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## Case Comment: Indian Young Lawyers Association & Ors v State of Kerala & Ors: Constitutional Morality and a Judgment at Stake

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### INTRODUCTION

“It is well to remind ourselves on each occasion that the purpose of this basic document (the Constitution) which governs our society is to bring about a constitutional transformation”.<sup>1</sup> The essence of transformative jurisprudence, most ordinarily, lies in the transcendence of sordid and infructuous societal beliefs and constructions. The most essential aspect of a modern society is not the mere acceptance of its ever-so-buried identities but, most importantly, the obliteration of blatantly operating societal mechanisms cloaked under customs and traditions. More precisely, the injustices against women in terms of their physiological distinctions are a degrading form of untouchability that remains partially unacknowledged. The Supreme Court (hereinafter referred to as “SC”) judgment in *Young Lawyers Association & Ors. v The State of Kerala & Ors.*,<sup>2</sup> inter alia, is a landmark case of feminist jurisprudence and gender equality, which

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<sup>1</sup> *Indian Young Lawyers Association & Ors v State of Kerala & Ors* AIR ONLINE 2018 SC 243

<sup>2</sup> *Ibid*

is yet again in discourse following the scheduled hearing of review petitions concerning the judgment before a nine-judge Constitution Bench from April 7. This groundbreaking 2018 judgment of the SC, which allowed the entry of women of menstruating age into the Sabarimala Temple in Kerala after long decades of exclusion, is glorified as a seraphic development in transformative constitutionalism, feminist jurisprudence, constitutional morality, and, although conflicted, in a harmonious construction between individual and collective rights of religious worship. On a surface level, it prima facie appears to be a case about temple entry; however, upon deeper analysis, it addresses a long-drawn battle of wits between those for individual fundamental rights and those for the precedence of religious autonomy over individual freedom. The reconciliation of the two was reached by the Court through the doctrine of constitutional morality in a manner that changed the trajectory of the essence of equality and religious freedom.

While the SC struck down the exclusion of women from entering the temple as unconstitutional as well as violative of significant constitutional provisions and principles, the fate of the judgment is at stake due to broader questions about the touchstone of the test of ‘essential religious practices’ (ERP), judicial intervention and overreach in matters of religion and faith, and the scope of individual and collective religious freedom. Such uncertainties situate this pivotal judgment within a state of flux and an unsettled constitutional moment.

This case comment analyses the ratio decidendi of the judgment along with its implications. Furthermore, it discusses the contemporary developments and concerns around this landmark ruling, addresses unresolved issues, and examines the scope of judicial competence in theological matters.

## **FACTUAL BACKGROUND OF THE CASE**

The tension hails from a major pilgrimage site, the Sabarimala Temple, situated in the Periyar Tiger Reserve in Kerala. The temple is dedicated to Lord Ayyappa, who is believed to be ‘Naishtika Brahmacharya’(eternal celibate), in whose devotion, the pilgrims observe a 41-day ‘Vruthum’ (fasting), during which they separate themselves from familial ties, practice celibacy and abstinence from worldly pleasures to revere the Lord.

The problem arose from the prohibition of women aged between 10 and 50 years from entering the temple on the belief that the menstrual process of women may affect the celibate nature of

the deity. The restriction was rooted in historical customs and traditions surrounding the place, and thus, for long years, women were denied the right to worship in the temple. The restrictions were also codified under Rule 3(b) of the Kerala Hindu Places of Public Worship Rules, 1965.

In 1991, the Kerala High Court upheld the restriction based on the essentiality of the exclusionary practice. In 2006, the Young Lawyers Association filed a Public Interest Litigation (PIL) in the Supreme Court of India, challenging the validity of the restriction on grounds that it violated the right to equality (Article 14), right against discrimination based on sex (Article 15), and the right to practice one's religion (Article 25). The case introduced larger concerns for gender discrimination, women's dignity, religious freedom, social exclusion and religious autonomy.

## **LEGAL ISSUES**

The following legal issues were framed by the Court-

1. Whether the exclusion of women from entry into the temple based on biological factors amounts to discrimination based on gender and thereby violates Articles 14, 15, and 17 of the Constitution of India.
2. Whether the exclusion of women constitutes an "essential religious practice" under Article 25.
3. Whether the Sabarimala Temple should be regarded as having a distinct denominational status.
4. Whether Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 permits a religious denomination to prohibit the entry of women aged 10–50, and if so, whether such a provision is ultra vires the parent Act and violative of Articles 14 and 15(3) of the Constitution.

## **ARGUMENTS BY THE PETITIONERS**

The counsel for the petitioners argued that the Sabarimala temple cannot be said to constitute a separate religious denomination since it followed the basic tenets of the Hindu religion. It was submitted that a religious denomination must follow a particular set of rituals and practices along with a distinct and separate administration. Further, it referred to the "essential religious practices" test to argue whether the exclusion of women constituted the essence of the religion under Article 26(b). And if so, the same shall not be protected without examining its validity

against the touchstone of constitutional morality. Several references to earlier SC judgments were also made, wherein the overriding effect of Article 25(2)(b) over Article 26(b) was declared if the latter substantially hampers the enforcement of the former.<sup>3</sup> The petitioners also raised contentions regarding social discrimination towards women on biological grounds under Article 15 and the denial of equality under Article 14.

### **ARGUMENTS BY THE RESPONDENTS**

The counsel for the respondents argued that the exclusionary principle was not rooted in gender bias or physiological differences. On the contrary, it submitted that even men are not allowed to enter the temple if they fail to observe the age-old custom of 41 days “Vruthum”. It was further argued that since the observance of “Vruthum” was a condition precedent for taking part in the pilgrimage, such was not possible for women during their menstrual period. Hence, they contended that the prohibition does not constitute social discrimination but only the protection of the age-old spiritual discipline, beliefs and customs, which in turn is preserved by the Kerala Hindu Places of Public Worship Act, 1965.

### **JUDGMENT**

By a majority of 4:1, the SC struck down the exclusionary practice of women aged between 10 and 50 years from entry into the Sabarimala Temple as unconstitutional and violative of Articles 14, 15, 17, and 25 of the Constitution of India. As regards the right to equality and right against discrimination guaranteed under Articles 14 and 15, the classification of women based on the biological process of menstruation and subsequent restriction on entry to a public place of worship amounted to discrimination based on sex and age. Moreover, the “uncleanliness” stereotype concerning menstruation was held to be a form of “untouchability” within the meaning of Article 17. The Court, thus, concluded the following-

### **Whether the followers of Lord Ayyappa constitute a religious denomination?**

The majority answered this question in the negative and hence concluded that the followers of Lord Ayyappa do not constitute a distinct and separate religious denomination within the

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<sup>3</sup> *Sri Venkatramana Devarund and Ors v The State of Mysore & Ors* AIR 1958 SC 255

meaning of Article 26. By referring to earlier judgments,<sup>4</sup> the Court held that a religious denomination must have a common faith, organisation, and a distinct name. Since there is no identified group called Ayyappans, and no other temples dedicated to Lord Ayyappa constitute such prohibitions, the Sabarimala temple is a public religious endowment open to all Hindu devotees, and hence it cannot be given a separate denomination status.

### **Does the exclusionary principle violate Article 25(1)?**

The Court held that the exclusion of women is indeed a violation of the right of women to worship as well as practice the Hindu religion within the meaning of Article 25(1). The scope of Article 25(1) was declared to be not only inter-faith but also intra-faith, which makes the right to practice and propagate a particular religion non-discriminatory based on sex or age. Therefore, Rule 3(b) of the 1965 Act was also held to be in violation of Article 25(1). The Court further contended that the exceptions to Article 25 (public order, morality and health) are also not applicable by widening the meaning of “morality” to “constitutional morality”. It was reasoned that such exceptions cannot be used as a colourable device to restrict the fundamental right to practice religion and discriminate against women.

### **Does the exclusionary principle constitute an “essential religious practice”?**

The Court applied the “essential religious practices” test to determine whether the exclusion of women from entry into the temple was the essence of the Hindu religion. It referred, inter alia, to its earlier judgment wherein it held “what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself”. By applying this, the majority answered in the negative and declared the exclusionary principle not to be an essential practice of the Hindu religion. The Court reasoned that there existed no scriptural evidence to support the claim that the entry of women of menstruating age into the temple would alter the nature of the Hindu religion.

The dissenting opinion was given by Justice Indu Malhotra, who was in favour of the exclusion of women from entry into the temple. The reasoning was based on the grounds of keeping a check on judicial intervention in purely religious matters.

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<sup>4</sup> *The Commissioner, Hindu Religious Endowments, Madras v Shri Lakshmindra Thritha Swaminar of Sri Shirur Mutt* AIR 1954 SC 282; *S P Mittal Etc v Union of India & Ors* (1983) 1 SCC 51

## **CRITICAL ANALYSIS**

The landmark Sabarimala judgment received widespread attention as a revolutionary one in upholding women's dignity and countering time-honoured stereotypes around menstruation. However, several review petitions were filed in 2019 following the judgment, and the issue has come into light again for the hearing of such pending petitions in April 2026. The rationale behind this SC ruling is plain and simple—to break down infructuous societal customs that are want of a legitimate object, alongside eliminating discrimination against women based on biological and physiological distinctions. Nevertheless, this significant judgment is not a mere revolution in Indian feminist jurisprudence but a reiteration of the true scope of religious freedom in India.

The majority held that the followers of Lord Ayyappa did not constitute a separate religious denomination for lacking a common faith, organisation, or distinct identity. On the contrary, they were held to be engendered from Hinduism itself. In addition, the practice of exclusion of women of menstruating age from entry into the temple was also not held to be essential to Hinduism. The reasoning given by the Court can be said to be a progressive view of society, wherein the mere entry of women into the temple during their menstrual period would not disrupt the essence of the said religion. However, when viewed from a historical lens, the 'impurity' custom remains much grounded even today, wherein women are not allowed to enter temples during their menstrual period within Hinduism in several parts of India. In fact, women themselves are contributors to this ideology. The question is not whether such practice reflects a regressive view of traditional society, but pertains to whether secular courts possess the authority to decide what is "essential" to a religion, especially when a practice has survived through the ravages of time. Or whether the doctrine of constitutional morality takes precedence over non-interference in religious matters? If so, the contemporary perspectives centre around whether Muslim women should also be allowed to enter mosques. Or should Parsi women married out of their faith be allowed to enter their religious place of worship? Such questions have been raised today regarding the power of the judiciary to intervene in essential religious practices. Also, if the courts decide the essentiality of a particular practice of a religion, what is then the significance of religious authorities and community autonomy under Article 26?

Furthermore, the Court invoked the doctrine of constitutional morality and even regarded “public morality” as synonymous with constitutional morality in the specific context of the case. The Court referred to several judgments to define the doctrine, but it does not articulate a clear criterion for the application of such a doctrine. Without a specified boundary, there emerge higher risks of the failure of the balance between judicial review and freedom in matters of religion and faith. Also, if the doctrine of constitutional morality is applied to all forms of religious practices, the rationality of any religion would be uprooted.

Another significant concern arises regarding the extent of Articles 25 and 26 of the Constitution. The basic rule is a harmonious construction between individual religious freedom and collective religious autonomy. However, the interplay between the rights of persons under Article 25 and the rights of religious denominations under Article 26 remains uncertain. Further, if the overriding effect of Article 25 over Article 26 is declared in all circumstances of intervention in the rights conferred by the former, there occurs a constitutional dilemma wherein the rights contained in Article 26 can be said to be subject to Article 25 alongside its provided exceptions of public order, morality and health.

The dissenting judgment of Justice Indu Malhotra foregrounds judicial restraint. Her argument is plausible from the standpoint of pluralism and non-interference in deeply religious matters. She prioritised community autonomy over individual equality, which also remains a controversial debate surrounding religious freedom in India. A significant part of her dissent is her disagreement with filing PILs in religious disputes. The same has been questioned in the review petitions, whether a person not belonging to a religious group or denomination can question a practice of such a group or denomination by filing a PIL.

The most striking feature of the judgment is the desperately needed recognition of menstrual stigmatisation as a form of social exclusion. The stigma around menstruation in Indian society has been and, in fact, is a long-standing phenomenon. The progressive view of the Court in striking down the exclusionary practice of women based on menstruation as a violation of Articles 14, 15 and 17 is the most oft-touted part of the judgment. While the ruling remains legendary, menstrual stereotypes remain an unfortunate reality of our society. More precisely, the most fascinating phenomenon of transformative jurisprudence is that judicial rulings and interpretations are immaculate, yet their implementation detours into a grey area.

## **CONCLUSION**

The Sabarimala case is an instance of real-time progressive development of Indian society. The judicial interpretations of the essence of equality and women's dignity in a large part of this landmark ruling are a testimony to the Indian judiciary's commitment to an anti-discriminatory environment as well as a commitment to obliterating entrenched patriarchal norms. From a sociological perspective, the traditionalist view of the biological process of menstruation is a renewed concept of 'purity and pollution' observed in caste discrimination within Hinduism. The very fact that the basic right to menstrual hygiene had to be widely recognised as a fundamental right in the 21<sup>st</sup> century further exposes the systemic barriers of traditional Indian society. While the fate of the judgment remains at stake, the recognition of the basic human need of inclusivity and non-discrimination on grounds of sex is a commendable achievement of the Apex Court.