

REVIEW AND REFERENCE: ON SABARIMALA REVIEW PLEAS

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

Ordinarily, a reference to a seven-judge Bench for an authoritative pronouncement on the entire gamut of issues arising from Article 25 and 26 of the Constitution, which protect the religious freedoms of individuals and denominations, would have been welcome. However, the order of a Constitution Bench in making such a reference, while delivering the verdict on petitions seeking review of last year's judgment allowing women in the 10-50 age group to offer worship at the Sabarimala temple, is problematic. The order, passed by a narrow majority of three judges, with two dissenting, means that the review petition, as well as fresh writ petitions, on the issue will be kept pending until there is clarity on the nature of religious rights. The majority, headed by Chief Justice Ranjan Gogoi, held that the petitions against the 2018 verdict, which laid down that the practice of keeping women of ovulating age out of the shrine is discriminatory and violative of the right to equality, have revived the question whether an individual's right to worship can outweigh a religious group's right to manage the affairs of its religion. An issue resolved by a 4:1 majority is sought to be reconsidered by formulating fresh questions on the interplay between religious freedom and other fundamental rights, especially the right to equality.

The majority anticipates that similar basic questions on the conflict between individual freedom and constitutionally-protected religious beliefs may arise in other situations too. It cites pending petitions concerning the entry of women into a *dargah*, the entry of Parsi women married to non-Parsis into an *agryari*, and the practice of female genital mutilation among Dawoodi Bohras. It is shocking that the Bench includes the abhorrent practice of female genital mutilation in this genre. It is well-established that freedom of religion, under Article 25, is subject to public order, morality and health, and it may not be difficult for any court to test the validity of the practice against the restriction on grounds of a woman's health, and this may not require an exalted panel of seven judges. In keeping the petitions on Sabarimala pending further, the court has displayed a disquieting inability to stand by its previous transformative judgment. Further, it may lead to a repeat of the unsavoury incidents of last year when religious groups and political activists blocked and attacked women devotees. Justices Fali Nariman and D.Y. Chandrachud, in their dissent, rightly call out such transgressions against the rule of law and, while rejecting the need for review, want all authorities to remember their constitutional duty to work in aid of the Supreme Court and the law laid down by it. An omnibus reconsideration of all issues related to religious freedom was not the way out of the serious issues posed by the Sabarimala judgment.

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