

## OPENING THE GATES

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The Supreme Court, in a 4:1 judgment, has ruled that women of all ages should be allowed the visit the Sabarimala shrine and struck down the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules 1965, which prohibited entry of women aged between 10 and 50 in Sabarimala, as unconstitutional. The majority also found that the exclusionary practice at the Sabarimala shrine did not pass the essential practices doctrine test or the principle of constitutional morality; the court also ruled that Ayyappa devotees will not constitute a separate religious denomination. It was held that “the heart of the matter lies in the ability of the Constitution to assert that the exclusion of women from worship is incompatible with dignity, destructive of liberty and a denial of the equality of all human beings. These constitutional values stand above everything else as a principle which brooks no exceptions, even when confronted with a claim of religious belief”.

Hence, it was concluded that “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” and “exclusionary practices are contrary to constitutional morality”.

The verdict is in with the spirit of the times and expands the rights and freedoms guaranteed in the Constitution. However, the powerful majority of four should not be read as a sanction to ignore Justice [Indu Malhotra](#)'s lone dissenting view, which asks for a nuanced reading of constitutional rights and morality. It is ironic that the dissent on a matter projected as an issue of the rights and freedoms of women has come from a woman judge itself. Justice Malhotra has problematised the manner in which matters of faith, tradition and custom are tested against the rationality embedded in the Constitution. “The equality doctrine enshrined under Article 14 does not override the Fundamental Right guaranteed by Article 25 to every individual to freely profess, practise and propagate their faith, in accordance with the tenets of their religion,” writes Justice Malhotra, who had recently ruled against Section 377 and the adultery law. Accordingly, “constitutional morality in a secular polity would imply the harmonisation of the fundamental rights, which include the right of every individual, religious denomination, or sect, to practise their faith and belief in accordance with the tenets of their religion, irrespective of whether the practise is rational or logical”.

At a time when the Supreme Court, by its own admission, is underlining the very importance of constitutional morality, Justice Malhotra's words are a cautionary reminder that it may need more than a judicial pronouncement to enable social reform.

**END**

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