

# BAN AN 'ESSENTIAL PRACTICE', SAYS DISSENTING JUDGE

Relevant for: Government Policies & Welfare Schemes | Topic: Welfare of Women - Schemes & their performance; Mechanisms, Laws, Institutions & Bodies

Judges should not impose their personal views, morality or rationality with respect to the form of worship of a deity, Justice Indu Malhotra on Friday wrote in her judgment, dissenting with the majority verdict to open up the Sabarimala temple for women of all age groups.

“A pluralistic society and secular polity would reflect that the followers of various sects have the freedom to practise their faith in accordance with the tenets of their religion. It is irrelevant whether the practice is rational or logical. Notions of rationality cannot be invoked in matters of religion by courts,” Justice Malhotra pronounced in her judgment, dismissing the appeals challenging the centuries-old ban in the temple.

“The manifestation is in the form of a *Naishtik Brahmachari*. The belief in a deity, and the form in which he has manifested himself is a fundamental right protected by Article 25(1) of the Constitution,” she held.

She said the prohibition in vogue for time immemorial qualified to be an “essential practice”. A religion can lay down a code of ethics, and also prescribe rituals, observances, ceremonies and modes of worship.

Imposing the court’s morality on a religion would negate the freedom to practise one’s religion according to one’s faith and beliefs. It would amount to rationalising religion, faith and beliefs, which is outside the ken of courts, Justice Malhotra observed.

## Diverse practices

“India is a country comprising diverse religions, creeds, sects each of which have their faiths, beliefs and distinctive practices. Constitutional morality in a secular polity would comprehend the freedom of every individual, group, sect, or denomination to practise their religion in accordance with their beliefs and practices,” the dissenting judge said.

Justice Malhotra upheld the status of Ayyappa devotees as a separate religious denomination. She banked on the notifications issued by the Travancore Devaswom Board in 1955 and 1956, which refer to the devotees as “Ayyappans”.

## Distinct creed

“The worshippers of Lord Ayyappa together constitute a religious denomination, or sect thereof, as the case maybe, follow a common faith, and have common beliefs and practices,” Justice Malhotra observed.

The worshippers constitute a religious denomination, or sect thereof, as the case maybe, following the “Ayyappan Dharma”.

They are designated by a distinctive name wherein all male devotees are called “Ayyappans”; all female devotees below the age of 10 and above the age of 50 are called “Malikapurnams”. A pilgrim on his maiden trip is called a “Kanni Ayyappan”. The devotees are referred to as

“Ayyappa Swamis”. A devotee has to observe the “vratham” and follow a code of conduct, before embarking upon the “Pathinettu Padikal” to enter the temple.

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