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A CASE STUDY OF SABARIMALA TEMPLE

CASE: INDIAN YOUNG LAWYERS V.

STATE OF KERELA

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Introduction

Sabarimala Temple is situated in the state of Kerela, it is dedicated to lord Ayyappa who was a Naishtik Brahmachari. Due to this reason, the women between the age group of 10-50 years were not allowed to enter the temple to worship lord Ayyappa. But where the discrimination on the religious practices is constitutional? It is violative of right to equality mentioned under the Constitution of India. Sabarimala Temple is maintained by statutory authority Travancore Devaswom Board. It was formulated under Cochin Hindu Religious Institution Act, 1950. With the passage of time, the dispute between this religious custom and women rights. In today's modern world, the citizens of India cannot be discriminated on any ground. So, the division of religion and their deities is the infringement of the rights of women.

Facts of the Case

When the question about the rights of women arose, the petition was filed in 2006 concerning the entry of women in Sabarimala Temple. It was filed under Article 32 of the Indian Constitution by the registered association of Indian Young Lawyers. It was contended in the petition that the ban on the entry of women between the age of 10-50 years needs to be declared unconstitutional. The Supreme Court of India has considered the petition and finally in 2008, the three-judge bench was constituted to discuss this matter. In the year 2016, the Supreme Court of India further contended that are these restrictions reasonable? Later in 2017, the case was transferred to the Constitutional Bench by the Supreme Court of India. It was contended in the petition that, Rule 3(b) of Kerela Hindu places of Public Worship

(Authorization of Entry) Rules, 1965 framed in relation to the section 4 of the Kerala Hindu places of Public Worship Act, 1965 is unconstitutional and it is violative of Articles 14, 15, 25 and 51 A(e) of the Indian Constitution.¹

Issues:

The following issues were raised in the Sabarimala Case:

1. Whether the practice of exclusion of females is discriminatory and violative of Articles 14,15 and 17. In addition to this, the Articles 25 and 26 of the Indian Constitution are also infringed by this religious practice.
2. Whether this religious practice comes under the purview of Article 25 of the Indian Constitution?
3. Whether the Ayappa Temple comes under the purview of Religious denomination under Article 26 of the Indian Constitution? If yes, then another issue arises that whether such denomination is managed by the statutory authority? Also, whether these derogatory practices come under the ambit of Article 14, 15 (3), 39 (a) and 51 A (e)? Whether Rule 3 of 1965 Rules permits religious denomination to prohibit entry of women between age of 10 to 50? And if so, would it not against the Articles 14 and 15(3) of Indian constitution?

Comments

Arguments of Petitioners

- The petitioners contended that the practice of banning the women to enter into the Sabarimala Temple is “discrimination” on the ground of gender. It was also added by the petitioners that the biological feature of menstruation among women is natural and cannot be considered as the point of discrimination.
- Another point added by the petitioners was that, these discriminatory practices are violative of Article 15 (1).
- Sabarimala Temple is the public place and everyone has equal access to it, irrespective of the gender. So, it is violative of Article 15 (2) (b) of the Constitution of India.

¹ V. Bijukumar, (2019). *When Religious Faith Mutilates Gender Equality: Women Entry in Sabarimala Temple in Kerala*, 4, IJWSC, 235, 238–244

- Right to worship is also violated if this discriminatory practice continues to be followed in India.
- It is gender-based inequality.
- It was also contended that lord Ayyappa do not comes under the separate religious denomination merely, of the fact that, large devotees worship lord Ayyappa.
- The restriction on women devotees is not reasonable and justified.
- The Article 21 of the Indian Constitution is also violative of such religious practice.
- Another major point contended by the petitioners was, the temple was managed by the statutory authority, that comes under the definition of “other authority”, so the fundamental rights must be respected by them.
- The right to profess and practice any religion is provided to us, irrespective of the fact that, the person is a male or a female, so there arises no question of excluding women devotees.²

Arguments of Respondents

- The respondents contended that, merely barring women between the age of 10-50 years does not amount to discrimination. It is the part of India’s custom and usages since time immemorial.
- Another point added was, women were free to enter into the temple of lord Ayyappa so, partial discrimination does not amount to the violation of the provisions of the Constitution of India.
- Lord Ayyappa was a Naishtik Brahmachari, so, the restrictions imposed on women devotees was reasonable and justifies to protect the belief and faith of Hindus.
- According to Article 13 (3) of the Indian Constitution, laws include custom and usage too, so this practice was the custom which is pre-constitutional.
- Another point added by the respondents was, Article 26 is only subject to public order, health and morality and the other provisions of part III of the Constitution are excluded. The Right to profess, propagate religion of devotees of Lord Ayyappa can only be preserved only when the Brahmachari character of Lord Ayyappa is preserved.

² Rashmi Kumari, *Menstruating women and celibate gods: a discourse analysis of women’s entry into Sabarimala temple in Kerala, India*, TWT, 290, 288-305, (2019)

- It was also added, that women are the centre of attraction everywhere, so to preserve the religious sanctity of the temple, women are excluded, so that the sacred and pure character of the temple can be preserved.
- This customary practice does not promote the discrimination based on caste i.e. untouchability. So, it is not violative of Article 17 of the Constitution of India.

Findings of the Court

The court held that according to Article 25 of the Constitution, right to religion is irrespective of the gender discrimination. So, this exclusionary practice is violative of the right of women who wants to worship Lord Ayyappa.

It was also added by the court that, there are certain evidences that shows that Lord Ayyappa is not a separate religious denomination under Art.26. Such activities to show the devotion are common in Hindus but it does not mean that, it is a distinct religion. There were no sufficient evidences to prove that these exclusionary practices are essential to be followed in Hindu religion. Another point that was clarifies by the court was, the definition of the term “morality”. It was held that, morality here does not mean societal morality instead it was considering as constitutional morality.

Conclusion

Sabarimala Temple case was a landmark judgment passed by the Indian Judiciary in which, the difference between societal and constitutional morality was figured out. Women were always considered as inferior gender as compared to men. So, is it justified that women cannot worship the particular god, just because of the gender biasness. Sometimes, the customary practices are such that they are violative of law. In this case, this exclusionary practice was simply, the violation of the fundamental rights of women. However, there are several other lacunas in this judgment, so, the review petition was also filed in the court. Later on, the case was directed to seven-judge bench.