



Sabarimala Temple

Columns

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The Sabarimala case reference: Recognition of sacred beliefs of tribals and adivasis

The Court has a duty to recognise and protect the sacred beliefs of tribals even if they do not strictly fall under the rubric of “religion”.

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One perplexing feature of the Constitution of India is that while it enjoins through Article 14 that every arm of the State should act in accordance with reason, it not only guards but enjoins the State to protect the right of the citizen to be irrational and to rest his or her beliefs in faith as provided in Article 25 and 26. For the rationalists (whose beliefs are also protected by Article 19 as they should be), most aspects of belief in religion and faith are irrational.



Now to the trajectory of the reference before the Supreme Court and its contents.

At Sabarimala is a temple to Lord Ayyappa, a deity born from two male gods - Shiva and Vishnu. He is worshipped as a '*naishtikabrahmachari*' (eternal celibate). This temple has an ancient tradition that only male devotees are allowed inside the temple. Women aged between 10-50 years are denied entry by temple authorities. Belief and faith associated with the deity holds that as the women in that age group are menstruating, their presence would violate the religious practices of the devotees.

A group of women challenging such beliefs claimed that the prohibition of entry of women into the temple was discriminatory and exclusionary. They filed a petition in the Supreme Court invoking Articles 14, 25 and 17 and demanded entry into the temple. Delivering judgment in *Indian Young Lawyers Association v. State of Kerala*, the Supreme Court decided the case in favour of the petitioners. In the judgment of the Supreme Court, Justice **DY Chandrachud** states in his opinion that prohibiting women's entry into the temple was a form of untouchability. The verdict states,

"A claim for the exclusion of women from religious worship, even if it be founded in religious text, is subordinate to the constitutional values of liberty, dignity and equality. Exclusionary practices are contrary to constitutional morality."

Interestingly, the only dissenting judge, Justice Indu Malhotra held against the decree granted to women to enter the temple. She declared,

"You cannot apply principles of morality into religious practices. What may be religious to you might be superstitious to others."

Review petitions challenging this verdict have been filed and are pending before the Supreme Court. In November 2019, a five-judge bench of the Supreme Court decided to keep the review petitions pending and referred certain significant constitutional questions to a larger bench:

1. What is the scope and ambit of the right to freedom of religion under Article 25 of the Constitution of India?
2. What is the interplay between the rights of persons under Article 25 of the Constitution and the rights of religious denominations under Article 26?
3. Whether the rights of a religious denomination under Article 26 of the Constitution are subject to other provisions of Part III of the Constitution, apart from public order, morality and health?
4. What is the scope and extent of the word 'morality' under Articles 25 and 26 of the Constitution, and whether it is meant to include constitutional morality?
5. What is the scope and extent of judicial review with regard to a religious practice as referred to in Article 25 of the Constitution?
6. What is the meaning of the expression "Sections of Hindus" occurring in Article 25 (2) (b) of the Constitution?
7. Whether a person not belonging to a religious denomination or religious group can question a practice of that religious denomination or religious group by filing a PIL?

Should the Supreme Court, while deciding these issues, also not consider the status to be accorded to religious faiths and beliefs of tribals? Must the religious beliefs of tribals be bunched with beliefs of other religious groups or should they enjoy a higher level of protection? Can tribals claim denominational rights? Considering the constitutional provisions under Articles 25 to 30, can a separate class of rights - possibly called ethno-cultural and sociological rights - be recognised and enforced in favour of tribals thus protecting their cultural identity?

Tribals hold several aspects of their beliefs to be sacred (like their reverence and respect for nature and all things associated with it) without necessarily claiming them to be religious. How is this belief to be protected if it does not fall within the traditional definition of "religion", yet is sacred?

Tribal religious rights are generally not considered mere "denominational rights" (rights of a

specific sect within a religion) because they are based on exclusive ethnic identity, ancestral land and customary law, rather than a codified set of beliefs shared with a larger conventional religion. Must not this aspect be revisited? None of the questions framed in the reference address these issues directly.

While considering the legal status of rights of tribals, one must bear in mind that tribal communities practice forms of animism, totemism, or nature worship. These may fall short of standards necessary to recognise them as branches of organised, mainstream religions. It is also true that due to cultural affiliations and practices observed, many tribals are sometimes classified as Hindus in census records, even though they may follow distinct tribal religions. It is further noteworthy that while conversion has been a significant social trend in tribal populations, it does not legally nullify their right to be considered "tribal" under the law.

Fortuitously, a reference arising from the Sabarimala case possibly provides the best context for addressing these issues. That is because there is good reason to believe that the impugned practices in the Sabarimala case could be age-old religious practices followed by tribals which later was continued by the Hindu majority groups.

This at least has been the claim of the Mala Araya, an Adivasi community.

Aikya Mala Araya Maha Sabha (AMAMS) is a developmental organisation working towards the welfare of the Mala Araya people in Kerala. In an interview for the magazine The Caravan, the founder and general secretary of AMAMS, PK Sajeer, makes certain claims about Mala Araya's beliefs about Ayyappa which deserve closer examination,

The members of this tribe believe that Sree Ayyappan was born in this [Mala Araya] community. The 41-day fast devotees are expected to undertake represents the tribulations that Lord Ayyappa's parents underwent by way of a 41-day fast to beget him. The Mala Arayas claim that they looked after the temple from the 12th century till the 1800s.

In their belief system, the 18 steps leading to the temple are symbolic of 18 hills that surround Sabarimala.

The ritual to receive the "jyothi" (light) that is performed even today in the Ponnambalamedu

district, the tribals believe, is fulfilment of the promise of Lord Ayyappa to his parents to appear every year in the form of a “*jyothi*.”

On the issue of menstruating women being prohibited entry, Sajeev says,

“They can go if they are going out of faith. To tell you impartially about what I have seen in my community, women did not go to temples during the seven days of periods. I have never heard of any instance of young women from the Mala Araya community going to Sabarimala [while menstruating]. [But even] back then, after a delivery, women resumed their periods only after some [one or] two years. They could follow the 41-day continuous fast completely —one or two have gone in those situations.”

From reading of the judgment in *Indian Young Lawyers Association*, the cause and claims of the tribals do not appear to have attracted much attention. It is a moot point as to how the Court would have viewed the challenge to the unconstitutionality of the impugned practice, had it been recognised as an ancient tribal practice.

The nub of the matter is that when ruling on “essential religious practice”, one wonders whether it would not be wiser for all factual claims in the case to be determined before a trial court. From such decision, if the *lis* travels up to the Supreme Court, the Court would have better material to peruse and decide. In the ultimate analysis, it is evident that the judicial acceptability of every component of that expression “essential religious practice” involves a fact-intensive scrutiny ill-suited to an adjudication based only on averments in affidavits and selective reading of scriptural authorities.

In the case of *Orissa Mining Corporation Ltd v. Ministry of Environment & Forests*, the Supreme Court recognised that the Dongria Kondh tribe's right to worship *Niyam Raja*, their deity residing in the Niyamgiri hilltops, must be protected. The Court’s endeavour to go beyond “the strictly rational approach” to understand the claims of the tribals and the forest dwellers is to be applauded. The Court held,

“Religious freedom guaranteed to Scheduled Tribes (STs) and the Traditional Forest Dwellers (TFDs) under Articles 25 and 26 of the Constitution is intended to be a guide to a

community of life and social demands...The above mentioned Articles guarantee them the right to practice and propagate not only matters of faith or belief, but all those rituals and observations which are regarded as integral part of their religion. Their right to worship the deity Niyam-Raja has, therefore, to be protected and preserved."

Tribals may lack the means to approach the Supreme Court to seek a determination of their distinctive sacred rights. However, the Supreme Court, while examining other terms of reference, has a duty to recognise and protect the sacred beliefs of tribals even if they do not strictly fall under the rubric of "religion" as understood by followers of mainstream religion for these are also beliefs that demand constitutional protection.

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