

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO. 373 OF 2006**

**Indian Young Lawyers Association      ...Petitioner(s) &Ors.**

**VERSUS**

**The State of Kerala &Ors.      ...Respondent(s)**

Observations of the Supreme Court on gender discrimination in matters of faith and religion(Excerpts fromthe 411-page 'Sabarimala judgement')

- Historically, women have been treated with inequality and that is why, many have fought for their rights. Susan B. Anthony, known for her feminist activity, succinctly puts, "Men, their rights, and nothing more; women, their rights, and nothing less." It is a clear message. Neither the said message nor any kind of philosophy has opened up the large populace of this country to accept women as partners in their search for divinity and spirituality.
- In the theatre of life, it seems, man has put the autograph and there is no space for a woman even to put her signature.
- There is inequality on the path of approach to understand the divinity. The attribute of devotion to divinity cannot be subjected to the rigidity and stereotypes of gender. *The dualism that persists in religion by glorifying and venerating women as goddesses on one hand and by imposing rigorous sanctions on the other hand in matters of devotion has to be abandoned.* Such a dualistic approach and an entrenched mindset results in indignity to women and degradation of their status. The society has to undergo a perceptual shift from being the propagator of hegemonic patriarchal notions of demanding more exacting standards of purity and chastity solely from women to be the cultivator of equality where the woman is in no way considered frailer, lesser or inferior to man.
- Patriarchy in religion cannot be permitted to trump over the element of pure devotion borne out of faith and the freedom to practise and profess one's religion.
- *The subversion and repression of women under the garb of biological or physiological factors cannot be given the seal of legitimacy.* Any rule based on discrimination or segregation of women pertaining to biological characteristics is not only unfounded, indefensible and implausible but can also never pass the muster of constitutionality.
- It is a universal truth that faith and religion do not countenance discrimination but religious practices are sometimes seen as perpetuating patriarchy thereby negating the basic tenets of faith and of gender equality and rights. The societal attitudes too centre and revolve around the patriarchal mindset thereby derogating the status of women in the social and religious milieu.
- All religions are simply different paths to reach the Universal One. Religion is basically a way of life to realize one's identity with the Divinity. However, certain dogmas and exclusionary practices and rituals have resulted in incongruities between the true essence of religion or faith and its practice that has come to be permeated with patriarchal prejudices.
- Sometimes, in the name of essential and integral facet of the faith, such practices are zealously propagated. it is an essential part of the Hindu religion to allow Hindu

women to enter into a temple as devotees and followers of Hindu religion and offer their prayers to the deity. In the absence of any scriptural or textual evidence, we cannot accord to the exclusionary practice followed at the Sabarimala temple the status of an essential practice of Hindu religion.

- By allowing women to enter into the Sabarimala temple for offering prayers, it cannot be imagined that the nature of Hindu religion would be fundamentally altered or changed in any manner.
- In the more recent religions such as Sikhism and the Bahá'í Faith, no ritualistic impurity is involved. The Sri Guru Granth Sahib deems menstruation as a natural process – free from impurity and essential to procreation. Similarly, in the Bahá'í Faith, the concept of ritual uncleanness has been abolished by Bahá'u'lláh.
- The postulate of equality is that human beings are created equal. The postulate is not that all men are created equal but that all individuals are created equal. *To exclude women from worship by allowing the right to worship to men is to place women in a position of subordination.*
- *The Constitution, should not become an instrument for the perpetuation of patriarchy.* The freedom to believe, the freedom to be a person of faith and the freedom of worship, are attributes of human liberty. Facets of that liberty find protection in Article 25. Religion then cannot become a cover to exclude and to deny the basic right to find fulfilment in worship to women. Nor can a physiological feature associated with a woman provide a constitutional rationale to deny to her the right to worship which is available to others. *Birth marks and physiology are irrelevant to constitutional entitlements which are provided to every individual.*
- To exclude from worship, is to deny one of the most basic postulates of human dignity to women. Neither can the Constitution countenance such an exclusion nor can a free society accept it under the veneer of religious beliefs.
- Practices which are destructive of liberty and those which make some citizens less equal than others can simply not be countenanced. To treat women as children of a lesser god is to blink at the Constitution itself.
- *Among the fundamental duties of every citizen recognized by the Constitution is "to renounce practices derogatory to the dignity of women".* In speaking to the equality between individuals in matters of livelihood, health and remuneration for work, *the Directive Principles speak to the conscience of the Constitution.*
- To allow practices derogatory to the dignity of a woman in matters of faith and worship would permit a conscious breach of the fundamental duties of every citizen. We cannot adopt an interpretation of the Constitution which has such an effect. Our inability to state this as a matter of constitutional doctrine is liable to lead us to positions of pretence or, worse still, hypocrisy. Both are willing allies to push critical issues under the carpet.
- If we are truly to emerge out of the grim shadows of a society which has subjugated groups of our citizens under the weight of discrimination for centuries, it is time that the Constitution is allowed to speak as it can only do: in a forthright manner as a compact of governance, for today and the future.
- Is the practice of excluding women between the ages of ten and fifty from undertaking the pilgrimage and praying at the Sabarimala temple an essential part of religion? The texts and tenets on which the Respondents placed reliance do not indicate that the practice of excluding women is an essential part of religion required or sanctioned by these religious documents. At best, these documents indicate the celibate nature of Lord Ayyappa at the Sabarimala temple. The connection between this and the exclusion of women is not established on the material itself.

- The Court must lean against granting constitutional protection to a claim which derogates from the dignity of women as equal holders of rights and protections. In the ethos of the Constitution, it is inconceivable that age could found a rational basis to condition the right to worship. The ages of ten to fifty have been marked out for exclusion on the ground that women in that age group are likely to be in the procreative age.
- Does the Constitution permit this as basis to exclude women from worship? Does the fact that a woman has a physiological feature – of being in a menstruating age – entitle anybody or a group to subject her to exclusion from religious worship? *The physiological features of a woman have no significance to her equal entitlements under the Constitution. All women in the age group of ten and fifty may not in any case fall in the 'procreative age group'. But that to my mind is again not a matter of substance.*
- The heart of the matter lies in the ability of the Constitution to assert that the exclusion of women from worship is incompatible with dignity, destructive of liberty and a denial of the equality of all human beings. These constitutional values stand above everything else as a principle which brooks no exceptions, even when confronted with a claim of religious belief. *To exclude women is derogatory to an equal citizenship.*
- The Respondents submitted that the deity at Sabarimala *is in the form of a NaishtikaBrahmacharya: Lord Ayyappa is celibate. It was submitted that since celibacy is the foremost requirement for all the followers, women between the ages of ten and fifty must not be allowed in Sabarimala. There is an assumption here, which cannot stand constitutional scrutiny.* The assumption in such a claim is that a deviation from the celibacy and austerity observed by the followers would be caused by the presence of women. Such a claim cannot be sustained as a constitutionally sustainable argument. *Its effect is to impose the burden of a man's celibacy on a woman and construct her as a cause for deviation from celibacy. This is then employed to deny access to spaces to which women are equally entitled.*
- To suggest that women cannot keep the Vratham is to stigmatize them and stereotype them as being weak and lesser human beings.
- A constitutional court such as this one, must refuse to recognize such claims. *Human dignity postulates an equality between persons. The equality of all human beings entails being free from the restrictive and dehumanizing effect of stereotypes and being equally entitled to the protection of law.* Our Constitution has willed that dignity, liberty and equality serve as a guiding light for individuals, the state and this Court.
- Though our Constitution protects religious freedom and consequent rights and practices essential to religion, this Court will be guided by the pursuit to uphold the values of the Constitution, based in dignity, liberty and equality. In a constitutional order of priorities, these are values on which the edifice of the Constitution stands. They infuse our Constitutional order with a vision for the future – of a just, equal and dignified society. Intrinsic to these values is the anti-exclusion principle.
- *Exclusion is destructive of dignity.* To exclude a woman from the right of worship is fundamentally at odds with constitutional values. It was briefly argued that women between the ages of ten and fifty are not allowed to undertake the pilgrimage or enter Sabarimala on the ground of the 'impurity' associated with menstruation. *The stigma around menstruation has been built up around traditional beliefs in the impurity of menstruating women. They have no place in a constitutional order. These beliefs have been used to shackle women, to deny them equal entitlements and subject them to the dictates of a patriarchal order.*

- **The menstrual status of a woman cannot be a valid constitutional basis to deny her the dignity of being and the autonomy of personhood. The menstrual status of a woman is deeply personal and an intrinsic part of her privacy.** The Constitution must treat it as a feature on the basis of which no exclusion can be practised and no denial can be perpetrated. **No body or group can use it as a barrier in a woman's quest for fulfilment, including in her finding solace in the connect with the creator.**
- Notions of "purity and pollution", which stigmatize individuals, can have no place in a constitutional regime. *Regarding menstruation as polluting or impure, and worse still, imposing exclusionary disabilities on the basis of menstrual status, is against the dignity of women which is guaranteed by the Constitution.*
- Practices which legitimise menstrual taboos, due to notions of "purity and pollution", limit the ability of menstruating women to attain the freedom of movement, the right to education and the right of entry to places of worship and, eventually, their access to the public sphere.
- Women have a right to control their own bodies. *The menstrual status of a woman is an attribute of her privacy and person. Women have a constitutional entitlement that their biological processes must be free from social and religious practices, which enforce segregation and exclusion. These practices result in humiliation and a violation of dignity.* Article 17 prohibits the practice of which a widow is not allowed to remarry, and pre-pubertal marriage of girls.
- "untouchability", which is based on notions of purity and impurity, "in any form". Article 17 certainly applies to untouchability practices in relation to lower castes, but it will also apply to the systemic humiliation, exclusion and subjugation faced by women. Prejudice against women based on notions of impurity and pollution associated with menstruation is a symbol of exclusion. The social exclusion of women, based on menstrual status, is but a form of untouchability. Exclusion of women between the age groups of ten and fifty, based on their menstrual status, from entering the temple in Sabarimala can have no place in a constitutional order founded on liberty and dignity.
- The issue for entry in a temple is not so much about the right of menstruating women to practice their right to freedom of religion, as about freedom from societal oppression, which comes from a stigmatized understanding of menstruation, resulting in "untouchability".
- The individual, as the basic unit, is at the heart of the Constitution. All rights and guarantees of the Constitution are operationalized and are aimed towards the self-realization of the individual. This makes the anti-exclusion principle firmly rooted in the transformative vision of the Constitution, and at the heart of judicial enquiry. Irrespective of the source from which a practice claims legitimacy, this principle enjoins the Court to deny protection to practices that detract from the constitutional vision of an equal citizenship.
- In any case, the exclusion of women from the Sabarimala temple affects both, the religious and civic rights of the individual. The anti-exclusion principle would disallow a claim based on Article 25 and 26 which excludes women from the Sabarimala Temple and hampers their exercise of religious freedom. This is in keeping with over-arching liberal values of the Constitution and its vision of ensuring an equal citizenship.
- Equal participation of women in exercising their right to religious freedom is a recognition of this right. In protecting religious freedom, the framers subjected the right to religious freedom to the overriding constitutional postulates of equality, liberty and personal freedom in Part III of the Constitution. The dignity of women cannot be

disassociated from the exercise of religious freedom. In the constitutional order of priorities, the right to religious freedom is to be exercised in a manner consonant with the vision underlying the provisions of Part III. The equal participation of women in worship inheres in the constitutional vision of a just social order.

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- The dignity of women cannot be disassociated from the exercise of religious freedom. In the constitutional order of priorities, the right to religious freedom is to be exercised in a manner consonant with the vision underlying the provisions of Part III. The equal participation of women in worship inheres in the constitutional vision of a just social order.
- The equal participation of women in worship inheres in the constitutional vision of a just social order. The Constitution seeks to achieve a transformed society based on equality and justice to those who are victims of traditional belief systems founded in graded inequality. It reflects a guarantee to protect the dignity of all individuals who have faced systematic discrimination, prejudice and social exclusion.
- Notions of purity and pollution have been employed to perpetuate discrimination and prejudice against women. They have no place in a constitutional order. In acknowledging the inalienable dignity and worth of every individual, these notions are prohibited by the guarantee against untouchability and by the freedoms that underlie the Constitution.
- *In civic as in social life, women have been subjected to prejudice, stereotypes and social exclusion. In religious life, exclusionary traditional customs assert a claim to legitimacy which owes its origin to patriarchal structures. These forms of discrimination are not mutually exclusive.* The intersection of identities in social and religious life produces a unique form of discrimination that denies women an equal citizenship under the Constitution. Recognizing these forms of intersectional discrimination is the first step towards extending constitutional protection against discrimination attached to intersecting identities.
- **An indispensable facet of an equal life, is the equal participation of women in all spheres of social activity.** The quest for equality is denuded of its content if practices that exclude women are treated to be acceptable. **The Constitution cannot allow practices, irrespective of their source, which are derogatory to women. Religion cannot become a cover to exclude and to deny the right of every woman to find fulfillment in worship.**
- Liberty in matters of belief, faith and worship, must produce a compassionate and humane society marked by the equality of status of all its citizens. The Indian Constitution sought to break the shackles of social hierarchies. In doing so, it sought to usher an era characterized by a commitment to freedom, equality and justice. The liberal values of the Constitution secure to each individual an equal citizenship. This recognizes that the Constitution exists not only to disenable entrenched structures of discrimination and prejudice, but to empower those who traditionally have been deprived of an equal citizenship.
- The equal participation of women in every sphere of the life of the nation sub serves that premise. **A claim for the exclusion of women from religious worship, even if it be founded in religious text, is subordinate to the constitutional values of liberty, dignity and equality.** Exclusionary practices are contrary to constitutional morality.

- The social exclusion of women, based on menstrual status, is a form of untouchability which is an anathema to constitutional values. Notions of “purity and pollution”, which stigmatize individuals, have no place in a constitutional order.

(Prepared by Adv.J.Sandhya , Thiruvananthapuram 94470  
36686)