

# “LEGAL EQUALITY OR RELIGIOUS SANCTITY?”: CRITIQUE OF THE FEMINIST JUDGEMENT IN THE SABARIMALA CASE 2019

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## **Abstract**

This paper focuses on the dissenting aspect of the Supreme Court’s judgement in the Indian Young Lawyers’ Association v. State of Kerala. The central concern of this paper concerning the case was the constitutional validity of a long-enforced prohibition on women from entering the Hindu temple at Sabarimala, Kerala. The paper further draws reasoning towards using History as a rational and legitimate factor in judicial pronouncements. The course of discussion of the paper revolves around the majority judgment that conforms to the transformative vision of the Constitution, which, on the contrary, the public sentiment has made it impractical to enforce. The paper attempts to criticise the pseudo-feministic approach to the Sabarimala controversy, which has played a significant in the Court’s judgement formulation.

**Keywords: Sabarimala, History, Religious Sentiments, Pseudo Feminism, Science**

## **Introduction**

In Indian Young Lawyers Association and Others<sup>1</sup> V. State of Kerala and Others, often referred to as the Sabarimala Case, the Supreme Court of India addressed the Sabarimala temple’s exclusionary practice as violative of the Constitution’s founding and fundamental principles. The Court, in its feminist judgement in the year 2018, limited its interpretation of religion, equality and freedom, and held the prohibition of women’s entry into the Sabarimala temple as an act in contravention to

the Indian Constitution and purported the same to be a discriminatory practice against women. In a culture-rich country like India, Religion and Law predominantly exist nearby and cannot exist independently. Thus, there prevails a scope for both to come into conflict, which results in either of the two being the trade-off for the other. Upon the delivery of this judgement, it is considered impliedly that external factors have moved the Apex Court and has disregarded the internal religious structure belief of the people. This judgement passed by the Court was subjected to the two-fold effect of small-scale progressive appreciation and widespread dissent and unacceptance, respectively.

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<sup>1</sup> Citation- (2019) 11 SCC 1; 2018 (8) SCJ 609

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### **The Historical Heritage:**

The Sabarimala Temple is an ancient Sastha temple in the thick forest of the Pathanamthitta district of God's own country – Kerala. The Temple's geographical location is near the dense forest and tiger reserve, and also, due to its hill topography, it is characterised by a rough terrain to travel by foot. This Hindu shrine is known to be the place of worship of Lord Ayyappa, a Brahmachari in his celibate form. The Temple is a part of the six temples, i.e., the Sastha Chakra Temples (i.e., the temples that correspond to the six chakras) of Sastha. Sastha, referred to herein is the deity whose incarnation is Lord Ayyappa. The Sabarimala temple, amongst the six chakras, represents the sixth chakra.

### **The Dialectic Argument of the Practice:**

There is reasonable and sufficient scientific evidence behind the customary prohibition practice on women's entry into the Sabarimala temple. There is a significant impact on women who enter the temple, not only during their menstruating period but also during the time duration of their respective reproductive ages.

The pilgrimage visit to Sabarimala by women of reproductive age, adversely alters the women's menstrual cycle. The result of the same is not only attributable to the stoppage of the period but also to the subsequent problems associated with the period cycle, which severely affects the women's health and well-being. The phenomenon of menstruation and the menstrual cycle is at the absolute core of a woman's health. If this is disrupted, her mental health, bodily disorders such as PCOD and Endometriosis and painful conditions can occur.

As mentioned in the previous paragraph, the six chakras are aligned along the spinal column and correspond to our endocrine glands. For the purpose of explaining the effect of, the reference of primarily three chakras is necessary, and they are - the chakra between the eyebrows, which refers to the pituitary gland and the lower two chakras, which correspond to the reproductive and excretory organs, respectively.

Entry into the Sabarimala Temple causes rigorous activation of the pituitary gland, which

begins to secrete testosterone (a male hormone) at a higher rate, which the ovaries, on the contrary, cannot convert into the female hormone as there is excessive production. The same secretion, which occurs in men upon entering the temple, positively impacts the male body by increasing any deficiency and balancing the hormones, respectively. However, the excess energising of the pituitary gland in women causes unpleasant changes. This is the widescale development of masculine features, such as the growth of excessive hair, a manly voice, and so on.

### **The Pseudo Feministic Mentality:**

Before understating this segment, there is a need to raise this question – “Why are women trying to fix something that has not been broken yet?”. It is to be taken into account, the level of misconception of the term ‘discrimination’ by women and their negligent claim. Lack of knowledge of native sciences has resulted in women overlooking the aspect of how this particular religious place of worship can impact and change the course of a woman's life and the considerate amount of negligence shown towards the consequent bodily harms.

This is highly attributable to the contribution of those pseudo feminists, who have misrepresented the ideology of feminism. It is upsetting to notice, how these women miscomprehended a sensitive traditional guideline proposed to be followed by them in the best of their interests as a discriminatory practice that is violative of their fundamental rights. It is such misrepresentation and distortion of facts that have significantly contributed towards the downfall of certain Hindu beliefs and the undermining of its worth.

It is ironic to note that several temples prohibit men from entering the holy premises due to religious sentiment, and where for the same, the men respected, valued and chose to preserve that belief. For instance, the Attukal Bhagwati temple prohibits the entry of men, which is upon Goddess Parvati's wish. In these cases, the men preferred to uphold the sanctity of the holy place and not infiltrate it with their right to equality of sexes.

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### **The Constitutional Interpretation:**

The writer herein opines that the Court approached and addressed this issue as “Women’s Right to Worship” but was utterly ignorant to the Temple, its tradition and religious sensitivity aimed at protecting “Women’s Right to Health”. Women’s right to health should have been given precedence over the aspects of discussion herein in this case. In this segment, the prime issue of focus that needs to be addressed is the “Constitutional authority of the Court to comment on religious matters. This is because, if any practice is considered harmful for the women, the same must be treated with due respect and further intervention or interpretation of the same must not be encouraged. Lastly, the writer poses the following questions to imbibe the sense of critical analysis of the Judiciary’s power: Are public sentiments and enforcement practicability to be considered while exercising the judicial process? Moreover, “Should judges ignore the disaffection caused by their decisions?”

### **CONCLUSION:**

In conclusion, it is necessary for the reasonable limitation on liberal interpretation performed by the Court in religious matters. The sacred practices of a religion and the corresponding sentiments of the people who are its followers must be given due respect and shall be upheld. Though the nature of such a judgement may be progressive, the people’s reaction to the same may, in instances as that discussed in the paper, tend to be revolutionary. The Court’s interference and interpretation have subsequently hurt certain deep-rooted cultural aspects of the country and developed a fear of the people. This is attributable to the rapid adoption of Western culture in our Indian society. Wherein the people fear that with further such “so-called progressive judgements”, the Indian nation’s varied ethnicity and cultural heritage is gradually depleting, and its significance is undermined. Hence, limited intervention with reference to such matters helps in restoring trust in the Judiciary in the minds of the people, which in turn will ensure that their age-old culture, in its broader sense and in its narrow sense, the religious practices will not be the trade-off, for upholding miscomprehended equality and in abolishing the non-existent discrimination.