

LEGAL VALIDITY OF RELIGIOUS CUSTOMS IN CONTEXT OF SABARIMALA

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ABSTRACT

This article aims at describing the need and significance of customs as a founding stone in law and in addition what role courts need to play when there is any kind of controversy between religion and secular. The article focuses on the debate around woman's right and custom in the controversial case of Sabarimala Temple and further analyses the historical background of custom practiced at Sabarimala Temple therewith scrutinizing the legal validity of disputed custom. Lastly, it puts forth the significance of freedom to practice essential religious practices and it must be the duty of judicial system of a country to safeguard the time immemorial practice from the activities of desperate social activists in the name of gender justice.

I. INTRODUCTION

Custom has been defined as 'the way of behaving or a belief that has been established for a long time'¹. It is considered as the mechanism that maintains human behaviour in a society and induces society to perpetuate. There is no country or community where customs are not been found. They are fundamental to the life of a society and held so sacred that any violation of them is regarded as unacceptable. They play a great role in determining our culture, preserving it and transferring it to the next generation.

Various jurists, scholars and authors have made efforts to define the word 'custom' such as Carter stated that "custom is the uniformity of conduct of all persons under like circumstances"² while Holland mentioned that, "custom is a generally observed course of conduct". Customs have always been considered as a source of law because they came with the society and from within the society

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¹ Cambridge dictionary

² Dr. V.D. 'Jurisprudence and Legal Theory' (2007), p254

which became the founding stone of all the legal systems in the world as they exhibit public utility and justice to the society for instance in *Subramanian Chettiar v. Kumarappa Chettiar*³ custom have been defined as a particular rule which has existed from time immemorial and has obtained the force of law in a particular locality. Therefore, any practice which is certain, immemorial and has continuous nature becomes a 'well preserved custom'^{4 5} and it is the duty of the State to safeguard it so that it can be continued without any interruptions from outside authorities⁶.

II. FRICTION BETWEEN SECULAR AND RELIGION

It is a matter of concern in contemporary times, that modern minds consider only those acts which can be rationally proved and calculated but fails to understand those practices behind which reasons are mysterious or beyond their standardized yardstick to evaluate any custom. Many customs such as offering water to stone, observing Vratam , cleaning yourself before offering prayers to God, covering head prior to entering gurudwara etc. might sound illogical to some people but these practices may be justified to those who obtain social or psychological fulfilment after observing these practices. Thus, dispute arises when there is any kind of disentanglement between secular and religion and at that point role of court comes into play which decides that up to what extent religion is protected and at what time secular can interfere in the concerned religious practices.

It is necessary to bring to attention **that religious beliefs cannot be tested on the touchstone of rationality**⁷. It was held in the case of *House of Lords in Regina v. Secretary of State for Education and Employment & Ors.*⁸ that the court ought not to embark upon an enquiry into the validity of asserted beliefs on the basis of objective standards or rationality. It is not on the courts to determine which of these practices of faith are to be struck down, except if they are pernicious or a social evil, like Sati. Thus, religious beliefs are considered as something that is intensely personal and can vary from one

³ AIR1955 Mad144

⁴ Ewanlangki Rymbai V. Jaintia Hills DC(2006) 4 SCC748, (para 26)

⁵ Bhiashya V. Janabi, (2006) 13SCC 627, Salekh Chand V. Satya Gupta (2008) 13SCC11

⁶ Bijoe Emmanuel & Ors V. State of Kerela, 1987 AIR748

⁷ Syndicate North crest v. Amselem (2004) 241 DLR

⁸ [2005] UKHL15

individual to another⁹. Each individual is at liberty to hold his own religious beliefs and customs¹⁰, however irrational they may seem to someone.

One such dispute pertains to a centuries old custom of prohibiting entry of women into the Sabarimala Temple. The law laid down by the courts in various cases¹¹ requires one to strictly and dispassionately examine the relevant history of a particular religious practice to determine its legal acceptability.

III. HISTORIC BACKGROUND OF SABARIMALA

The Sabarimala Temple, situated in the district of Pathanamthitta, Kerala is devoted to a celibate god Ayyappa also called 'Manikantan' who practices strict penance and the severest form of celibacy and derives his powers from his asceticism. Although there are numerous Ayyappa Temples in India, the Sabarimala Temple depicts Lord Ayyappa as a "Naishtika Brahmacharya" wherein his form specifically abstains contact from woman folks.

According to the legend, Lord Ayyappa himself explained how the Sabarimala pilgrimage shall be undertaken, emphasizing the importance of the 'Vratham' and what the devotees can attain by his 'darshan'. The followers of Lord Ayyappa undertake a holy pilgrimage wherein the journey to the site is preceded by a preparatory period of forty-one days. During this period, pilgrims are obliged to wear black clothes, abstain from meat and intoxicants and most importantly they must observe celibacy before and during the pilgrimage. The devotees need to strictly refrain from any interaction with women in daily life including those in the family.¹² It is believed that Lord Ayyappa himself undertook the 41-day 'Vratham' before he went to Sabarimala Temple to merge with the Dharmasastha. The whole process of the pilgrimage undertaken by a pilgrim is to replicate the journey of Lord Ayyappa and to attain Godhead or to be one with Lord Ayyappa by maintaining oneself as 'pure and unpolluted'. Therefore the pilgrims are referred to as 'Ayyappans'.

As a part of this system of spiritual discipline, it is expressly stipulated that women between the ages of 10 to 50 years should not undertake this pilgrimage. This is attributable to keep the pilgrims away

⁹ Religion, Law and the State in India, 1968 J. Duncan M. Derett

¹⁰ Madhu Kishwar v. State of Bihar: (1996) 5 SCC 125

¹¹ The Comm, Hindu Religious Endowments v. Sri LT Swamiar of Shirur Mutt, 1954 AIR 282

SS Taher Saifuddin Saheb v. SOB 1962 AIR 853 and Tilkayat Govinda Maharaj v. State of Rajasthan (1964)

¹² Radhika Sekar, The Process of Pilgrimage: The Ayyappa Cultus and Sabarimalai Yatra

from any distraction related to sex as the dominant objective of the pilgrimage is to achieve undefeated self-discipline.

In the case of *S. Mahendran v. The Secretary and others*, 1993¹³, the Kerala High Court had upheld the restriction on the entry of women inside the holy temple and stated that since the deity is in the form of a Bramchari, young women should not offer worship in the temple respecting the celibacy and austerity observed by the deity.

In 2006, another petition was filed in the Supreme Court by *Indian Young Lawyers Association* seeking entry of women between 10 to 50 years at the historic temple. On 28 September, 2018 a five-judge bench of Apex Court held the restriction over the entry of women to be unconstitutional and allowed women of all ages inside the revered shrine. The state government sought time to implement the verdict, however even after the entry was allowed a large number of aggrieved devotees of Lord Ayyappa especially women camped outside the shrine to prevent the entry of young women activists into the holy shrine.

Relationship of man with man and man with state is fixed and is regulated by the law of the land. But there is one area which is claimed by man to be his own, which is very exclusive to him and is claimed not to be interfered with either by the law or state, it is the area of his relationship with God. Even a slightest of interference or defilement in this area would violently afflict him and this is precisely why the God's own country was indeed paralyzed for months amid the violent protests led by the wronged devotees.

IV. LEGISLATIVE VALIDITY OF CUSTOM

This case is primarily based upon the proclamation by Young Lawyers Association and others which regards the time immemorial as manifestly arbitrary, discriminatory in nature and violative of Article 14,15,17,21 and 25 of the Constitution. They have disregarded the temple's custom by contemplating it as a non-essential practice and furthermore requested the court to allow the entry of woman in the Sabarimala temple.

¹³ AIR 1993 Kerala 42

V. FREEDOM TO PROFESS, PRACTICE AND MANAGE RELIGION

Indian Constitution, protects not only the freedom of religious belief, but also acts done in pursuance of a religion.¹⁴ As drawn by the Supreme Court in *Shirur Mutt* case¹⁵ the words “practice of religion” in Article 25(1) protects only the essential acts done in pursuance of a religion. Hence, the real question is whether the believers of Lord Ayyappa look upon it as an essential part of their religion or not. In *Ratilal Panachand* case¹⁶, the court observed that no outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority to restrict them in any manner. Even if it may appear irrational to persons who do not share that religious belief, the view of the believers must prevail.¹⁷

Endorsing this view¹⁸ it can be ascertained that the personal views and reactions of judges, social activists and all other non-believers are irrelevant. If the belief is conscientiously held to be essential and integral by the believers of god Ayyappa, it attracts the protection of Article 25. Moreover, if any practice in a particular temple can be traced to antiquity, and is integral to the temple, it must be taken to be an essential religious practice.

Article 26 gives complete freedom to the religious denomination to manage its own affairs in matters of religion.¹⁹ Given the sui generis identity and traditions of the temple there can be no denying the fact that devotees do in fact constitute a religious denomination for the purposes of Article 26.^{20 21}

The right of women under article 25(1) are subject to right of religious denomination to manage internal affairs under article 26(b) of the Constitution. A religious denomination enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion. And this right of management given to a religious body is a guaranteed fundamental right which no legislation can take away.^{22 23}

¹⁴ *Ratilal Panachand Gandhi vs. The State Of Bombay And others*, 1954 AIR 388,

¹⁵ *Commr, Hindu REndowments v. Sri LT Swamiar of Shirur Mutt*, 1954 AIR 282

¹⁶ *Ratilal Panachand Gandhi vs. The State Of Bombay*, 1954 AIR 388

¹⁷ H.M. Seervai, *Constitutional Law of India : A Critical Commentary*, Vol. II paragraph 12.66 at p. 1283)

¹⁸ *Bijoe Emmanuel & Ors. v. State of Kerala & Ors.*, 1987 AIR 748

¹⁹ *T. Krishnan v. Guruvayoor Devaswom*, AIR 1978 KER 68

²⁰ *Raja BKishore Deb v. State of Orissa*, AIR 1964 SC 1501

²¹ *S. Mahendran vs. The Secretary, Travancore*, 1991 AIR 1993 Ker 42

²² *Ratilal Panachand Gandhi v. The State of Bombays*, 1954 AIR 388

²³ *K.V. Narayanan Namboodiri vs State Of Kerala*, AIR 1958 Ker 160

Therefore, unless a case of blatant and unreasoned discrimination is made out, the rights of individuals are subject to the rights of a religious denomination under Article 25 and 26.

VI. NON-APPLICABILITY OF ARTICLE 14- '*DIFFERENCE IS NOT DISCRIMINATION*'

It is essential to realize that while dealing with a matter which principally involves the dispute between the rights of a community and religion, emphasis must have to be given on surgical precision and rigorous examination of evidence instead of solely approaching it with a sledgehammer in the name of gender equality or right to worship. It is pertinent to keep into view the intention for establishing time-honored custom which in the present matter was the celibate nature of Lord Ayyappa and there is no reference whatsoever to impurity of menstruation forming the basis of this religious practice.

It is crucial to understand that 'Naishtik Brahmacharya' phase requires a Brahmachari to observe the vow of celibacy without any room for departure that have been accepted in Hindu texts such as Sridhara Swami's SrimadBhagwatam which prohibits Brahmacharis from thinking about, looking at, talking, wishing or engaging in sex with a female. It is believed that after vowing for 41 days one symbolically detaches himself from all the worldly ties and natural disposition such as Kama, Krodha, Lobha, Moha, Asooya, Dhumb(Love, Anger, Lust, Competition, Boastfulness) consequently all this cannot be achieved in the presence of woman inside the temple therefore the restrictions of entry becomes even more necessary.

It is significant to appreciate that Hindu deities have physical, temporal and philosophical form. Worship of any of such phase is unique in itself and every phase cannot be worshiped by everyone. Thus, here the alleged discrimination to a class as to woman is flawed since, woman can always worship Lord Ayyappan at several other Ayyappa temples in the country or after completing the specified age. Therefore, to claim as a devotee of Lord Ayyappa and at the same time not respecting for what he stands by is undoubtedly hypocrisy.

VII. PERMISSIBLE CLASSIFICATION IS NOT FORBIDDEN

It is noteworthy that females below the age of 10 and above the age of 50 are permitted entry into the recognised temple which shows there is no absolute restriction on females. On this account

classification of intra women group by age is not based on gender and cannot be challenged as against Article 14 and 15 of Constitution.

It is well entrenched that Article 14 forbids class legislation but not reasonable classification²⁴
²⁵. Permissible classification must have to be found on an intelligible differentia that distinguishes persons or things that are grouped together from others left out of the group and such differentia must have a rational relation to the object sought to be achieved by statute in question²⁶. Therefore, classification which is based on age group distinguishes it from other groups based upon inherent physiological characteristics bearing nexus to the object of celibacy and for preserving the religious faith of the Sabarimala temple. In *Transport & Dock Workers Union V. Mumbai Port Trust*²⁷ also the court stated that it is not pragmatic for courts to insist on absolute equality when situations are diverse. Hence Article 14 protects the rights of people who are similarly placed²⁸ but where there is a reasonable basis for the classification i.e for preserving the celibate nature of god then it does not violate Article 14.

Additionally, the subject religious practice does not infringe Article 15 as there is no discrimination on the basis of sex²⁹ and therefore such blinkered approach to gender equality certainly sub serves the constitutional ethos.

VIII. ERRONEOUS RELIANCE ON ARTICLE 17

It has to be noted that reliance on Article 17 by the Young Lawyers Association is misplaced as Article 17 only applies to untouchability based on caste or religion and clearly not gender therefore to include the practice in question within the provision of untouchability will lead to ignorance of legislative history of this Article.³⁰ ³¹Hence all forms of exclusion does not tantamount to untouchability.

²⁴ D.S Nakara V. UOI (1983) 1SCC 305

²⁵ State of Gujarat V. Ambica Mills Ltd, AIR 1958SC 328

²⁶ Ram KDalmia V. Justice Tendolkar , AIR 1958 SC 538

²⁷ 15 November, 2010

²⁸ Western U.P Electric Power and Supply Co. Ltd V. State of U.P, 1970 AIR21

²⁹ Narasu, AMBhattacharjee, 'Matrimonial law and constitution'

³⁰ Jai Singh v. Union of India, AIR 1993Raj 177

³¹ Mariswamy Vs. State by Kuderu Police Station, 2000Kar LJ 234

IX. DEITY'S RIGHT UNDER ARTICLE 21

It is recognised through a plethora of judgments^{32 33} that Hindu idols are juristic entities and have a judicial status. Henceforth, Lord Ayyappa too has the character of a juristic person under Hindu law. Consequently the deity is the owner of his abode and thereby has the right to privacy under Article 21 which comprises of his right to preserve his celibate nature and put restrictions for this.

X. CONCLUSION

The customs and religious beliefs as mentioned above are peculiar to the Sabarimala Temple and have admittedly been followed since centuries. It is highlighted here that the objection to this custom and the claim of it being unconstitutional is not being raised by the worshippers of Lord Ayyappa, but by social activists who do not see the entry inside the temple as sacred or pious but merely as another achievement over misogynists. Institutions outside the devotees of Lord Ayyappa are all third parties and there is no question of them being discriminated. Contrarily, a woman devotee will never question against the denial of darshan in the Sabarimala temple because she respects the belief that her God in his specific form derives his powers from asceticism and will always want to preserve his strict celibacy by not visiting his abode.

It is unfortunate that assertions made by the devotees that the practice of classifying women on the basis of their age is an integral part of their religion were not paid heed to by the Supreme Court. The Court failed to remember that its role in matters concerning religion and religious practices under a secular Constitutional set up is only to afford protection under Article 25(1) and 26 of the Constitution to those practices which are regarded as “essential” or “integral” by the devotees, itself^{34 35}. It would be a delinquent approach if all religious customs or practices are viewed entirely through the prism of individuals as it would be disproportionate static interference into religious matters which goes against the grain of the Constitution which was never the intention of the makers. This would lead to a situation in which Courts would re-write the fundamentals of every faith as a consequence the cultural heritage and religious diversity would be disrupted and will lose its charm. Thus, the Court should reverently consider the review petition and must not combine Sabarimala temple case with varied

³² Pramatha Nath Mumck vs PradyumnaKumar Mullickin (1925)27 BOMLR 1064

³³ The Hindu Law of Religion and Charitable Trust, 2nd edition

³⁴ Riju Prasad Sharma Etc vs. State Of Assam ,Civil Apl Nos. 3276-3278

³⁵ Satikaralinga Nandan v. Rajeswara Dorai,(1908) ILR.31 M236

other religious practices having diverse history and beliefs. Therefore the court must safeguard the identity and essential religious custom of this unique temple with regard to the will of the deity in which millions of devotees bestow their religious faith by allowing temple management to observe their custom in continuity.