

FREEDOM TO PRAY: ON SABARIMALA VERDICT

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The Constitution protects religious freedom in two ways. It protects an individual's right to profess, practise and propagate a religion, and it also assures similar protection to every religious denomination to manage its own affairs. The legal challenge to the exclusion of women in the 10-50 age group from the Sabarimala temple in Kerala represented a conflict between the group rights of the temple authorities in enforcing the presiding deity's strict celibate status and the individual rights of women to offer worship there. The Supreme Court's ruling, by a 4:1 majority, that the exclusionary practice violates the rights of women devotees establishes the legal principle that individual freedom prevails over purported group rights, even in matters of religion. The three concurring opinions that form the majority have demolished the principal defences of the practice — that Sabarimala devotees have constitutionally protected denominational rights, that they are entitled to prevent the entry of women to preserve the strict celibate nature of the deity, and that allowing women would interfere with an essential religious practice. The majority held that devotees of Lord Ayyappa do not constitute a separate religious denomination and that the prohibition on women is not an essential part of Hindu religion. In a dissenting opinion, Justice Indu Malhotra chose not to review the religious practice on the touchstone of gender equality or individual freedom. Her view that the court "cannot impose its morality or rationality with respect to the form of worship of a deity" accorded greater importance to the idea of religious freedom as being mainly the preserve of an institution rather than an individual's right.

Beyond the legality of the practice, which could have been addressed solely as an issue of discrimination or a tussle between two aspects of religious freedom, the court has also sought to grapple with the stigmatisation of women devotees based on a medieval view of menstruation as symbolising impurity and pollution. The argument that the practice is justified because women of menstruating age would not be able to observe the 41-day period of abstinence before making a pilgrimage failed to impress the judges. To Chief Justice Dipak Misra, any rule based on segregation of women pertaining to biological characteristics is indefensible and unconstitutional. Devotion cannot be subjected to the stereotypes of gender. Justice D.Y. Chandrachud said stigma built around traditional notions of impurity has no place in the constitutional order, and exclusion based on the notion of impurity is a form of untouchability. Justice Rohinton F. Nariman said the fundamental rights claimed by worshippers based on 'custom and usage' must yield to the fundamental right of women to practise religion. The decision reaffirms the Constitution's transformative character and derives strength from the centrality it accords to fundamental rights.

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