

DE JURE NEXUS LAW JOURNAL

Author:

Shruti Roy

Symbiosis Law School, Noida

3rd Year, BA LL.B.

CASE ANALYSIS: INDIAN YOUNG LAWYER ASSOCIATION
VS THE STATE OF KERALA & ORS.
("THE SABARIMALA TEMPLE CASE")

De Jure Nexus
LAW JOURNAL

Court: The Supreme Court of India**Citation:** WRIT PETITION (CIVIL) NO. 373 OF 2006**Bench of Judges:** The Chief Justice of India: Justice Ranjan Gogoi, Justices A M Khanwilkar, Indu Malhotra, R F Nairman, and D Y Chandrachud.**Theme:** women entering in the temple**Judgement:** India**Decided on:** 28 September 2018**INTRODUCTION**

The case famously known as "The Sabarimala Temple Case", was a landmark judgement given by the Supreme Court of India. The Sabarimala is a temple located in Pathanamthitta District, Kerala, India. ¹There was a traditional believe, which did not allow women and girls to enter the temple in order to worship the deity. ²In 1991, a legal justification provided by a Kerala

¹ Wikipedia;

https://en.wikipedia.org/wiki/Entry_of_women_to_Sabarimala#:~:text=The%20verdict%20was%20passed%20with,while%20Justice%20Indu%20Malhotra%20dissented last visited on 7/8/22.

² Legal Service India E-Journal; <https://www.legalserviceindia.com/legal/article-5822-the-sabarimala-verdict-a-complete-analysis.html> last visited on 5/8/22.

High Court prohibiting women to legally enter the temple. To be more specific, the Travancore Devaswom Board (TBD), which managed the Sabarimala temple, restricted the women menstruating, aging from 10 to 50 years from entering. The deity of the temple, Swami Ayyapa, who is a celibate and is the incarnation of purity, was believed to get polluted if menstruating women entered the temple. ³Lord Ayyapa is referred in “Dharmashastha” believed is the son of Shiva and Mohini, the feminine incarnation of Vishnu.

The Problem

⁴In 1991, women were restricted from entering the temple, it was challenged in the Kerala High Court, which was seen in the case ⁵*S. Mahendran vs. The Secretary, Travancore Devaswom Board, Tiruvanathpuram and Others*. The Kerala High Court ruled in favor of the defendants and gave a decree that Travancore Board did not violate the Constitution of India or the pertinent 1965 Kerala Law. A Constitutional Bench granted entrance to women of any age into the Temple in 2018 on the grounds that the prohibition infringed their constitutionally protected right to freedom of religion under Article 25 of the Constitution. The state law’s participation was overturned as being unconstitutional.

Several such cases in the past had taken place like, in the case, ⁶*Sri Venkataramana Devaru vs. State of Mysore, the trustees of the temple Sri Venkataramana of Moolky*, challenged the Madras Temple Entry Authorisation Act, 1947, which threw open the doors the temple to the Harijans. The petitioners asserted a religious right to bar other communities from attending their temple. The Court acknowledged that the exclusion fell within Hindu ceremonial law and was thus, a necessary custom.

After an age of restricting women from entering the temple, a group of five women lawyers, the Indian Young Lawyers Association, challenged under ⁷Rule 3 (b) of the Kerala Hindu Place Worship (Authorisation of Entry) Rules, 1965, sanctions restriction on “of menstruating age”. The matter was taken to the Supreme Court after the Kerala High Court said that only the “tantri” (priest) had the power to decide whether the century old tradition can be followed or not.

The temple board was against the women to enter the temple and contended in court that they were allowed to frame rule for the temple and the state has no right to interfere in it. At the same time, women devotees who ran the campaign know as ‘#ReadyToWait’ in order oppose the petition. This campaign arose in response to ‘#RightToPray’, keeping their argument for women to enter the temple, but of a certain age, i.e., after they turn 50.

³ Blog.ipleaders.in; <https://blog.ipleaders.in/case-comment-sabarimala-case/> last visited on 5/8/22

⁴ Case Comment on Sabarimala Case; <https://blog.ipleaders.in/case-comment-sabarimala-case/> last visited on 6/8/22

⁵ *S. Mahendran vs. The Secretary, Travancore Devaswom Board, Tiruvanathpuram and Others*; AIR 1993 Ker 42

⁶ *Sri Venkataramana Devaru vs. State of Mysore*; AIR 255 SCR 895

⁷ Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965; Rule 3(b); Kerala Act no. 7 of 1965 (India)

⁸Supreme Court set on and drew parallel between “Right to Religious” and “Right to Equality” as the fundamental rights provided by the Constitution of India and its judgement uplifted the ban which was imposed on women from entering the temple.

Decision

Sabarimala case is example of how women fought against the patriarchal philosophy of religious order which restricts women entering to the temple. A nine-judge bench of the Supreme Court with a majority of 4:1 verdict, Justice Indu Malhotra had a dissenting opinion regarding the matter. The petitioners and respondents each made a number of arguments before the Supreme Court. The petitioners said that the temple’s restricted policy prohibiting women from entering the temple was manifestly discriminatory toward them and a violation of their fundamental rights guaranteed by the Indian Constitution.

⁹The Supreme Court disrupted the decision in ¹⁰*Navtej Singh Johar vs Union of India*, which legitimize diversity of sexual orientation among consenting adults. Every religious group in India detested and deplored the controversial issue of homosexuality, and they passionately opposed the petitioners’ efforts to obtain justice for the lesbian, gay, bisexual, transgender, and queer (LGBTQ) population. The petitioners in the Sabarimala case claimed that in the conservative interpretations of the scriptures, the society is trying to sustain unfair actions based on individual’s biological state. Therefore, in order to limit dogmatic activities in the purported practice of religion, judicial intervention has been sought through this case.

¹¹The Supreme Court examined what constitutes an ‘essential practice’ as part of religion as entitled to protection under *Article 25* of the Indian Constitution. The Supreme Court held that keeping menstruating women away from temples was not a requirement of Hinduism. Furthermore, the Court correctly decided that the celibate status of Lord Ayyappa, as prescribed by sacred texts, did not ipso facto justify barring women of menstrual age from temple devotion. The restrictive practice that expressly forbade by *Article 17* of the Constitution. The Indian Constitution does not require that women be denied into places of public worship based merely on their physiological state, and doing so is a disrespect to *Article 14*, i.e., “right to equality.” The decision supports the theory of social inclusion by giving a thorough interpretation of what “life and liberty” under *Article 21* imply. The Court argued through its ruling that it is the guardian of the constitutional conscience and cannot be herded by popular morality or contextual compulsion.

⁸ Supra 4

⁹ Sabarimala Verdict: A watershed moment in the history of affirmative action; The Leaflet: Constitution First; Ayesha Jawal; October 30, 2020; <https://theleaflet.in/sabarimala-verdict-a-watershed-moment-in-the-history-of-affirmative-action/#:~:text=In%202018%2C%20a%20Constitution%20Bench,Article%2025%20of%20the%20Constitution.>

¹⁰ Navtej Singh Johar vs Union Johar; (2018) 10 SCC 1

¹¹ Supra 9

Conclusion

¹²In the 21st century, as every country is concerned about development, power, growth, prosperity, global leadership, world dominance, etc. India continues to deeply ingrained conservative ideas of particular customs and beliefs. The judgement of Sabarimala records a conflict between concepts of equality and religious beliefs and customs. The Supreme Court underscored the ultimate moral principle, “The Constitutional Morality” through the case over even after the presence of various diverse moral principles, traditions, and religions.

The Supreme Court cleared through this case that a war involving fundamental rights and traditions in the country like India with diverse people and culture should not take place. Removing the ban on women from entering the temple was removed as all citizens is guaranteed with fundamental rights which consist of both equality and right to religion.

¹³Later Justice Indu Malhotra dissented her judgment and stated, “It is not for the courts to determine which of these practises of a faith are to be struck down, except if they are pernicious, oppressive, or a social evil, like Sati.” A year later, on 14th November 2019, by a 3:2 majority, the bench with Justices Nariman and Chandrachud dissented, holding that this petition is not of the reviewing nature. The 2018 judgement would be considered until the review petitions are decided.



De Jure Nexus

LAW JOURNAL

¹² Supra 3

¹³ <https://www.scobserver.in/cases/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-background/> last visited on 6/8/22.