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Gender Equality, Religious Freedom and Sabarimala

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This article is based on the editorial published in The Hindu "The Sabarimala Singularity" and contains inputs from various sources.

In the west, the idea of secularism has been an extension of classical liberalism, where the state neither protects nor promotes a religion. In a society, where there is one major religion, this seemed to flow from the idea of “separation of powers” of state and the church.

However, in the Indian context, where the society is essentially multicultural and so many sects and religions thrive together, it was difficult to adopt this version of secularism. Also, the conservative nature of Indian society and communal tensions prevalent at the time of framing of the Constitution made it even more difficult to transgress into such an open and liberal society. Thus, Indian secularism (the word was a later addition to the Constitution via 42nd Amendment) became more of a concept promoting “communal harmony and coexistence” where the state protects as well as promotes all the religions equally.

Notwithstanding, that Indian secularism has been lauded by the west as well, it has met with criticisms for being in contradiction to “freedom of expression” when it comes to criticizing religion, no matter how grounded that criticism is.

In the recent case of Indian Young Lawyers Association v. State of Kerala, that questions rules to bar women from the age 10-50 to enter the Sabarimala temple, “freedom of religion” and “gender equality” are the two counter-arguments that have been put forward by the defenders of the customary practice and the petitioners respectively.

Freedom of Religion

- **Article 25: Freedom of conscience and free profession, practice and propagation of religion.** According to it, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate a religion.

- **Article 26: Freedom to manage religious affairs.** Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to establish and maintain religious institutions and manage its own affairs in matters of religion.
- In **Sri Venkataramana Devaru v. State of Mysore (1958)**, the petitioners had claimed that the **Madras Temple Entry Authorisation Act** which allowed the entry of Harijans into the temple, was against the Article 26 of the Constitution and the temple was a **denominational one** having been founded exclusively for the Gowda Saraswath Brahmins. However, the Supreme Court held that not merely temples dedicated to the public as a whole but also those founded for the benefit of some sections are contemplated in **Article 25 (2)** which provides for **social welfare and reform or the throwing open of Hindu religious institutions** of a public character to all classes and sections of Hindus
- **Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965**, which states, “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.” The petitioners have challenged this law in court in the recent case.
- It has been argued that **religion and social practices are interlinked**. So, the prohibition of entry of women should not be seen as a gender inequality issue, but as a religious practice which has been followed by the people for ages. Such religious rituals should not be tampered with.
- Another argument which is being put forward is that Sabarimala temple ought to be seen as an institution where only males are allowed. Just like there are boy’s schools and girl’s school. Also, there are other institutions where men are not allowed. Further, **even Mosques do not allow the entry of women**.
- Another point raised by the defenders is that there is no “god” inside the Sabarimala temple. What is present inside the temple is a “deity”. A deity is a socio-cultural energy centre and on the other hand “god” is universal. Hence, a **deity is a legal entity**, and being so, its rights are protected by constitutional privileges.

Gender Equality

- **Article 14: Equality before law:** The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- **Article 15: Prohibition of discrimination on grounds of religion,** race, caste, sex or place of birth, states that “The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”
- **Article 51A(e)** makes it a fundamental duty of every citizen of India to **renounce practices derogatory to the dignity of women**
The ban on the entry of women of certain age groups was violative of various fundamental rights including Article 17 which deals with untouchability.

- **Article 25(2)(b)** enables the state “(to provide) for social welfare and reform or the **throwing open of Hindu religious institutions of a public character** to all classes and sections of the Hindus.” In such case, the state ought to have brought an appropriate legislation to facilitate the constitutional direction.
- Discriminating against women on the basis of a biological process i.e. menstruation is unscientific and is against **Article 51A(h) with states that it is the duty of every citizen of India to develop scientific temper**, humanism and the spirit of inquiry and reform.
- Besides the gender inequality argument, the **idea of individual liberty is also at stake** here. Monopolisation of religious rights by a few, under the guise of management of religious institutions, corrupts the idea of individual liberty.
- From the societal point of view, such regressive practices in any sphere would **inevitably constrict the natural development of human potential**.

How Do We Need to Look Upon It?

Historically, **legal reforms usually precede socio-political change**. Legal abolition of several antiquated practices such as Sati or untouchability did not witness a social transformation overnight. It took time for practices like Sati to vanish. Law very often stimulates a **subsequent socio-cultural evolution**.

The court should look at it as **whether the Sabarimala temple is a separate denomination or not**. As it is open to the public, it is difficult for the authorities to claim that it is a separate denomination. This may strengthen the case of the petitioners.

Also, it needs to inquire whether there actually is any religious custom of not allowing women from the age 10 to 50 from entering. We also need to revisit our history to evaluate every act of discrimination that has been defended on the grounds of customs, traditions and religious practices.

The court should see this as an opportunity not to rationalise religious practices, but to **overturn its existing passé ideas on the subject**. It is high time that the extent of applicability of religious rights is defined rationally. We need to keep in mind that our Constitution doesn't acquire its secular character merely from the words in the Preamble, but from a collective reading of many of its provisions, DPSP included, and particularly the various fundamental rights that it guarantees.

As Suhrith Parthasarathy writes (“The Sabarimala Singularity”, Editorial, The Hindu) - *“Given the inexorable relationship in India between religion and public life, it's time the court shattered the conventional divides of the public and the private. If the court can look beyond the essential practices doctrine and see this case for what it really is — a denial to women not only of their individual rights to freedom of religion but also of equal access to public space — it can help set the tone for a radical re-reading of the*

Constitution. This can help the court reimagine its jurisprudence in diverse areas, making a meaningful difference to people’s civil rights across spectrums of caste, class, gender and religion.”

For further reading, refer to the RSTV Debate “The Big Picture – Gender Equality versus Religious Practices”