



## SC Allows Women Entry into Sabarimala Temple

In a 4:1 judgment, 5-membered constitution bench of Supreme Court, in ***Indian Young Lawyers Association vs. the State of Kerala***, has allowed women of all ages to worship in Sabarimala Temple.

- In its judgment, SC stated that '**devotion cannot be subjected to gender discrimination**'.
- Chief Justice Dipak Misra, Justice RF Nariman, Justice AM Khanwilkar and Justice DY Chandrachud constituted the majority, while the lone woman judge on the Bench, Justice Indu Malhotra dissented.
- The petitions had challenged the Constitutional validity of **Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965**, which **restricts the entry of women into the Sabarimala Temple** as being *ultra-vires* **Section 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965** which states that places of public worship are to be open to all sections and classes of Hindus.

### Sabarimala Temple Issue

- Located in the forests of the Western Ghats in Kerala's Pathanamthitta district, the hill shrine is dedicated to Lord Ayyappa and is managed by the Travancore Devaswom Board (TDB).
- The Sabarimala temple prohibits women aged between 10 and 50 years from entering the shrine.
- It is said that its deity, Lord Ayyappa, is a "**Naisthik Brahmachari**" and that allowing young women to enter the temple would affect the idol's "celibacy" and "austerity".
- The Travancore Devaswom Board has said that the prohibition on women of menstruating age from entering the temple is a part of '**essential religious practice**' of Lord Ayappa devotees.
- The petitioners have argued that the ban enforced on menstruating women from entering the Sabarimala shrine does not constitute a core foundation of the religion.
- Preventing women's entry to the temple with an irrational and obsolete notion of "purity" offends the equality clauses in the Constitution.
- It takes away the woman's right against discrimination guaranteed under Article 15(1) of the Constitution.
- It also curtails the religious freedom assured by Article 25(1).
- In 1991, Kerala High Court upheld the prohibition on young women entry in Sabarimala Shrine. The High Court had pointed out that the 'Naisthik Brahmachari' nature of the deity was "a vital reason for imposing this restriction on young women".

### SC judgment

- **Majority Judgement**
  - SC has ruled that Rule 3(b) is *ultra-vires* the Constitution, Section 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 as well as Section 4 of the 1965 Act which says that the regulations/rules made under this act shall not discriminate, in any manner whatsoever, against any Hindu on the ground that he/she belongs to a particular section or class.
  - Supreme Court condemned the prohibition as "**hegemonic patriarchy**" (hegemonic patriarchy means that patriarchy has become such an over-arching idea that discrimination based on it appears to be common sense to such an extent that not only men, even women become the supporter and perpetrator of the very notion which discriminates them).
  - It said that exclusion on grounds of biological and physiological features like menstruation

was unconstitutional. It amounted to discrimination based on a biological factor exclusive to gender. It was violative of the right to equality and dignity of women.

- SC said that prohibition founded on the notion that menstruating women are "**polluted and impure**" is a form of **untouchability** and the notions of purity and pollution stigmatized women.
- SC also held that Ayyappa devotees do not form a separate denomination just because of their devotion to Lord Ayyappa, but it is only a part of Hindu worship.
- SC overturned the 1951 judgment of Bombay High Court in the **State of Bombay versus Narasu Appa Mali** which held that the personal law is not 'law' or 'law in force' under Article 13 and held that immunising customs takes away the primacy of the constitution.
- No customs or usages can claim supremacy over the Constitution and its vision of ensuring the sanctity of dignity, liberty, and equality and customs and personal law have a significant impact on the civil status of individuals.

#### ▪ Dissent Opinion

- Justice Indu Malhotra dissented from the majority opinion and held that notions of rationality cannot be invoked in matters of religion by courts.
- She held the determination of what constituted an essential practice in a religion should not be decided by judges on the basis of their personal viewpoints. Essentiality of a religious practice or custom had to be decided within the religion and it is a matter of personal faith.
- Justice Malhotra observed that the freedom to practice their beliefs was enshrined in Article 25 of the Constitution. Harmonisation of fundamental rights with religion included providing freedom for diverse sects to practice their customs and beliefs.

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