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The Big Picture - Sabarimala: Women Of All Ages Allowed

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The Supreme Court paved the way for the entry of women of all ages into the Ayyappa temple at Sabarimala in Kerala. The five-judge constitution bench headed by Chief Justice Dipak Misra, in its 4:1 verdict, said that banning the entry of women into the shrine is gender discrimination and the practice violates rights of Hindu women. The CJI stated that religion is a way of life which links life with divinity. The lone woman judge in the bench passed a dissenting judgment and said that issues which have deep religious connotation should not be tinkered with to maintain a secular atmosphere in the country. She was of the view that it is not the task of courts to determine which religious practices are to be struck down, except social evils like 'Sati'.

Drishti Input

What is the Sabarimala case?

- A group of five women lawyers challenged Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, which authorises restriction on entry of women “of menstruating age” to the shrine. They moved to the apex court after the Kerala High Court upheld the centuries-old restriction, and ruled that only “tantri (priest)” is empowered to take decision on traditions.
- The petitioners argued that the restrictions are against Articles 14 (Equality before law), 15 (Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) and 17 (Abolition of Untouchability) of the Indian Constitution.
- The temple management has argued in court that they should be allowed to frame rules for the shrine without the state’s interference. They also said that the practice isn’t discriminatory as the tradition was born from the belief that the deity is a ‘naishtika brahmachari’ (eternal celibate).
- While the Kerala government had opposed the entry of women in 2016, it told the SC during the hearing in 2018 that it was in favour of allowing women to pray in the temple.

The Debate Behind the Case

- The Sabarimala case brings forth two issues which form the core of the debate.
- The constitutional morality has to be held supreme at any cost. In light of this, ban on entry of women, not only corrodes the foundational principles of the constitution, but also act as a barrier to the gradual liberation of women.
- On the other hand, Indian society is a fabric comprising hundreds of cultural and religious practices that have been passed through generations. The question then arises that whether these ancient practices be sacrificed for achieving constitutional morality or exemptions for cases like these have to be identified.

The Debate Against the Judgment

- The argument is that the Sabrimala visitor has to observe a 41-day penance which is essential for the pilgrimage to Sabarimala. According to the Travancore Devaswom Board, such penance would be difficult for women to undertake.
- Another argument emphasized ‘Naishtika Brahmacharya’ or the celibate nature of the deity. Hence, the entry of women is in direct contravention to the deity’s liberty.
- However,
 - 2 of the 5 petitioners withdrew after having conceded that they do not see the practice as discriminatory.
 - Of the five-judge bench, the only judge who has dissented is a woman. These two factors wither the base of appeal.

The Debate in Favour of the Judgment

- Judgment upheld that, the constitutional morality is supreme. Therefore, individual, regional, societal and religious moralities are secondary. In light of this understanding, rituals followed in Sabarimala are ultra vires to the constitution.
- “Prohibition of women entry is a form of untouchability”. The sole basis of restriction is menstruation of women. The Sabarimala temple cannot claim the character of an independent religious denomination since it is managed by the Travancore Devaswom Board, which receives public funds. As a result, the temple cannot practice gender-based discrimination, as it violates Articles 14 and 15 of the Constitution.

Article 26 vs. Article 14

- 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.
- Article 14 - Equality before the law. The State shall not deny any person equality before the law or the equal protection of the laws within the territory of India. There is a prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
- The majority in judgment has stated that the right to equality would prevail over right to practice.

The Judgment and Gender Equality

- According to the judgment, the prohibition was based on a natural, physiological process. When you are suggesting that menstruating women cannot enter a temple, they are basically being castigated based on their gender.
- Indian society off late has shown a hint of accommodating progressive ideas by including menstrual hygiene as a talking point. Not only educated women but NGOs and government have taken an active step to make the society educated on this issue. State funding, distribution of pads and films are made on this issue, which is the correct stance of the society.
- All changes begin with rejection or partial rejection of practices that were in motion for hundreds and thousands of years. Sabarimala judgment is one such rejection. Traditions should also change with time.
- Being one of the milestones, this judgment might open a floodgate for litigations in the future.