

# LEGALFOXES LAW TIMES

## **Sabarimala Temple Issue - Should women of All Ages Be Allowed To Enter ?**

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Sabarimala issue is one of most debatable issue in the recent times and is also been in news. The only question which comes in our mind is should women of all ages groups be allowed?

### **Background:**

Sabarimala Temple is a Temple of Shasta located within the Pathanamthitta district of Kerala. It is one among the most important pilgrimage sites within the planet with 40 to 50 million devotees visiting per annum. The temple is devoted to a Hindu deity Ayyappan is a 'Naishtika Brahmachari' (celibate). Lord Ayyappa is a son of Lord Siva and Lord Vishnu in his incarnation sort of Mohini. The temple is managed by the Travancore Devaswom Board, as per the board women belonging to the age of 10 to 50 years aren't allowed to enter into the temple. This is due to the very fact that women within this age bracket are at the menstrual phase, considering the beliefs that they're viewed as impure. This brought the conflict between tradition and women rights.

In 1990, S Mahendran vs Travancore case, the Kerala High court upheld the state's ban on menstruating women from entering the temple. The court observed that Such restriction of women entry imposed by the Devaswom Board does not violate Articles 15, 25, and 26 of Indian Constitution. It further stated it even doesn't violate provisions of Hindu Place of Public Worship Act 1965. The High court order went unchallenged for fifteen years. In 2006, Indian Young Lawyers Association filed a PIL before supreme court of India challenging the Sabarimala Temple in excluding the entry of women. The association said that this practice of excluding women entry violates article 14 and 25 of Indian Constitution.

### **Arguments in favour of women entry:**

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- Allowing women from entering the temple goes against Articles 14, 15, 19, and 25 of the Indian Constitution, which affect right to equality, the right against discrimination based on gender, freedom of movement and religion.<sup>1</sup>

- Some contend that menses women aren't allowed as they are impure and there is nothing called impure or not clean.
- A temple or place of worship cannot assert a right to the divinity who is being admired therein place ,since the divinity by definition is present to all or any.
- Religious practices must remain relevant to changing social structures and relationships.It needs reform from within.
- Right to manage its own religious affairs under Article 26(1) of Indian Constitution cannot “override the proper to practice religion itself”,as Article 26 can't be seen to overrule the right to practice one's religion.<sup>2</sup>

#### **Arguments against women entry :**

- Allowing women to enter the temple would affect the deity's celibacy which is that the exclusive nature of Lord Ayyappa.
- The temple representatives claim that it has its own traditions and customs, just like public places which have certain rules which we'd like to be followed.
- Article 25(2) of the Indian Constitution which provides entry to public Hindu religious institutions for all classes and sections of the society are often applied only to societal reforms,not religious entity which are protected under Article 26(b) of the constitution. Which provides right to each religious group to manage their own religious affairs.
- The High court of Guwahati in Ritu Prasad Sharma Vs State Of Assam(2015), ruled that religious customs which are preserved under Article 25 and 26 are free from challenge under other provisions of Part III of the constitution.
- Rule 3(b) of the Kerala Hindu Places of Public Worship Rules,1965 prohibits women from entering the Sabarimala temple premises.<sup>3</sup>

#### **What is Naishtika Brahmacharya ?**

As the claim of Travancore Devaswom Board is that women are'nt allowed as Lord Ayyappa is Naishtika Brahmacharya .Brahmacharya is that the vow of celibacy within the thought,word and deed,by which one attains Self-realization or reaches Brahman.It means control of not only the reproductive Indriya but also control of all

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<sup>3</sup> [www.iasexpress.net](http://www.iasexpress.net)

senses in thought, word and deed. The door to Nirvana or perfection is complete Brahmacharya. Complete celibacy is that master-key to open sphere of divine happiness. The avenue to the adobe of Supreme peace begins from Brahmacharaya or purity.

Naishtika Brahmacharaya is just keeping far away from sexual thoughts. As it restricts sexual thoughts completely if one gets distracted due to the sight of women then such vow of celibacy is of no use.<sup>4</sup>

### **Supreme Court about Sabarimala Issue :**

The supreme court on September 28, 2018, lifted the way for the entry of women of all ages into the Ayyappa temple at Sabarimala in Kerala. The five-judge bench by Chief Justice Dipak Misra, in its 4:1 verdict, said that devotion could not be subjected to gender discrimination and exclusion on the grounds of biological, physiological features like menstruation is unconstitutional. Both men and women have right to worship bestowed on them and the practice by temple authorities was discriminatory and is against Indian Constitution.

Further Justice Chandrachud opined that any religious practice that violated the dignity of women by denying her entry just because of menses is completely unconstitutional. The judgement contained lines as “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. The menstrual status of a woman cannot be a valid constitutional basis to deny her the dignity of being and the autonomy of personhood”. Justice Indu Malhotra, being the only woman gave a dissenting opinion. She said that court must respect a religious denomination’s right to manage their internal affairs, regardless of whether their practices are rational or logical. She further stated the Sabarimala Temple satisfies the requirements for being considered a separate religious denomination.<sup>5</sup>

She therefore held that Sabarimala Temple is protected under Article 26(b) to manage its internal affairs and is not subject to social reform mandate under article 25(2)(b), which applies only to Hindu denominations. Article 26, freedom of religion is subject to ‘public order, morality and health’. Justice Malhotra held that ‘morality’

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<sup>5</sup> [www.scobserver.in](http://www.scobserver.in)

must be understood in the context of India being a pluralistic society. She stated that the state must respect the freedom of various individuals and sections to practice their faith. She held that fundamental right to equality guaranteed to women under article 14 cannot override Article 25, which guarantees every individual the right to profess, practice and propagate their faith. She held that Rule 3(b) does not stand in conflict with its parent Act, the Kerala Hindu Places of Public Worship Act. She emphasised the rule 'carves out an exception in case of public worship'. She held that the rule was consistent with Article 26(b) of Indian Constitution. She further dismissed the argument that the Sabarimala custom violates Article 17 of constitution. Article 17 pertains to untouchability and prohibits discrimination on the basis of impurity. She said that untouchability refers to caste and does not extend to discrimination on the basis of gender. Finally Supreme Court lifted the ban of women entry to the temple.<sup>6</sup>

#### **Entry to the Sabarimala Temple:**

On 2nd January 2019, two women aged below 50 have entered into the temple becoming the first to do after Supreme Court's decision. On 4th January 2019, a 46 year old woman from Sri Lanka entered the Sabarimala temple and had offered her prayer at sanctum sanctorum.

#### **Conclusion:**

According to me women should not be allowed to enter into the temple as Lord Ayyappa is Naishtika Brahmacharaya. There are temples like Brahma Temple which doesn't allow men it's not discrimination its just a way of life. If every temple stops allowing women then it is discrimination. There are more female deity temples than male deity temples it's our culture which is prevailing since many years, let's respect them.