

Sabarimala: Controversy over Women’s Access to the Temple

Silvia Tieri and Emma J. Flatt

Summary

In India, the two practices of menstrual taboo and gender-selective access to places of worship come together, as women are prevented from accessing certain shrines by virtue of the menstruating nature of their body. Recently the Supreme Court of India ordered the lifting of a legal ban, which prevented women of menstruating age from entering a famous Hindu temple. The Court’s judgement endorsed feminist activists’ claim that the ban is discriminatory against women, hence anti-constitutional. On the other hand, religious and political institutions and devotees (including women) maintain that the ban is a canonized religious custom, which must be observed out of respect for the religious sentiment of Hindus. The judgement divided public opinion and fuelled a wave of protests, often backed by opposition parties; it is also likely to have important consequences for the future of management of religious affairs in India.

Menstrual Taboo and Gender Discrimination

Based on a widespread Indian custom, during menses, women’s daily activities and interactions are subject to a number of limitations. Among the limitations, there is the exclusion of menstruating females from worship *practices* (e.g. touching holy books, participating in pujas and prayers) and *spaces*, i.e. entering the house’s *puja* (prayer) room as well as public temples. Restrictions to women’s access to religious spaces have been criticized by Indian feminists as a harmful and patriarchal practice. On 28 September 2018, the Supreme Court of India ordered the lifting of a legal ban, which prevented women of menstruating age from entering the famous Hindu temple of Sabarimala. The judgement divided public opinion over what the state should protect: gender equality or religious freedom.

The Sabarimala Temple

Sabarimala (literally meaning “the Sabari hill”) is a hill located in the Pathanamthitta district of the southern state of Kerala, and the site of the most important Hindu temple dedicated to the worship of Ayyappan. It is estimated that every year Sabarimala attracts between 6

and 10 million during the pilgrimage period¹ and 40-50 million over the whole year, making it the world's second largest pilgrimage destination after Mecca.²

The main peculiarity about Sabarimala is that the near totality of its pilgrims are men. As a consequence, the temple and its premises are configured as an all-male space, and the pilgrimage is configured as a masculinity-defining practice.³ Till the Supreme Court verdict was passed in September 2018, there existed a formal prohibition preventing women between 10 and 50 years old -- that is to say women in fertile age -- from accessing the temple at any point in time.

In 1965, the *Kerala Hindu Places of Public Worship (Authorization of Entry) Act* (KHPPWA) allowed discriminatory access if mandated by religious custom. In 1991, the Kerala High Court decided on a petition converted into Public Interest Litigation which complained that some young women had entered the temple.⁴ In its verdict, the court endorsed the ban imposed by the temple board to prevent women (aged 10-50) to trek the hill and enter the shrine, based on the following motivations: because it existed from time immemorial the prohibition was an integral part of the Hindu religion; also, it did not violate the constitutional principles of non-discrimination (Art. 15), freedom of religion (Art.25) and right of religious denominations to manage their religious affairs (Art. 26), nor the 1965 KHPPWA. It was not discriminatory, according to the court, since it concerned not all women as a group, but just a part of them (those aged 10-50).

Exclusion of Women: Patriarchy or Faith?

Why did the temple forbid the entry to fertile women? Apart from a religious belief that the presence of fertile women in front of Sabarimala's resident deity, Ayyappan, endangers his celibacy, other explanations suggest that the exclusion of women is based on a menstrual taboo. Because women are unable to complete the mandatory 40-days purification period (*vratham*)⁵ as a consequence of monthly bleeding, they do not qualify to embark on the pilgrimage.

¹ Filippo Osella, and Caroline Osella, 'Ayyappan Saranam': Masculinity and the Sabarimala Pilgrimage in Kerala' *Journal of the Royal Anthropological Institute*, Vol. 9, no. 4 (2003), pp.729-54.

² Rumi Bandyopadhyay, and Kushagra Rajendra, 'Religious Tourism: The Beginning of a New Era with Special Reference to India', in Shin Yasuda, Razaq Raj, and Kevin Griffin (eds.) *Religious Tourism in Asia: Tradition and Change Through Case Studies and Narratives*, (Cabi (Centre for Agriculture and Bioscience International), 2018), 67-76.

³ Filippo Osella, and Caroline Osella. *Ibid.*

⁴ *S. Mahendran v. The Secretary, Travancore Devaswom Board, Thiruvananthapuram and Others* (AIR 1993 Ker 42). <https://indiankanoon.org/doc/1915943/>

⁵ *Ibid.*, p. 733.

Whichever might be the underlying reasons for the ban – male celibacy or menstrual taboo – it might be argued that the practice derives from misogynist beliefs. At the same time, it is embedded in religion, specifically, in a form of Hindu devotion. Since women are denied equal access on the account of a religious belief, the following dilemma is posed: when *gender equality* clashes with *religious freedom*, which of the two is more deserving of protection by the state?

Judicial Antecedents and the Supreme Court's Verdict

Before making it to the apex court, the issue of discriminatory temple access had already been the object of judicial rulings, as mentioned earlier.

In 2006, however, women lawyers belonging to the Indian Young Lawyers' Association filed a Public Interest Litigation maintaining that the ban clashed with the right to equality (Art. 14), and the freedom to follow and propagate religion (Art. 25). They challenged the validity of the 1965 KHPPWA which made the ban legal, and also highlighted that the temple is partially funded by state money, hence it can be considered a public entity. The case extended for a decade, with the Supreme Court hearing petitioners and respondents.

Eventually, on 28 September 2018, with a 4:1 verdict, the Supreme Court ruled that the restriction on the entry of women to the Sabarimala temple was unconstitutional and discriminatory.⁶ It hence ordered the lifting of the ban to grant entrance to the temple to women of any age. Chief Justice Dipak Misra, Justice A.M. Khanwilkar, Justice R.F. Nariman, and Justice Dhananjaya Y. Chandrachud endorsed the claims of the petitioners, with only Justice Indu Malhotra delivering a dissenting judgement.

Against the exclusion of women from Sabarimala, the four judges argued the following:

- the right of a religious denomination to manage its affairs (Art. 26) is not “a standalone right uncontrolled or unaffected by the other fundamental freedoms”.⁷ As a consequence, religious freedom is to be understood as subservient to the overarching principle of equality; otherwise, it is subject to legal intervention.⁸

- the exclusion of women is not an essential religious practice. Instead, it clashes with the essential character of Hinduism which is inclusion of women.⁹

⁶ *Indian Young Lawyers Association & Ors. VS The State of Kerala & Ors.* (IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO. 373 OF 2006)

⁷ *Ibid.*, Dr Dhananjaya Y Chandrachud, p. 15.

⁸ *Ibid.*, Dipak Misra, CJI, p. 3.

⁹ *Ibid.*, p. 78.

- The exclusion is comparable to untouchability, and as such clashes with Art.17.¹⁰
- It is based on a menstrual taboo¹¹, as well as on a more general patriarchal definition of genders.¹²
- It damages *women's right to worship*, because it excludes women while allowing men.¹³

In her judgement, Justice Indu Malhotra (the only woman of the bench) offered a different and often contrasting take on the issue. She argued that:

- In a secular society, like India, there must be a clear demarcation between secular matters -- which are within the scope of the state -- and religious matters -- which are not. Hence, interpreting religion and determining what is essential to it or not is beyond the faculty of courts.¹⁴
- Religious customs are thus protected from potential legal intervention, unless they cause severe violation of human rights.¹⁵
- The exclusion of women is not comparable with untouchability, this being a discrimination based on caste, not on gender. Hence, the ban does not clash with Art. 17.¹⁶
- Equal right to worship can be reclaimed only by those who belong to the religion concerned.¹⁷ To challenge religious customs is a prerogative only of its insiders.¹⁸ A different case would cause danger especially for minority religions.¹⁹
- The right to equality claimed by the petitioners produces a breach into the devotees' right to freedom of worship, which requires them to maintain in place the custom in question (whose nature of "essential religious practice" is not rejected).²⁰

¹⁰ Ibid., Dr Dhananjaya Y Chandrachud, p. 115.

¹¹ Ibid., p. 115.

¹² Ibid., p. 76.

¹³ Ibid., p. 20.

¹⁴ "In a secular polity, issues which are matters of deep religious faith and sentiment, must not ordinarily be interfered with by Courts". Ibid., Justice Indu Malhotra, p. 22.

¹⁵ Ibid., pp. 28-29.

¹⁶ Ibid., p. 67.

¹⁷ Ibid., p. 28

¹⁸ Ibid., p. 23-24.

¹⁹ Ibid., p .23.

²⁰ Ibid., p. 28-29.

Reactions To The Ban Lifting

Throughout the years, the Sabarimala controversy saw protests and mass mobilization from both sides on more than one occasion and through different channels. Women got mobilized and participated to the protests both in favour and against the ban.

In 2015, following a misogynist comment by the Travancore Devaswom Board on the auspicated advent of a futuristic menstruation-detecting machine, enraged women across India expressed their dissent in an online protest. Inspired by a post against menstrual taboo published on the user-generated content platform *youth ki awaaz* by a young student,²¹ girls across social media shared pictures of pads with the famous hashtag “Happy To Bleed”.²² Soon after, in early 2016, female supporters of the ban responded with the “Ready To Wait” campaign, expressing their willingness to refrain from visiting the shrine before the age of 50, maintaining that the restriction is not discriminatory against women but motivated by the observance of the *brahmachari* nature of Ayyappan.²³

A new wave of protests rose with the latest judicial developments involving the Sabarimala controversy in 2018. As elections approached, the Sabarimala case got politicized and demonstrations saw the involvement of government, political parties and political movements.

Immediately before, and especially after, the Supreme Court’s judgement, crowds started agitating in defence of the ban. Protests included all-women public gatherings, mobs of pilgrims preventing the access to the hill to women even after the ban had been lifted,²⁴ and blockage and assault to journalists.²⁵ Protesters often acted under instigation of various religious boards and groups.²⁶

²¹ Azad, Nikita. “‘A Young Bleeding Woman’ Pens An Open Letter To The ‘Keepers’ Of Sabrimala Temple’ *Youth Ki Awaaz* (20 November 2015), <https://www.youthkiawaaz.com/2015/11/open-letter-to-devaswom-chief-sabrimala/>. Accessed March 10, 2019.

²² ‘Why Are Indian Women ‘Happy to Bleed?’’ *BBC* (23 November 23 2015). <https://www.bbc.com/news/world-asia-india-34900825>. Accessed March 10, 2019.

²³ ‘#ReadyToWait: These Kerala Women Devotees Campaign against Women Entering Sabarimala Shrine’ *The Indian Express* (29 August 2016), <https://indianexpress.com/article/trending/trending-in-india/women-devotees-in-kerala-say-readytowait-to-enter-sabarimala-shrine-3002027/>. Accessed March 10, 2019.

²⁴ ‘Sabarimala Row: Women Journos Forced to Deboard Bus Going to Pamba’ *The News Minute* (16 October 2018), <https://www.thenewsminute.com/article/sabarimala-row-women-journos-forced-deboard-bus-going-pamba-90058> Accessed March 10, 2019.

²⁵ ‘Mob Attacks Journalists Near Sabarimala, NDTV Crew Blocked By Protesters’ *NDTV* (17 October 2018), <https://www.ndtv.com/kerala-news/two-journalists-covering-sabarimala-protests-attacked-car-smashed-1933382>. Accessed March 10, 2019.

‘Beaten, Hair Pulled: India Today Reporter Suffers Horrifying Attack by Sabarimala Protesters’ *India Today*, (17 October 2018), <https://www.indiatoday.in/india/story/sabarimala-protesters-attack-india-today-tv-crew-1369966-2018-10-17>. Accessed March 10, 2019.

²⁶ ‘BJP’s Kerala president calls for protests as women enter Sabarimala temple’ *Reuters* (2 January 2019), <https://in.reuters.com/article/india-temple/bjps-kerala-president-calls-for-protests-as-women-enter-sabarimala-temple-idINKCN1OW0AH>. Accessed March 10, 2019.

The year 2019 started with the “Kerala Wall”: a “620-kilometre long human chain of millions of women standing side by side on the roads of Kerala,²⁷ owing to successful mobilization led by the Communist Party of India (Marxist) - the incumbent government in Kerala. The Bharatiya Janata Party (BJP) sought to use the Sabarimala case to gain a foothold in the state, by mobilizing the pro-ban front²⁸ as it exploited the unpopularity of the verdict among a section of the Keralites (men and women). After two women in fertile age had managed to visit the temple under police protection in early January 2019, the pro-ban front was galvanized, leading to protests which resulted in the temporary paralysis of the state and even in one casualty.²⁹ The Congress party, historically aligned on secular positions, also in a minority position in Kerala, had remarkably criticized instead of endorsing the court’s judgement.³⁰

Conclusion

Unfolding for decades, the Sabarimala controversy saw protests both in favour and against the ban. On these occasions women did not form a unitary bloc: while many campaigned for the lifting of the ban in virtue of their “right to pray” or, more generally, to put an end to practices deemed patriarchal, others protested that their religious freedom, as Hindu women, was at risk. This polarization highlighted that on feminist issues there is often division among women themselves. Not only in a country as diverse as India the definition of womanhood might assume different meanings; but also “most of the protests emanate from the urban elite, educated women who are better off in terms of choice and freedom and who are privileged and make use of media and legal resources”.³¹

Another highlighted issue pertains to the “gap” existing between a forward-looking and active Supreme Court and the average sentiment of society. Through its jurisprudence the Indian Supreme Court has pushed the boundaries of existing law to advance it in a progressive sense, deeply fracturing public opinion. This has been the case at Sabarimala too as,

²⁷ Snigsha Poonam, “Indian women just did a remarkable thing – they formed a wall of protest”, *The Guardian* (3 January 2019), <https://www.theguardian.com/commentisfree/2019/jan/03/gender-activism-india-womens-wall-sabarimala-temple-kerala>. Accessed March 10, 2019.

²⁸ Sneha Mary Koshy, ‘Sabarimala Key Issue; Will Use In Campaigns: Kerala BJP To Poll Officer’ *NDTV* (12 March 2019), <https://www.ndtv.com/kerala-news/sabarimala-key-issue-will-use-in-campaigns-kerala-bjp-leader-tells-state-chief-election-officer-2006321>. Accessed March 10, 2019.

²⁹ ‘Sabarimala: India's Kerala Paralysed amid Protests over Temple Entry’ *BBC* (3 January 2019). <https://www.bbc.com/news/world-asia-india-46744142>. Accessed March 10, 2019.

³⁰ ‘Women's Wall': How Kerala Govt Is Pushing Back Against Sabarimala Protests’ *Huffington Post* (23 December 2018), https://www.huffingtonpost.in/entry/womens-wall-kerala-govt-sabarimala-protests-pinarayi-vijayan_in_5c1a50dee4b02d2cae8f62a4. Accessed March 10, 2019.

³¹ Chitra Karunakaran Prasanna, ‘Claiming the Public Sphere: Menstrual Taboos and the Rising Dissent in India’ *Agenda*, Vol. 30, no. 3 (2016), pp.91-95.

after the verdict, demonstrations increased, often fuelled by opposition parties, and turned even violent.

This poses the question of whether the best way to deal with reformation of religion is through judicial means.

The verdict is also likely to have long-term implications with regard to which type of polity India aims to be, given its aspiration to be a secular and, at the same time, a pluralist state; as well as which kind of secularism it aims for. The tension between secularism and pluralism is reflected in the constitution of the country, and eventually in the dilemma between egalitarianism and particularism that underlies Sabarimala too. With the verdict, the Court stated that *equality transcends religious freedom*, and that religious customs infringing equality might be subject to legal intervention by the state. On the one hand, this provides ground for challenging the retrograde elements present in most religions, which generally mirror patriarchal societal systems. On the other, it produces a peculiar situation in which secular state courts' prerogatives extend to include religious exegesis. In addition to this, and most importantly in the case of India, it makes especially minority religions vulnerable; even more so in light of the comeback of majoritarian politics.

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Ms Silvia Tieri is a Research Analyst at the Institute of South Asian Studies (ISAS), an autonomous research institute at the National University of Singapore (NUS). She can be contacted at silvia@nus.edu.sg. Dr Emma J. Flatt is an Assistant Professor of Indian History at the University of North Carolina, Chapel Hill and is currently a Visiting Research Fellow at ISAS. She can be contacted at isasfej@nus.edu.sg. The authors bear full responsibility for the facts cited and opinions expressed in this paper.