

## The bench has supported gender equality in the Sabarimala case

There is no “concept of a private temple.” With these words, the Chief Justice of India (CJI) Dipak Misra has set the tone for the ongoing arguments in the controversial Sabarimala case on the issue of women between 10 and 50 years of age not being allowed into the iconic temple. Echoing this, Justice DY Chandrachud who is part of the five-judge constitutional bench hearing the case said, “Every woman is also the creation of God and why should there be discrimination against them in employment or worship?”

This upturns the argument offered by religious authorities that every denomination has the right to manage its religious affairs. The prohibition of women in their fertile years into the temple is predicated on the fact that the celibate deity would be angered.

Custom and norm have no place in the law as seen in the Haji Ali Dargah case when the Bombay High Court ruled that women can enter the shrine irrespective of traditional restrictions. The arguments so far are in favour of the fundamental rights of women, the right to equality and the right to freedom of worship. The observations send a strong signal to political parties who have been quick to weigh in on the issue. Notable is the ruling CPI(M) which first took a progressive stand only to backtrack for political reasons. The courts however have consistently supported the rights of women saying that tradition cannot take precedence over the Constitution and that such discrimination flies in the face of gender equality. It was the CJI himself who had earlier asked, “Can a biological phenomenon be ground for discrimination?” This will also hopefully send the message to other religious authorities that places of worship cannot discriminate against women and people of different castes on the grounds that such practices are sanctioned in the scriptures.

The CJI’s sentiments are similar to those of BR Ambedkar who said that public temples, like public roads and schools are meant for the public with no discrimination on any grounds. The right of the religious authority under Article 26(b) cannot take precedence over a woman’s religious freedom under Article 25(1). It has long surprised people that a state as educated and supposedly enlightened as Kerala still clung onto the outdated notions of feminine purity. In fact, many women were opposed to opening the temple to women between the ages of 10 to 50. Now gender equality seems set to go up a notch if the court’s initial observations are any indication.

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