

# AN ANALYTICAL REVIEW ON SABARIMALA VERDICT

Dr. K.Chandrasekhara Rao.,  
Dy. Commissioner, Dept of State Tax, Ap., Vijayawada.

*"I have a Uterus and I bleed once every month. God does not get angry if I pray during my periods. And everyone who thinks women are impure during their periods, don't forget it's the same impurity you survived on for 9 months inside your mother's womb"- Dis Ez Dixia.*

## ABSTRACT

On 28<sup>th</sup> September, 2018, the Hon'ble Supreme Court delivered a 4:1 landmark judgment in *Indian young lawyers Association Vs. State of Kerala* throwing open the doors of the Sabarimala Temple to women of all ages by overturning a country's- old ban on menstruating women praying at the hills shrine. The main opinion shared by Chief Justice of India, Dipak Misra and Justice A.M. Khanwilkar, said the prohibition reduced freedom of religion to a 'dead letter', and the ban was a smear on the individual dignity of women. The Chief Justice of India added that *"relation with the creator is a transcending one. Physiological and biological barriers created by rigid social dogma have no place in this "*. On the contrary, Justice Indu Malhotra opined that *"Judicial review of religious practices ought not to be undertaken as the Court cannot impose its morality or rationality with respect to the form of worship of a deity. Doing so would negate the freedom to practice one's religion according to one's faith and beliefs. It would amount to rationalizing religion"*. Further, much heated debate is going on for and against on the judgment across the country besides processions. On 13<sup>th</sup> November, 2018, the Hon'ble Supreme Court rejected to stay on its judgment. Albeit, it agrees to hear against the review petitions and the matter is posted to January, 22<sup>nd</sup>, 2019 by reckoning the prevailing terse and tense conditions across the country. Against this back drop, an exertion has been initiated to focus a bird's eye view on the background of the controversy, long battle of the chronological events, highlights of the judgment, for and against arguments on the judgment, review of the judgment followed by suggestions and a logical conclusion.

**Key Words :** *Sabarimala Verdict, Swamy Ayyappa, Supreme Court, Freedom of religion, Purity and impurity, menstruation, dissent.*

## INTRODUCTION:

Until 1991, the Sabarimala Temple was visited by the people irrespective of poor and rich alike. But, in the year, 1991, the Kerala High Court Bench comprising of Justices K. Paripoornan and K. Balanarayana Marar gave a ruling against the Travancore Devaswom Board under which it banned the entry of women between the age group of 10-50 claiming that such a practice of not allowing women of that age group was very much prevalent in the past according to the traditional practices and directed the Government of Kerala to initiate appropriate measures to honor its ruling. From that onwards, the issue has been burning. Albeit, on 4<sup>th</sup> August, 2006, The Indian Young Lawyers

Association filed a petition in the Supreme Court seeking to ensure entry of women in the said age group in to the temple. In November,2007, the then LDF Government in Kerala filed an Affidavit in support of the said petition. On 11<sup>th</sup> January,2016,the Supreme Court questions against imposition of ban. On 6<sup>th</sup> February,2016, the UDF Government in Kerala replied to the Supreme Court that it is their bounded duty “ *to protect the right to practice the religion of these devotees*”. On 11<sup>th</sup> April,2016, the Supreme Court says ‘*Gender Justice is endangered by ban*’. On, 13<sup>th</sup> April,2016, the Supreme Court says that tradition cannot justify the ban. On 21<sup>st</sup> April,2016, Hindu Navothana Pratishtan and Narayana Sharma Tapovanam filed a petition in the Supreme Court supporting the entry of women. On 7<sup>th</sup> November,2016, the LDF Government in Kerala filed a fresh Affidavit saying that it favours the entry of women of all age groups. However, by reckoning its sensitivity, the Supreme Court refers the case to the constitution Bench on 13<sup>th</sup> October,2017. On 27<sup>th</sup> October,2017, a petition was filed in the Supreme Court for a gender equal Bench to hear the case. Accordingly, the Supreme Court on 17<sup>th</sup> July,2018, constituted a Five-Judge Constitution Bench and started hearings in the matter. On 19<sup>th</sup> July,2017, the Supreme Court says women have the fundamental right to enter into the temple and questioned the rationale behind the age group. On 24<sup>th</sup> July,2017, the Supreme Court making it clear that the ban would be tested on ‘Constitutional ethos’. On 25<sup>th</sup> July,2017, the Nair Service Society tells that court that the celibate nature of Lord Ayyappa is protected by the constitution. On 26<sup>th</sup> July,2017, the Supreme Court observes it cannot remain obvious to ban on the entry of women as they were barred on the “*Physiological ground*” of menstruation. On 31<sup>st</sup> July,2017, the Court says that the constitutional scheme prohibiting exclusion has “some value” in a “*vibrant democracy*”. On 1<sup>st</sup> August,2017, the Supreme Court reserves the verdict. Eventually, on 28<sup>th</sup> September,2018, the Supreme Court in a 4:1 verdict, allows the entry of women, says “*banning it is gender discrimination and the practice violates the rights of Hindu women*”.

### Highlights of the Judgment:

Out of five Judges, four Judges on the Bench ruled in favour of lifting the ban on women entering in to the Sabarimala temple. CJI Dipak Misra and Justices Khanwilkar, Nariman and Chandrachud found the practice discriminatory in nature and violates Hindu women’s right to pray as cited beneath.

**CJI Dipak Misra and Justice Khanwilkar:** “*Devotion cannot be subjected to discrimination. Patriarchal rules have to change. Patriarchy in religion cannot be allowed to trump right to pray and practice religion*”.

**Justice Nariman :** “*To exclude women of the age group 10-50 from the temple is to deny dignity to women. To treat women as children of lesser god is to blink at the constitution*”.

**Justice D.Y.Chandrachud** : “ Religion cannot be used as cover to deny rights of worship to women and it is also against human dignity. Prohibition on women is due to non-religious reasons and it is a grim shadow of discrimination going on for centuries”.

Thus, all Judges ruled that devotees of Lord Ayyappa do not constitute a separate religious domination.

**Justice Indu Malhotra** : She wrote the dissenting Judgment in this case. She said that “ the nations of rationality cannot be brought in to matters of religion”. She added that “ *the shrine and deity are protected under Article 25 of the constitution and that it was not up to the Court to decide which religious practices should be struck down, except in issues of social evil like ‘sati’. What constitutes essential religious practice is for the religious community to decide, not for the Court. India is diverse country. Constitutional morality would allow all to precise their beliefs. The Court should not interfere unless if there is any aggrieved person from that section or religion. Present Judgment will not be limited to Sabarimala, it will have wide ramifications. Issues of deep religious sentiments should not be ordinarily interfered into. Religious practices cannot solely be tests on the basis of the right to equality. It is up to the worshippers, not the Court to decide what is religion’s essential practice”.*

#### **A. Arguments on Sabarimala Judgment :**

##### **Arguments in favour of the Judgment:**

- 1. Period is a period** : A Menstruating Women’s natural bodily process of the reproductive cycle in which blood from the uterus exists. **If there had been no menstruation, there would have been no mankind.** There is no scientific basis what so ever that menstruation is ‘*impure*’. Buddhism differed from Hinduism in the matter. A period was seen as a natural physical excretion that women have to go through on a monthly basis. Even in Muslimism, women will not be allowed only for four days a month in a menstruating period, but not for life. Sikkism believes in purity of mind and that purity of the body cannot guarantee it. Gurunanak is said to have condemned the practice of treating women as impure. She is allowed to pray every day of the month because they treats that mother’s blood is fundamental to life. The first and foremost argument against women between the age group of 10-50 in visiting Sabarimala is linked with menstruation. Albeit, an Indian women pretty well knows instinctively that she would not visit temples during periods. But to prohibit from ever going to sabarimala is an abomination perpetuated by patriarchy and supported by misogyny. Moreover, how could ban them for life even after the Supreme Court has ruled definitively on gender equality. When women are allowed to worship at Shani Shinganapur, then, why Can’t allow them in Sabarimala?.
- 2. Individual freedom prevails over purported group rights even in matters of religion** : The majority judgment hold that devotees of Lord Ayyappa do not constitute a separate religious denomination and prohibition on women is not an essential part of Hindu religion. Therefore, the

CJI Dipak Misra aptly said that *“any rule based on segregation of women pertaining to biological characteristics is indefensible and unconstitutional. Devotion cannot be subjected to the stereotypes of gender”*. Further it is quite apt to mention here the golden words of justice. D.Y.chandrachud, who said that *“ Stigma built around traditional notions of impurity has no place in the constitutional order, and exclusion based on the notion of impurity is a form of untouchability”*. Father, Justice R.F.Nariman rightly said that *“the Fundamental rights claimed by worshippers based on ‘custom and usage’ must yield to the fundamental right of women to practice religion”*. The decision reaffirms the constitutions transformative character and derives strength from the centrality it accords to fundamental rights.

3. **The Supreme Court’s Judgment is final and one should be honored** : Whether one agrees with it or not, there is no dispute that the Supreme Court’s Judgment allowing into the shrine, the entry of all women, irrespective of their age, is the law of the land. Once, the Supreme Court delivered its Judgment, there is no basis for devotees to prevent the implementation of the Supreme Court order, by threats and the unseemly use of force.
4. **Claim for denominational status Under Rule 3(b) of the Kerala Hindu Places of Public worship ( Authorisation of entry) Rules,1965 is not sustainable** : According to the said rule, *“ women who are not by custom and usage allowed to enter a place of public worship shall not be entitled to enter or offer worship in any place of public worship”*. Albeit, these arguments were vehemently rejected by the Court’s majority. *The majority Court found no doctrinal or factual support for the temple’s claim for denominational status. Further, the Court also repudiated the validity of Rule 3(b), which, it said, was, at its core, discriminatory towards women. The Court also suggested that it must look beyond the essential practices doctrine and examine claim by applying a principle of ‘anti-exclusion’ or in other words, “where a religious practice causes the exclusion of individuals in a manner which impairs their dignity or hampers their access to basic goods, the freedom of religion must give way to the over-arching values of a liberal constitution”*, It added that discrimination couched as plurality cannot be allowed to undermine the constitution’s basic *“quest for equality”*. It is an apt to quote here the golden words of justice Chandrachud as *“ the constitution exists not only to disenable entrenched structures of discrimination and prejudices but to empower those who traditionally have been deprived of an equal citizenship”*.
5. **No place for dogma** : *“ Relation with the creator is a transcending one. Physiological and biological barriers created by rigid social dogma have no place in this “ –CJI Dipak Misra. He added that “ on one side, we pray to goddesses and on the other, women’s of a certain age group are considered impure, this ban exacts more purity from women than men. This ban is discriminatory”*. Justice D.Y.chandrachud rightly said that *“the social exclusion of women, based on menstrual status is nothing but a “form of untouchability”*. *To exclude women on the basis of ‘purity and pollution’*



was derogatory to an equal citizenship". He added that "the presence of women would deviate the celibacy and austerity cannot be constitutionally sustainable argument. Mere sight of women cannot affect one's celibacy if one has taken oath of it. Otherwise, such oath has no meaning". He further opined that "A deity in a temple does not have constitutional rights and fundamental rights are meant for individuals, not deities or idols".

## **B. Arguments against the Judgment :**

1. **Justice Indu Malhotra's dissenting Judgment :** " Judges should not impose their personal views, morality or rationality with respect to the form of worship of a deity. A Pluralistic society and secular polity would reflect that the followers of various sects have the freedom to precise their faith in accordance with the tenets of their religion. It is irrelevant whether the practice is rational or logical. Notions of rationality cannot be invoked in matters of religion by the Courts. The manifestation is in the form of a Naishtik Brahmachari. The belief in a deity, and the form in which he has manifested himself is a fundamental right protected by Article 25(1) of the Constitution. Imposing the Court's morality on a religion would negate the freedom to practice one's religion according to one's faith and beliefs. India is a country comprising diverse religions, creeds, sects each of which have their faiths, beliefs and distinctive practices. Constitutional morality in a secular policy would comprehend the freedom of every individual, group, sect, or denomination to practice their religion in accordance with their beliefs and practices".
2. **Ban is right in religious point of view:** The religious bodies defending this ban have put forth Article 26 of the Constitution of India which has given power to every religious denomination to manage their religious affairs as a fundamental right. Interference by the State in matters pertaining to the temple will violate their right and also assert faith of people cannot be subjected to crude logic. Many supporters also draw an analogy between societies which only allow men, restaurants which serve a certain kind of food only and claim that such bodies were formed for a specific purpose and members and hence, it cannot be claimed that they are being unfair to women by not letting them in.
3. **Supreme Court Verdict opened a pandora's Box :** All along temples were being targeted over a particular ritual or practice. Breaking a tradition would take its toll on believers and the same is happening at Sabraimala. The political overtones should not be ignored. Will the unity of Hindus take place due to this very specific case, is a million dollar question.
4. **A dissenting view by Justice Markandey Katju :** He opined that the majority judgment is incorrect and the correct judgment is that of Justice Indu Malhotra, the sole dissenting Judge. While the majority judges go by abstract and theoretical notions of dignity, equality and gender justice, ignoring the ground social relations of India, Justice Indu Malhotra takes notice of the tremendous diversity of India. It was held earlier by the Kerala High Court that this prohibition of

entry to women of menstruating age was a practice prevailing for centuries. It was not aimed at degrading women, but was based on the belief that Lord Ayyappa was a Naishtik Brahmachari. He opined that Justice Malhotra aptly said that the right to equality in Article 14 had to be harmonized with the right of people under Article 25 to follow their own religious practices and the Court was not entitled to see through the prism as whether the practice was rational or not. He further stated that there are thousands of temples, mosques and gurdwaras in India, many with their own rituals and practices. There are some temples which do not permit entry to women, and some to men. Should Courts now start interfering in all these issues?. Thus, he felt that the judgment has opened a Pandora's box and litigation will surely be started about other places of worship too.

5. **Likely to be arisen the law and order problem** : The biggest challenge is to provide sufficient infrastructure to meet a possible increase in the number of devotees, especially women . On one side, quite a good number of protests against the ruling gathering momentum not only in Kerala State but also across the country. On the other side, due to occurring recent ghastly floods, quite a good number of shelters, structures, toilets and bathing ghates at Pampa river were demolished. The pump house of the Kerala Water Authority still remains buried under huge deposit of sand and the water lines on the banks of the river are clogged with sand and consequently drinking water supply was badly effected. In this pathetic episode, haplessly the government of Kerala and the Devaswom Board racing against each other as for and against to the judgment by ignoring the rehabilitating the activities as cited supra.

### **Suggestions and Conclusion:**

From the foregoing marathon discussion, we can conclude that the Sabarimala issue is highly sensitive one and we have to reckon 360 degrees analytical view. Presently, quite a good number of processions have been occurring across the country in protest against the judgment besides for and against heated debate. *"The Gods own country, Kerala"* has been suffering a lot from multifarious problems due to the recent ghastly floods. The riotous scenes in the pathways leading to the Sabarimala temple in Kerala in the last few days ought to persuade everyone, irrespective of where they stand on the Supreme Court's verdict, of the importance of the thing is **'to keep the peace first'**. Whether one agrees with it or not, there is no dispute that the Supreme Court's judgment allowing into the shrine the entry of women, irrespective of their age, is the law of the land. Albeit, quite a good number of processions have been taken place in protest against the judgment that is not to be permitted into the shrine, between the age group of 10-50 women to safeguard the sanctum sanctorum of the shrine that has been followed by the staunch believers across the country irrespective of sex. Nevertheless, and even so, there is no basis for the devotees to prevent the

implementation of the Supreme Court's order, by threats and the unseemly use of force. These unwanted events and developments do not augur well to one and all. Activists and non-devotees are legally entitled to visit the shrine, but in such a violative atmosphere, little is gained and a lot is lost by merely attempting to score a point. Therefore, everyone would do well to wait the outcome of the review petitions before the Apex Court, even if the same issues resurfaced were the Court to reinstate its verdict. At this juncture, the state Government of Kerala, Travencore Devasworn Board and the devotees of for and against the verdict should discuss the ways and means of implementing the Supreme Court's order instead of frittering away their energies on managing protests and conflicts on a daily basis. If at all, no solution is found soon, there is a risk that incidents may recur on any day when the shrine is open. In the interregnum, it is very important that everyone works together to ensure that such fears are unfounded by reckoning our country's basic and bedrock principle of "**Unity in diversity and diversity in unity**" for the wellbeing of one and all forever. Further the review petition shall be allowed for deeper consultations with the stakeholders towards attaining an amicable solution-more into the form of a "*referendum*" in the devotees Court. Further, it is to be *nota bene* that in order to arrive a moderate solution, one should whole heartly leave space for the other. In the meanwhile, the government of Kerala shall be initiated a war-foot basis rehabilitation measures to restore the State in all corners, which suffered a lot due to the recent ghastly flood. It should constitute a master plan to do so with the co-operation and co-ordination of the Travencore Board, the Central Government and the N.G.O's. besides the priests A new accommodation policy needs to be framed, toilets segregated, women staff engaged and several gender-specific requirements planned and provided for with meticulous planning and professional management, using existing infrastructure is possible. Furthermore, the judgment has to be seen by the TDB as an opportunity to change archaic practices and attitudes and usher in a new management culture. The TDB has to absorb the ramifications of the order and undertake planning with foresight. Large scale modifications of existing buildings, a re-engineering of process and much needed training of staff in housekeeping, office management and counter management, etc are the major tasks are to be followed by the TDB. Inadequate safeguards and preparations will only make a mockery of the verdict and validate the worst fears. On the other hand, the Apex Court shall also be reckon the latest developments and repercussions after its verdict besides the age old custom and beliefs of the devotees, shall be delivered a moderate and amicable modified judgment against the review petitions, which will satisfies all the people across the country. Therefore, by extrapolating the ensuing another modified and moderate landmark judgment of the Apex Court, before going to epilogue, it is an apt to quote here the buzz words of Githa.

**Sloka :** *“Yad Yad acarati sresthas tat tad evetaro janah!  
Sa yat pramanam kurute lokas tad anwartate!!*

**Epitome:** *Whatever action is performed by a greatman , common men follow in his footsteps. And whatever standards he sets by exemplary acts, all the world pursues.*

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