

Topic – Indian Constitution- historical underpinnings, evolution, features, amendments, significant provisions and basic structure.

Women's Entry into Sabarimala Temple

1) Introduction

- Religion is not just a spiritual pursuit but a critical part of the societal organisation.
- Supreme Court is hearing petitions challenging the prohibition of women of 10 to 50 years of age to enter the Sabarimala temple.
- The restriction of women between the ages of 10 and 50 has been prevailing in Sabarimala since time immemorial.

2) Background

All eyes on SC

The chronology of the long-standing petition in the Supreme Court against the restriction on women aged between 10 and 50 from entering the Sabarimala temple in Kerala:



1991: In *S. Mahendran versus the Secretary, Travancore* case, the Kerala High Court upheld the State's ban on menstruating women from entering the temple. The HC order went unchallenged for 15 years

2006: Kannada actor Jayamala claimed she had entered the sanctum

sanctum and touched the idol of the deity in Sabarimala. Her claims led to a furore, leading to a case against the actor

2006: A PIL against the Kerala HC order was filed by the India Young Lawyers Association, contending that the ban violated constitutional rights of women

2008: On March 7, a Bench of Justices S.B.Sinha and V.S. Sirpurkar referred the case to a three-judge Bench. The case lay in cold storage for 8 years

2016: On April 13, a Bench of Justices Dipak Misra, V. Gopala Gowda and Kurian Joseph heard a batch of petitions

2016: On April 25, senior advocate K.K. Venugopal, representing the Devaswom, said, "There is a reasonable classification by which certain class of women are excluded." The SC enquired if the defence was implying that menstruation was associated with purity of women

2017: On Oct. 13, the SC referred the Sabarimala case to the Constitution Bench

3) Arguments for Temple Entry

- Sabarimala Temple is a public temple and this is an important determinant in adjudicating the claim of women's entry.
- "Right to freely profess, practise and propagate religion" is a constitutional right.
- Restriction imposed on the entry of women aged between 10 and 50 years is unconstitutional.
- There are hundreds of other gods and goddesses where such rules don't apply. There is no restriction in praying to them.
- Some arguments suggest menstruating women should not enter the temple because they may "pollute" the confines. This is unacceptable because there is nothing "unclean" or "impure" about a menstruating woman.

- The biological factor exclusive to the female gender amounts to “discrimination” and thereby violates the very core of Articles 14, 15, and 17 of the Constitution.
- It curtails her religious freedom assured by Article 25(1).
- Prohibition of women’s entry solely on the basis of womanhood and the biological features associated with womanhood is derogatory to women, which Article 51A (e) aims to renounce.
- The NGO “Happy to Bleed” intervened to oppose the restriction, terming it as an outdated taboo against menstruation.
- The CJJ observed that the temple draws funds from the Consolidated Fund, is a “public place of worship” and that there is “no concept of private mandirs”.
- A temple or any place of worship cannot claim a right to the deity who is being worshipped in that place, since the deity by definition is present to all at all other places.
- In the case of the god of Sabarimala, he is worshipped in countless temples outside Sabarimala where women of the proscribed age group can enter.
- He is also worshipped by women of this age in their houses.
- Hinduism is not a religion but a way of life, which is why its practice cannot be dictated only and narrowly by religious pundits and Tantric priests.
- Religious practices must remain relevant to changing social structures and relationships. It needs reform from within.

4) Supreme Court's Views

- Supreme Court observed that ban on entry for women of a certain age at Sabarimala temple is based on the "patriarchal" belief that the dominant status of a man in society makes him capable of performing austerity.
- The Constitution Bench led by Chief Justice Dipak Misra said the court cannot accept a practice mired in patriarchy and chauvinism.
- The ban seems to have emanated from the "paternalistic notion" that women cannot perform the penance of 41 days.
- How can one assume here that women cannot lead an austere life for 41 days' vratham (penance).
- Exclusion of menstruating women considered ‘impure’ could amount to the practice of untouchability.

5) Arguments against Temple Entry

- Nair Service Society (NSS), a prominent casteist outfit, opposed the demand for allowing women belonging to all age groups entry into the Sabarimala temple.
- The Ayyappa idol in Sabarimala is said to be a Naishtika Brahmachari (celibate).
- Lord Ayyappa at Sabarimala is unique since he is celibate and doesn’t want the presence of women aged between 10- 50 as it will affect his penance.
- Article 25 (2) which throws open public Hindu religious institutions to all classes and sections of society can be applied only to social reforms and it does not apply to matters of religion covered under Article 26 (b) of the Constitution.
- Article 26 (b) provides right to every religious denomination to manage own affairs in matters of religion.
- The Court in Ritu Prasad Sharma vs State of Assam (2015), held that religious customs which are protected under Articles 25 and 26 are immune from challenge under other provisions of Part III of Constitution.

- Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965, bars women from entering the temple premises.

6) **Challenging society's power structure**

- Challenging these is to challenge society's power structure.
- By denying women of a certain age entry into the temple, society reinforces rigid taboos about purity and pollution.
- By dismantling such rules, we slowly strip society of the power to declare someone 'impure' by reason of birth or menstruation.
- Ambedkar once argued that denying untouchables the right to enter religious places was a powerful way of extending the social discriminations against them.

7) **Way Forward**

- The court should see this as an opportunity to reassess and reform the historical shortcomings, if any.
- The court should look beyond the essential practices doctrine and see this case as 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.

