

Theme: - The Sabarimala verdict: In the Conflict of Customs and Law, which one should prevail?

### **CUSTOM IS A GUIDE AND NOT A JAILER**

*“Religion must mainly be a matter of principles only. It cannot be a matter of rules. The moment it degenerates into rules, it ceases to be a religion, as it kills responsibility which is an essence of the true religious act.” – Dr. B. R. Ambedkar*

We, the people of INDIA; citizen of secular but multifarious religious country. Most popularly India acknowledge as the land of spiritual belief, philosophical thinking and its unique culture in the world. India’s culture is among the world’s oldest civilization and describe it as “Sa Prathama” which means the First and Supreme Culture in the World. Where tradition and religious custom is an intrinsic part of Indian’s life, and play Indispensable role in Life from Birth to Death. Albeit all these religious belief and custom Indispensable concurrence, we should not forget that India cogent ‘Constitutionalism’ rather than ‘communalism’. Where each and every step taken by the public, social and religious Institution has to be in the constitutional ambit. Moreover while considering the tradition and custom of society, every practice of culture, custom and faith must have to meet the constitutional purview and unwarrantable if someone transcend or encroach the law of the land. Popularly it has been said that ‘custom may or may not be moral’ but ‘laws are always moral’. But this does not mean that our constitution is harsh, heartless, and emotionless; it is a passionate seeking for human and social upliftment. Therefore laws always respond with care, compassion and empathy for the citizen of India, especially those who are at the receiving end of a discriminative practice, socially weaker and vulnerable section of society, disregarding society’s majoritarian impulse. It is the duty of the law to become a arbitrator when there is disputes or conflict between the violation of rights of weaker section, the rule impose and justified by the majority in the name of so called ‘custom’ and tradition’.

Now the million dollar question is i) should law have a freedom to interfere in religious matter or not? ii) In sabarimala verdict, what we should concur majoritarian impulse or the law of the land? And besides them there is also one question, should law interfere between the devotee and

their deity? Before answering the question posed before us, it is necessary cover the ground because sometime answer of issues gets on the depth of the subject.

The sabarimala is an ancient temple, devoted to Lord Ayyappan (also called ayyappa) situated over one of the eighteen mountains spread over the western ghat known as sannidhanam situated at the district of pathananthitta kerala, the temple nestle at the height of 1260 m above the sea level. It is believed that he was born out of union between Lord Shiva and the mythical Mohini, who is also regarded as an avatar of lord Vishnu. Therefore, Ayyappa is also called as 'Hariharan puthiran' which means son of both Hari or Vishnu and Haran or Shiva. The divine being left the boy in a forest near river Pampa. the pandalam king got the child but after queen birth to her male child dislikes manikanta ( ayyappa) in fear of getting crown to manikanta as king treated him as a elder child. Queen makes conspiracy and persuaded king to sent manikanta in forest to bring the milk of tigress and in forest he got blessings from lord shiva. Later king and queen realize that lord ayyappa is not ordinary child; and requested him to accept the crown but he refuses and goes to heavenly above. King constructed a temple for ayyappa at sabarimala and ayyappa idol was carved by sage parasuram, and installed it on the day of makara sankranti.

Now if we talk about restraint of women for entering temple is not very old and it has been established in the evidence before high court that women irrespective of their age were permitted to enter the sabarimala temple for first rice feeding ceremony of their children<sup>1</sup>. It is only the last 60 years after the passing of notification in 1955 that women between the ages of 10-50 years were prohibited from entering the temple. The Maharaja of Travancore accompanied by the Maharani and Divan has visited the temple in 1115 M.E<sup>2</sup> there was no prohibition for women to enter the sabarimala temple in olden days, but women in large number were not visited the temple .That was not because of any prohibition imposed by Hindu religious but because of other non- religious factors. In 1990 the granddaughter of the former of the former Devaswom commissioner smt. Chandrika conducted first rice feeding ceremony<sup>3</sup>. This shows that the ban is nothing more than a VIP treatment given to the families of temple Board and their authority. The ban was no relation with the practice and propagation of religion. But only for making a gap and

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<sup>1</sup> S.Mahendran vs The Secretary, Travancore, AIR 1993 Ker 42 ( India )

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

difference between the common and VIP peoples. This type of practices is not only against the law and constitution but also against the tenets of religion which says that before the God everyone is equal and everyone will get equal chance to profess and practice their religion irrespective of caste, class, color and gender. Prohibition of women in sabarimala temple is a step towards making a hierarchy between Male and Female which is itself a sin in religion and illegal. This type of practices affect the mindset of present and future generation which leads to discriminatory behavior in society where male enjoy more respect and opportunity than female.

The scholars give reason behind prohibition that Lord Ayyappa is celibate god or 'Naishtika Bramhachari'. Therefore orthodox temple authorities visiting of Menstruating age (10-50 years) women could act as potential distraction on the deity's path of celibacy. The reason for prohibiting women is the epitome of 'foe' of Hindu culture and tenet. In Hindu scripture and its texts do not talks about prohibition of women (age 10-50) in temple. And if we go through Hindu tenet 'Naishtika Bramhachari' Lord Hanuman is the epitome of all celibate god. But in Ramayana lord Hanuman he offer Lord Sita (wife of Lord Ram) to sit on his shoulder for returning Lanka on hanuman first visit of lanka. Also he never confines himself to only male devotee.

Moreover if we prohibiting women from worship to Lord Ayyappa it contradict the faith on lord Ayyappa celibacy that his is not so weak thank it can be distracted by female devotee. women cannot affect one's celibacy if one has taken oath of it, otherwise such oath has no meaning and also the devotee do not go to sabarimala temple for taking the oath of celibacy but for seeking the blessings of lord Ayyappa.

According to some legend menstruating women were not allowed to enter the sabarimala temple, Ayyappa was born to destroy a female demon but after mangle she appeared as a beautiful young lady called Mahishi. She was impressed by lord Ayyappa and wanted to marry him. But he refused, by saying he was destined to go in to forest and answer the prayer of devotees. She persisted, so he would marry to her the day new devotee stopped coming to seek his blessings. But that never happened. The legend saying that she waits for him at a second temple, which lies on the main sabarimala shrine. Women are not allowed to visit either temple- Belief is that to do so would insult both the deity and the sacrifice of woman who loved him.

According to story prohibiting women from entering sabarimala temple due to distraction of deity celibacy, we are questioning a relation between the deity and devotee who is immoral and unethical in the view of society and religion. Because the relation between deity and devotee is that of teacher and student. A student requires no one mediator to talk to his teacher similarly there is no need permission from any mediator to show his devotion to his deity. The reason behind prohibition women is not only illogical and irrational but it showing that patriarchal society just wants a shield for suppressing women and discrimination.

The temple management argues in Supreme Court that restriction on entry of women in the age group of 10-50 years in the shrine because the presiding deity Lord Ayyappa is considered to be a 'naishtika brahmachari' and women of menstruating age can't be allowed on account of 'purity'. In Hindu tradition it has been said that during menstruating period women considered as dirty and impure. There are many myths and lots of religious story for one natural biological phenomenon, like in Veda it has been declared as the guilt of Indra's killing of Brahma. In this period woman restricted from doing daily life activities, like she is not supposed to enter in kitchen, not to enter the pooja room. But in nuclear family these restrictions not much relevance because they cook food, do pooja, they do sex. Which shows our orthodox mindset and we take it as a convenience of male dominant or patriarchal society.

Moreover for a short time if we consider menstrual as impure but on the basis of this, how can we restrict all women for till the time she can menstrual. Imposing ban on 10-50 years women is irrational, arbitrary and unreasonableness. We are generalizing all women in a same adjunct. Restriction also means that during menstrual period we consider women as impure but we should not forget that on during that period of age women do all other important religious rituals. During those ages women marry to a man but they considered as pure, woman gives a birth to child on this impure ages. So according to this logic all human beings are impure because they get same impure body of the women.

Restriction women are like a restricting dalit from temple in the name of pure and impure. Similarly women is treated in sabarimala is the impact of casting a stigma on women of menstruating age for it consider them polluted and thereby has a huge psychological impact on which violates Article 17 of the Indian constitution as the expression in any form , article 17

includes untouchability based on social factor and its wide enough to cover menstrual discrimination against woman.

Prohibition of women on the basis of menstrual will give sanctity and strength to discriminatory activities and gives a shield to thought like women should live in one corner of house. This type of behavior will only make hierarchy between man and women as a result of this female treated inferior in a society and ultimately in all the institution social, political and economical.

It has been justified by those people who support prohibition is that it is not only the women who has been prohibition by sabarimala temple but there are many temples who prohibits man in other temple also but it's a half truth spoken by those people because the temple who only prohibits the outsider man but authority and temple ruled by the men itself.

Supporter of prohibition justifies that the restriction of women of certain age is a peculiar nature of presiding deity but we have to understand that discrimination cannot be a peculiar. We cannot neglect the women on the name and sake of its peculiar nature because it is not a peculiar but a way of discrimination and way of justifying discrimination on the lurk of religion and its peculiarity.

Sabarimala, In the conflict between female devotee of Lord Ayyappa and the priest, law should interfere because when there is a free play of social force there will be a conflict of interest between the different groups (caste, class, gender, etc) law has to step into set aside imbalance between competing groups. And it should be keep in mind that arbitrator should not have their own interest that's the reason law should prevail between the disputes of self dignity and orthodox custom. Because it is the basic principle of natural justice "Nemo judex in causa sua" which means that 'No person can judge a case in which they have an interest' this latin phrase fit in this case because because preist will not be a judge unless they have a interest.

In the light of law, the constitution decide the valid interest of both the parties, If we talk about priest and their religious freedom and rights which has been given in article 26 (i) to maintain and establish religion, (ii) to manage and affair, (iii) to own and acquire property, (iv) to administer such property. Apart from constitution rule 3(b) of Kerala Hindu places of public worship (Authorization of Entry) Act which state that "women at such time during which they are not by custom and usage allowed to enter a place of worship" was the basis of the practice of

excluding women of the age group of 10-50 years to enter the temple. This has been struck down by the Supreme Court by saying an ultra vires for it violative article 14, 15, 17, 21 and 25.

But it should be also kept in mind that a person or group can exercise his religious freedom so long as it does not come into conflict with the exercise of fundamental rights of others. Because a particular fundamental right cannot exist in isolation but it co-exist in harmony with the exercise of another fundamental rights and also with reasonable and rational. The Supreme Court observed<sup>4</sup> that “No right in organized society can be absolute”. Enjoyment of one’s right must be consistent with the enjoyment of rights also by the others.

The practice was violating Article 15(i) of the constitution which amount to discriminate on the basis of sex as physiological features of menstruation is exclusive to female alone. Article 14 which secure equality before law. Article 21 which were undermining their Dignity of women. It was violating Article 17 by keeping prohibition of menstruating women from religious practice and profess is no less a form of discrimination than the exclusion of oppressed class. Exclusion practice violates the right of Hindu women under Article 25 as they have right to enter Hindu temple along with practice, profess and propagate their religion. This practice also violate sec 7(c) of Civil Right Act 1955, which criminalizes the encouragement and incitement to practice “Untouchability” in any form whatsoever<sup>5</sup>.

struck down of prohibition against women is not a violation of fundamental rights of article 26 of religious denomination and also prohibition of women in matter of entry to temple is neither a ritual nor a ceremony associated with Hindu religion, as the religion does not discriminate against women, but on the contrary, Hindu religion accords to women a higher pedestal in comparison to man and such a discrimination is anti Hindu for restricting of women is not the essence of Hindu religion. The practices which discriminate between the male and female, Rich and Poor should change with the efflux of time. This is not the first time were demand for certain practices abolishing we have earlier taken a lots of rigid decision like Abolition of Sati Pratha, abolition of untouchability in lower caste people, abolition of Zamindari system, abolition of slavery or Bandhua majdoor according to demand and sentiments of people. We are living in a era where we are discussing on Right to privacy but on the other hand we are discussing and

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<sup>4</sup> Acharya Maharaj Narendra prasadji Anand Prasad ji Maharaj vs State of Gujarat, A.I.R (1974) S.C. 2098 (1975) 1 SCC 11 ( INDIA)

<sup>5</sup> Indian Young Lawyer Association & ors vs The State of Kerala & Ors CIVIL NO. 373 (2006), India

making a condition before women by a Devaswom board member Prayar Gopalkrishna said that he would allow women to enter only after a machine was invent to detect if they were “ pure” which means that firstly they will detect menstruating women then they will allow to enter the women. Which is not only illegal but also a inhuman and against the dignity of women. On one side Hinduism gives a special status to women and on the other hand we are imposing restriction on women.

In the theatre of real Life, it seem that man plays all dominant and luxurious role, left women with a very less space ,the space is Inequality and Discrimination. In the country like India where woman contributes equality in population but the Irony is that such equality is not visible in the social, political and Economical structure of the country. Women’s have always been a part of vulnerable and weaker section of society. It is bitter truth of our society, pushed them in to a prison of custom and tradition. The philosophy of custom and tradition does not accept women as a partner in their search for divinity and spirituality. There is inequality in the path of approach to understand divinity. The approach to understand divinity is patriarchal because societal attitude is too centres and revolve around the patriarchal mindset and it has been shaped according to the mindset of society rather than intellectual, rational and moral. Therefore, some rituals of religion are biased with the nature of mindset of society and patriarchal prejudiced. Sometimes in the name of essential and integral facet of faith, such practices are enthusiastically propagated. And our religion becomes one of the easy shields for those groups and people who want to impose the oppressive and discriminatory thesis. This is the reason that we feel Dichotomy that shows in our religion by glorifying and defying women as a goddess on one hand and imposing rigorous sanction on the other hand in the name of custom and tradition should be abandoned because such a paradox philosophy gives a negative behavior and such behavior gives a space for Indignity to women and degradation of their status. The society has to re-think about its patriarchal customs if the society wants to give their equal status rights. Because by allowing women to enter into Sabarimala Temple for offering prayer, it cannot be imagine that the nature of Hindu religion would be fundamentally uttered or change in any manner. It has also been observed by Apex court that Hinduism is not only a religion but “a way of life” which teach us a big lesson that Hinduism consider whole world as family and without participation of women and without giving a equal status in society we cannot imagine a family.



