cannot proceed further. The questions and issues raised are as follows:

1. Clarify the interplay between the freedom of religion under Articles 25 and 26 of the Constitution and other provisions in Part III, particularly Article 14.
2. What is the sweep of expression 'public order, morality and health' occurring in Article 25(1) of the Constitution?
3. The expression 'morality' or 'constitutional morality' has not been defined in the Constitution. Is it over arching morality in reference to preamble, or limited to religious beliefs or faith? There is a need to delineate the contours of that expression, lest it becomes subjective.
4. What is the extent to which the court can enquire into the issue of whether a particular practice is an integral part of the religion or religious practice of a particular religious denomination, or should that be left exclusively to be determined by the head of the section of the religious group?
5. What is the meaning of the expression 'sections of Hindus' appearing in Article 25(2)(b) of the Constitution ?
6. Are the "essential religious practices" of a religious denomination, or even a section thereof, afforded constitutional protection under Article 26?
7. What would be the permissible extent of judicial recognition to PILs in matters calling into question religious practices of a denomination or a section thereof at the instance of persons who do not belong to such religious denomination?

It was stated by the Supreme Court that until the above mentioned questions and issues are not dealt with, the 65 review petitions filed in the court will be pending. The next chief justice- SA Bobde will be forming a larger bench for the examination after which the review petitions can be dealt with.

V. RED FLAGS

This case created a lot of controversy as soon as it came into the limelight. There were individuals and social groups who spoke in defence of either the temple or in support of the women. In addition to this, the media houses too did not let the case slip through. The case overall received a lot of criticism.

A part of the society believed the temple is correct on imposing such restrictions as the deity was a Nashtik Brahmachari and therefore women of a specific age shall not be permitted to enter. Such an opinion was highly believed by mainly the priests and then came the followers. The followers not only constituted men but also a lot of women themselves. They believed that the court should not be interfering in matters related to religion and sentiments. This part of the society believed that women who are against this practice have forgotten their ancestral beliefs and practices.

On the other hand, the women believed that the temple is no one to stop them from entering on the biological ground. They said that such a practice violates their fundamental rights. Furthermore, they also touched upon the topic of feminism saying that being the 21st century and when women are partly being treated equally as men, they should also be given the freedom to go to places of worship based on their choice.

VI. MY ANALYSIS

The topic of Sabrimala is a very sensitive topic to me personally. As it not just put the court in a dilemma but me too. It made me raise questions not just on the Hindu religious practices but also various other religious practices of other religions. This case not just is questioning why the judiciary is interfering in their practices but also highlights the jurisprudential aspect. According to Jurisprudence, Custom is a very important topic which is given great priority by the Historical school. They give great importance to the Customs and traditions. In other words, we can say all those who stood in defence of the Temple follow the historical school of Jurisprudence. In my opinion, I see no harm if women of a specific age group are not allowed. It is the duty of the Hindus to protect the traditions and Customs which have been practiced for several years.

However, what applies to a man applies to women. When the temple is said to be opened to the general public, the general public comprises of all women. Depriving women from visiting a place of worship on biological and physiological grounds is wrong on all grounds. Having said that, it is important to note it is the 21st century where more emphasis is given to the Analytical School of jurisprudence. They opine that, it is the statutes which should be given great importance as they are codified and if followed will make life easier for all. In the present the topic of feminism is being talked a lot, where they believe that men and women should be treated equally at all stages. Therefore, the same set of people believe that if the men of all age groups are allowed, so should women.

This case made me introspect about religious practices of Christianity and Islam. Why aren't women allowed into the mosques? Why aren't women allowed to be ordained? why weren't these questions put forth in the earlier stages of the hearing of the case? A strange thing that struck me was why haven't women from other religions raised such questions? Because they feel it is their duty to preserve their culture, their traditions and their practices which have been followed for decades now. The one thing to note is, these women maybe under the fear of the superiors of their religion or considering it is their duty to preserve their customs. Even though the Hindu religion gives great liberty to its followers, the Hindus should too keep in mind that it is important to preserve their practices and not come under the influence of western culture.

To conclude, I'd suggest that to prevent all these religious fights, internal religious battles we should all agree to the concept of Uniform Civil Code. It will make the lives of individuals easier. It will also put an end to all the religious fights and the bitterness about religions. it will also ensure no one is treated superior and that everyone irrespective of their religious background are treated equally. Not just that, it will also nullify all the different laws established for different religions. One people, One law this makes it easier for the courts to adjudicate matters and also provide justice.

VII. REFERENCES

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