

JUDICIAL INTERFERENCES ON RELIGIOUS FREEDOMS: SABARIMALA DECISION AND ITS FUTURE IMPLICATIONS

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ABSTRACT

Hailed for its revolutionary stance on women's entry into the temple, the paper focuses on the fine balance between essential religious practises and universal tenets of public and constitutional morality. It does so by exploring the complex web of constitutional dynamics. The research explores the Indian top court's interpretation of the essential religious practise theory, drawing comparisons with the Sabarimala ruling. Examining the fine line that separates public morality from constitutional morality, it highlights the developing body of legal precedent regarding "non-discrimination" as defined by the Constitution. Additionally, the article makes the case that the Sabarimala ruling has broadened the application of Article 17, bringing the debate over untouchability to the forefront of judicial theory. This expansion empowers constitutional courts to issue criminal directives, fortifying the prohibition on untouchability and potentially dismantling various discriminatory practices. This extension strengthens the ban on untouchability and may lead to the abolition of other discriminatory practises by enabling constitutional courts to issue criminal directives.

The authors in this paper discussed how religious freedoms towards a particular gender being discriminated from centuries. Further, the research paper throws light on the role of judiciary in protecting constitutional rights of its citizens with reference to Sabarimala ruling and its impact on essential religious practises.

KEYWORDS: *Religious Practices, Judiciary, Constitution, Freedoms, Rights.*

1. INTRODUCTION

Gender inequality in India is a deep-rooted issue that stems from long-standing discriminatory practices. The theological understanding of religious beliefs is complex and often marred by controversial and questionable customs. Since independence, several controversies surrounding customary religious practices have raised questions about gender discrimination. Religious activities are sometimes seen as perpetuating patriarchal values that undermine the fundamental principles of faith, gender equality, and human rights. However, it is crucial to remember that faith and religion should never be used to justify prejudice. The male-dominated perspective is at the heart of societal attitudes that devalue the status of women in both social and religious domains.

The Sabarimala ruling, which propelled positivist jurisprudence that enriches the wheels of social integration, has once again proved that the judiciary's role is pivotal in addressing the historical discrimination against women. The judicial philosophy expressed in this ruling highlights the relationship between the State and its subjects in the *Social Contract Theory* perspective, where the State has a constitutional duty to protect the religious rights of all.

The freedom of religion is fundamental, inalienable, and represents the integrity of the Constitution.¹

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The Social Contract by Rousseau opens with one of his most famous quotes, “Man was born free, and he is everywhere in chains”. This statement serves as the link that humans are inherently free in their natural State. Still, societal practices have made individual freedoms vulnerable and have replaced that freedom with inequality. The Social Contract tackles the central ideological issue concerning how individuals will be able to coexist despite being the objects of other people’s persuasion and power. According to Rousseau, we may accomplish this by surrendering our individual preferences in favour of the communal or universal preference, which is established via consent from other free and equal people.² It demonstrates how evolution has created all men alike. Consequently, nobody has an inherent liberty to use the teachings of religion to control individuals or to prevent members of a specific sex or class from practising their core liberties.

The pertinent sections of the Constitution which makes it abundantly evident that everyone has the right to freedom of conscience is outlined under Article 25.³ Additionally, it gives the State the authority to enact laws controlling religious practices to promote change.

1.1 OBJECTIVES OF STUDY

- Investigate and analyze the legal framework and reasoning employed by the Indian Supreme Court in its interpretation of essential religious practices, particularly in the context of women's entry into temples.
- Examine how the court’s stance on essential religious practices aligns with or challenges universal tenets of public and constitutional morality.
- Conduct a comparative analysis between the Sabarimala ruling and previous judgments to identify key similarities and differences in the court's approach to issues related to religious freedom, discrimination, and essential religious practices.
- Analyze the legal implications of this distinction and its impact on the broader landscape of constitutional rights and freedoms, particularly in the context of religious practices.
- Explore the potential consequences of this expansion, particularly in empowering constitutional courts to issue criminal directives and strengthen the prohibition on untouchability.

¹ Ayesha Jamal, *Sabarimala Verdict: A Watershed Moment in the History of Affirmative Action*, THE LEAFLET (Oct. 30, 2023) (Nov. 16, 2023, 11:00 AM), <https://theleaflet.in/sabarimala-verdict-a-watershed-moment-in-the-history-of-affirmative-action/>.

² G.D.H. COLE, *THE SOCIAL CONTRACT: JEAN-JACQUES ROUSSEAU* (Unabridged edition, 2007).

³ INDIA CONST. art. 25.

2. RESEARCH METHODOLOGY

To identify and analyze the criticisms of Supreme Court practices on Essential Religious Doctrine and constitutional rights in context of religious practices a quantitative research methodology has been deployed by the authors by conducting a doctrinal study through constitutional law books, constitution law judgments, scholarly articles, research papers from reputed journals and articles on the internet related to religious rights. News articles in both digital and print media were additionally studied for a contemporary viewpoint on the legal issue. The current research question demanded a thorough theoretical analysis of the commentaries and differing legal opinions on the doctrine for which the doctrinal and quantitative study method was found to be best suited to highlight valid and juxtaposing arguments.

3. RELIGIOUS RIGHTS AND GENDER EQUALITY

The Constitution of India does not stand for any discrimination. It provides religious freedoms for all without restrictions under Articles 25⁴ and 26⁵ of the Constitution. The judicial interpretation of religious practices stands with constitutional morality instead of popular morality. The Court cannot question the faith, but practices can be questioned if they violate a person's faith or belief, including intrinsic constitutional rights. Conventionally, the judiciary stands with the religious rights of the women in an affirmative way who have been subjugated systematically by the male-dominated society. It is a well-settled jurisprudence that any law that violates fundamental rights is invalid as far as Article 13⁶ of the Constitution is concerned. The country's Constitutional Courts have the power to overrule customary or religious practices that are ipso facto discriminatory towards any gender. The question arises whether personal rights come under the purview of 'law' discussed in Article 13 of the Constitution.⁷ It is imperative to note the supremacy of fundamental rights over personal laws has been upheld in various cases by the Supreme Court of India, like Triple Talaq, LGBTQIA++, etc.

*On the Sabarimala issue*⁸ again, the Supreme Court has taken a stand to uphold the right to equality and religious freedoms for all, irrespective of segregation.

The Supreme Court's decision in the Sabarimala case paved the way for social integration and strengthened positivist jurisprudence elucidated by

⁴ *Id.*

⁵ INDIA CONST. art. 26.

⁶ INDIA CONST. art. 13.

⁷ *Id.*

⁸ Indian Young Lawyers Assn. (Sabarimala Temple-5J.) v. State of Kerala, (2019) 11 S.C.C. 1 (India).

famous jurists Jeremy Bentham and Austin. The conventional understanding of religious doctrines cannot be used to justify discriminatory practices based on a person's biological State. The purpose of this legal dispute is to compel the judiciary to intervene and prohibit dogmatic actions motivated by customary religious practices. It is unconstitutional to restrict women's entry to public places of worship based solely on their biological condition. These actions contradict the essence of the Indian Constitution's Articles 14,⁹ 17,¹⁰ 21,¹¹ 25,¹² and 26,¹³ which uphold the right to equality and other associated intrinsic rights. A Constitution Bench ruled that the prohibition on women entering the Sabarimala Temple should be removed as it violated the fundamental right to freedom of religion, as guaranteed by the Constitution, regardless of their age. The clause in the state statute that forbade women from entering was ruled to be unlawful and discriminatory. The shrine's administration argues that keeping women out of religious organisation is frequently seen as an "essential religious practise" that is safeguarded by Article 25 of the Constitution.¹⁴ Nonetheless, the right of a woman to declare her faith and to engage in spiritual pursuits is violated by this practise. Consequently, when it comes to barring women from participating in such activities, a religious organisation cannot argue that it has the authority to conduct its own business in issues of faith. It is critical to acknowledge that this restriction impedes the advancement of gender equality within religious institutions in addition to being a violation of women's rights.

The issue of preventing women from visiting places of worship has received a lot of attention in the modern era. Although these practises have been in place for decades, there have been many petitions filed in both the High and Supreme Courts as a result of recent national movements that raised awareness of these issues. In the pursuit of social reforms and equality, courts have taken a proactive stance in upholding women's rights pertaining to equality, freedom of speech and expression, and the right to freedom of religion. The Bombay High Court, for instance, delivered a progressive judgment on the prohibition of women in the inner sanctum of the Shani Shingnapur temple, asserting that women have a fundamental right to enter all places of worship where men are already allowed.¹⁵ The legal landscape in India has witnessed debates around the Maharashtra Hindu Places of Public Worship Act, 1956,¹⁶ which restricts

⁹ INDIA CONST. art. 14.

¹⁰ INDIA CONST. art. 17.

¹¹ INDIA CONST. art. 21.

¹² INDIA CONST., *supra* note 3.

¹³ INDIA CONST., *supra* note 5.

¹⁴ Indian Young Lawyers Assn., *supra* note 8.

¹⁵ Sarpanch Balasaheb Venunath Bankar v. State of Maharashtra, (2018) S.C.C. OnLine Bom 5128 (India).

¹⁶ Maharashtra Hindu Places of Public Worship Act, 1956, No. 31, Acts of Parliament, 1956 (India).

certain sections or classes of the Hindu population from entering religious spaces.

Taboos related to menstruation and gender-specific entries for women have further fuelled the discourse. Notably, in the case of *Indian Young Lawyer Association v. the State of Kerala*,¹⁷ the Supreme Court lifted the ban on women of menstruating age entering the Sabrimala temple. The court, adopting a feminist perspective, deemed the practice unconstitutional, triggering a robust debate on the prioritization of fundamental rights versus religious practices.

4. RELIGIOUS RIGHTS AND SUPREME COURT

4.1 REFORMATION VS RIGIDITY

The story of Lord Ayyappa's birth and the establishment of the Sabrimala temple adds depth to the discussion. Born from the union of two gods, Vishnu and Shiva, Ayyappa is believed to possess mystic powers. The monarch who raised Ayyappa faced a dilemma when the childless couple later had a biological son. The narrative involves a clever plan by the queen and a minister to ensure the biological son's inheritance. Ayyappa's subsequent journey, including obtaining tiger's milk, highlights his mystical nature. The king, realizing Ayyappa's divine significance, decides to construct a temple dedicated to him, resulting in the Sabrimala temple's establishment.¹⁸

Feminist arguments against the exclusion of women from the Sabrimala temple revolve around the violation of the right to equality under Article 14 of the Indian Constitution.¹⁹ The practice is seen as arbitrary, lacking a constitutional objective, and contrary to Article 15(1), which prohibits discrimination based on sex.²⁰ The tension between religion and equality is evident in the debate surrounding the Act of 1965, with Rule 3(b) prohibiting women's entry held violative of fundamental rights.²¹ The essential practices doctrine, explored in the *Qureshi* case,²² becomes a critical element in this discourse, allowing the court to determine if a practice is integral to a religion and, therefore, protected by constitutional provisions.

Religious arguments present a different perspective, contending that Lord Ayyappa's worshippers do not form a single religious group with a common faith. Different practises can be found at every temple, however this does not mean that a particular religion is defined by its practises. Advocates contend that a specified age restriction is in place, making the ban on women entering

¹⁷ (2019) 11 S.C.C. 1(India).

¹⁸ Rajnandini Singh, "Sabrimala - A Conundrum between Religion and Feminism", 1.4 JCLJ 413, (2021).

¹⁹ INDIA CONST., *supra* note 9.

²⁰ INDIA CONST. art. 15, cl. 1.

²¹ (2019), *supra* note 17.

²² Mohd. Hanif Quareshi v. State of Bihar, (1957) S.C.C. OnLine S.C. 17 (India).

the Sabrimala temple somewhat less severe.²³ Emphasis is placed on the washing procedure, the demanding 41-day vruthum period, and the need of preserving Lord Ayyappa's unique form throughout worship. The argument highlights the significance of maintaining particular forms of deities in Hindu devotion and is extended to other temples, such the Kamakhya temple, where women are prohibited from entering during menstruation.

The argument continues to centre on the dilemma of religion and equality, with court rulings attempting to achieve a precarious balance between preserving constitutional rights and honouring the diversity of religious practises. In addition, the cases of *Venkaatarmana Devaru v. State of Mysore*²⁴ and *Tilkayat Sri Govindlalji Maharaj v. State of Rajasthan*²⁵ highlight the significance of courts in interpreting fundamental religious practises and guaranteeing a nuanced understanding of the interaction between faith and fundamental rights.

The long-standing religious practise of limiting women's admittance came under investigation in the Sabrimala temple case. Even while these practises have long been significant, recent rulings contesting them have sparked questions about the careful balancing act that must be done between equality and religious freedom. The unique ways in which different sects and religious worship gods and goddesses reflect religious sentiments protected under the freedom of religion.²⁶

The Supreme Court's assertive approach in this issue, according to critics, ignores the necessary balance between equality and faith. They worry that these rulings may open the door to contesting and outlawing other traditional religious practises, which would result in drawn-out judicial disputes. This strategy is perceived as undervaluing the freedom of religion in favour of equality, ignoring the variety of traditions and cultures that make up a nation as religiously diverse as India.

Although some view the ruling as reformative, it ignores the deeply held beliefs and practises that religious communities hold dear. Those who disregard traditional customs and show insensitivity towards the sentiments of believers are specifically targeted for criticism. The argument focuses on how India's centuries-old customs and culture define its identity and how little law should meddle with religious affairs, particularly when there isn't a serious infringement of human rights.

²³ INDIA CONST., *supra* note 9.

²⁴ State of A.P. v. Yelamati Venkaataraju, (2001) 10 S.C.C. 728 (India).

²⁵ Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan, 1963 S.C.C. Online S.C. 52 (India).

²⁶ Saumya Mishra *Constitutionality of Personal Laws* 2.3 JCLJ 584 (2022).

It is believed that the Supreme Court's ruling ignores the unique symbols and customs connected to different religions. Age and gender-based limitations are also in place at several Indian temples, including the Padmanabhaswamy Temple in Kerala, the Patbausi Satra in Assam, and the Ranakpur Temple in Rajasthan. These limitations are frequently based on convictions about preserving chastity or honouring the attributes of the god being worshipped.

Critics contend that the adored form of God, known as naishtika brahmachari, which encourages celibacy, makes the Sabarimala instance unique. They argue that the limitation is founded on the purity connected to the worship style rather than being discriminatory. On the other hand, the court is encouraged to address discrimination against members of other religious sects in specific mosques and temples, as well as arbitrary prohibitions on certain groups, such as Shudras, in certain temples, which violate Article 17.²⁷

The judiciary is urged to adopt a more impartial stance that prioritises protecting fundamental rights without endangering the nation's rich cultural and religious heritage. Extreme actions raise the possibility of negative long-term impacts on the foundations of the nation. The Indian judiciary continues to face a difficult task in maintaining a delicate balance between protecting fundamental rights and honouring various religious practises.

4.2 ESSENTIAL RELIGIOUS PRACTICES

The "Essential Religious Practise Test," a tool designed to safeguard rituals deemed essential to a religion, has shaped the Supreme Court of India's stance on religious practises in India. Using this approach, the court can examine disputed practises to see if they meet the requirements of being considered vital to the religion, regardless of the practitioners' beliefs.²⁸ When it came to examples like Lakshmindra Swamiar (1954), where elements like food offerings, ceremonies, and the recitation of sacred texts were acknowledged as religious practises, the term "essential" was initially understood in accordance with Dr. Ambedkar's vision.²⁹

By a majority vote of 4:1 on September 28, 2018, the Supreme Court struck down the prohibition on women and girls between the ages of 10 and 50 from visiting the Ayyappa shrine in Kerala. Justice Indu Malhotra's dissent, nevertheless, brought forth important issues. She questioned the petition's maintainability, highlighting the fact that the claimants were not Sabarimala Temple followers, a need for a legitimate Article 32 petition. Furthermore, she warned against allowing external entities to challenge religious practices, as it could endanger religious minorities.

²⁷ INDIA CONST., *supra* note 11.

²⁸ Yuvraj Pratap Singh *Essential Religious Practices (ERP)* 2.4 JCLJ 1634 (2022).

²⁹ Vibhuti Jaswal and Aayush Raj, *Constitutional Morality in India: A Brief Analysis and Contextualising its (De) Limitations* 4 SML L Rev 113 (2021).

Justice Malhotra's dissent delves into the concept of cultural dissent, asserting that challenges to norms imposed by cultural gatekeepers must come directly from marginalized groups rather than external authorities. She also emphasizes constitutional pluralism, arguing that the court should only intervene when religious practices cause real social harm, not based on grounds like immorality, irrationality, or unequal treatment.

Justice Chandrachud, in his judgment, questions the established exclusion of women from Sabarimala, asserting that it lacks the status of an essential religious practice. He critiques the argument of Lord Ayyappa's celibacy, highlighting that it unfairly burdens women with a man's celibacy. He introduces the concept of a patriarchal order, suggesting that the exclusion of women is not isolated but reflects broader societal structures striving to subordinate women.

Addressing the issue of untouchability, Justice Chandrachud rejects Malhotra J.'s stance, asserting that Article 17 is not limited to caste-based untouchability. He argues that exclusion based on menstruation falls under Article 17, as it is rooted in concepts of purity and pollution, akin to the caste system's core. Chandrachud J. recognizes the structural nature of prejudice and inequality, emphasizing the need to combat it constitutionally. He magnifies the specific occurrence of exclusion from temple worship, illustrating how it is nested in a larger social structure characterized by hierarchy and subordination.

The Sabarimala case reflects a complex interplay between religious freedom and equality. The court's essential religious practice test, while seeking to protect fundamental practices, has led to a nuanced examination of cultural dissent, maintainability, and constitutional pluralism. The dissenting opinions, particularly those of Justice Malhotra and Justice Chandrachud, highlight the broader implications of the case on constitutional values such as justice, liberty, equality, and fraternity. The dialogue between constitutional freedoms, as expressed in these judgments, underscores the ongoing challenge of balancing religious rights with the imperative to combat historical discrimination and structural oppression.

4.3 LARGER ISSUE- CONSTITUTIONAL MORALITY

Dr. B.R. Ambedkar introduced the concept of "constitutional morality" during his speech on the Draft Constitution in 1948. He quoted George Grote to emphasize the need for cultivating this morality, distinct from natural sentiments, as a means of ensuring reverence for constitutional forms while allowing open criticism and censure of authorities. Ambedkar envisioned constitutional morality as crucial for the effective functioning of administration within the constitutional framework.

Ambedkar argued that any extra-constitutional political action, including violent revolutions or peaceful satyagraha, went against constitutional morality and termed them as “the grammar of anarchy.” He stressed the importance of an efficient administration and expressed skepticism about entrusting the form of administration entirely to the Legislature, raising concerns about excessive authority.

Crucially, Ambedkar’s constitutional morality was not intended to drive social change directly but to provide a legal framework for resolving disputes and disagreements. It focused on conditions that disputing parties must meet for a determination rather than dictating specific outcomes.

Although the term “constitutional morality” is not explicitly defined in the Constitution, judgments, such as the Sabarimala case, have shed light on its meaning. The court in the Sabarimala case emphasized that when fundamental rights are violated, the term "morality" implies constitutional morality. This doctrine was exercised in contrast to the doctrine of essentiality, criticized for judicial overreach in deciding essential and non-essential religious practices.

Constitutional morality becomes imperative when societal opinions clash with individual Fundamental Rights, and the judiciary steps in to safeguard these rights when the state fails to do so through enacted laws. Fundamental Rights, conceived in a liberal spirit, strike a balance between individual freedom and social control. Judicial activism, as seen in cases like *Maneka Gandhi v. Union of India*,³⁰ plays a crucial role in upholding these rights and ensuring the balance remains reasonable.

In the context of Article 21, which protects life and liberty, the harm principle is invoked. This principle asserts that individual liberty can only be restrained if its exercise causes harm to others, excluding moralistic and paternalistic reasons. The decriminalization of homosexuality exemplifies the application of constitutional morality, where actions that do not harm others cannot be penalized based on moralistic principles.

Constitutional morality is more than a utopian ideal; it is a tangible goal reflected in the inalienable rights granted by the Constitution. The Sabarimala case exemplifies the exercise of constitutional morality, challenging societal views and advancing progressive ideals. Despite accusations of judicial overreach, the decision sets a precedent for addressing discriminatory religious customs in the future.

The ongoing interplay between social morality and constitutional morality contributes to productive governance. The tussle between these moralities signifies a dynamic process where constitutional ideals continue to guide the nation even in the face of societal opposition.

³⁰ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248(India).

5. RECENT PRACTICE IN RELIGIOUS MATTERS

The Karnataka High Court's decision on March 15, 2022, upholding the government order prohibiting pre-university students from wearing headscarves (hijabs) to class has sparked debates on constitutional rights and religious practices.³¹ The petitioners in *Reshma v. State of Karnataka*³² contended that the right to practise one's religion and to wear a hijab are guaranteed by Article 25 of the Constitution, which upholds the right to an individual's free conscience. The court saw the hijab as a way to gain access to public places after analysing verses from the Quran and coming to the conclusion that it is not a fundamentally religious or Islamic practise.

Additionally, the petitioners argued that the decision went against Article 19(1) (a) on the grounds that dress choice is a form of expression. They further claimed that requiring students to take off their hijabs in order to enter schools violated their right to an education by discriminating against women based on their gender. The Karnataka High Court's decision is currently under appeal before the Supreme Court.

The court's interpretation of constitutional provisions raises questions about the intersection of freedom of expression, privacy, and religious rights. While the court acknowledged that clothing can constitute symbolic expression protected under Article 19(1) (a),³³ it emphasized the need for specific details on how not wearing a hijab would offend an individual's conscience. The right to privacy, particularly decisional freedom, was also considered in the context of religious freedom and freedom of expression.

In addressing dress rules and uniforms, the court referred to the proportionality framework, emphasizing reasonable accommodation. This framework evaluates whether a requested accommodation can coexist with the uniform without undermining the larger public goal, such as education. The claim for reasonable accommodation in the hijab case focused on the possibility of wearing it alongside the uniform without compromising educational objectives.

The Essential Religious Practices (ERP) test, commonly used in such cases, has faced criticism for its arbitrariness and inconsistency. Questions arise about whether a religious activity deemed essential would be exempt from legal restrictions, limiting the constitutional right to freedom of religion. The subjectivity of opinions in ERP cases, as noted by Justice D.Y. Chandrachud,

³¹ Harsheen Kaur Luthra *The Row of Hijab & Quest for Justice* 3.1 JCLJ 2018, (2022).

³² *Reshma Sultana v. State of Karnataka*, 2021 S.C.C. OnLine S.C. 3248 (India).

³³ INDIA CONST. art. 19, cl. 1.

raises concerns about judges donning a theological mantle without the necessary competence to determine essential religious practices.

Recent cases, including the 2017 ruling on triple talaq,³⁴ have highlighted the need for a more nuanced approach that goes beyond the ERP test. The arbitrariness of the test has led to calls for a new criterion that declares practices unconstitutional if they violate core constitutional principles, rather than merely categorizing them as non-essential. Also, in the hijab case in Karnataka brings to the forefront complex issues surrounding religious practices, individual freedoms, and constitutional rights. The ongoing legal debate emphasizes the need for a more nuanced and constitutionally grounded approach to strike a balance between religious liberties and broader constitutional principles. The case highlights the evolving nature of jurisprudence in India as it navigates the diverse landscape of religious practices and individual rights.³⁵

When we analyse the intent of the framers of the Constitution on religious freedoms for all in a democratic society, the critical issue that arises is whether Personal Laws are 'Laws' within the meaning of Article 13 of the Constitution. If so, can personal Laws be challenged if they violate fundamental rights? Following independence, the Indian Supreme Court interpreted the Constitution in accordance with textualist principles. Some of the Apex Court's early decisions reflected the court's typical textualist interpretation of the Constitution. The Supreme Court has modified its customary narrow and textual interpretation method, despite protest from legal professors and subsequently.³⁶

The *State of Bombay v. Narasu Appa Mali*,³⁷ a landmark decision that outlines the scope to which personal legislation may be regulated by basic liberty and makes the writers of the Constitution's view on this matter clear, provides a clear understanding of the original literary technique. It also calls for consideration if personal laws are under the Constitution's definition of "law" as stated in Article 13. In this instance, the Court interpreted Personal Laws under Article 13 of the Constitution by applying a conventional literary interpretation. It was decided that the phrase "laws in force" as used in Article 13(1) of the Constitution does not cover "personal law." Addressing the inclusion of "custom or usage" in the definition of "laws in force" in Article 13 (1) and its applicability in tests for violating basic rights, Justices M C Chagla and Gajendragadkar disagreed. Justice Gajendragadka disputed with Justice Chagla's opinion that "custom or usage" should be included. He adopted an

³⁴ Shayara Bano v. Union of India, (2017) 9 S.C.C. 1(India).

³⁵ Gautam Bhatia, *While Upholding Hijab Ban, Karnataka HC Misconstrued Several Constitutional Principles*, THE WIRE, (February 11, 2023) (Nov. 19, 2023, 12:10 PM), <https://thewire.in/law/karnataka-high-court-order-hijab-ban-constitutional-principles>.

³⁶ *State of Bombay v. Narasu Appa Mali* A.I.R. 1952 Bom 84, (1951) 53 BOMLR 779, ILR 1951 Bom 775 (India).

³⁷ *State of Bombay v. Narasu Appa Mali*, 1951 S.C.C. OnLine Bom 72 (Overruled).

originalist and textual approach, arguing that “custom or usage” does not fall under the definition of “laws in force” in Article 13(1).³⁸ The founders of the Constitution intended for personal laws to be outside the purview of Part III, as Justice Gajendragadkar pointed out in his ruling. It would be incorrect to argue that this ruling is still applicable even though it hasn’t been contested because the Honourable Supreme Court has ruled that some cultural or conventional practises violate the basic liberties and are unconstitutional.

The ruling in *Maharshi Avdhesh v. Union of India*³⁹ by the Supreme Court recognised that basic rights cannot be used as grounds for challenging even regulated personal law. This instance demonstrates how the courts have used a strict reading of the law. But since then, the judiciary’s position on fundamental rights and personal law has evolved. The Court put the Muslim Women (Protection of Rights on Divorce) Act, 1986 to scrutiny using fundamental rights in *Daniel Latifi & Anr. v. Union of India*.⁴⁰

In *Shayara Bano v. Union of India*,⁴¹ the Court rendered a significant ruling that abolished the practise of instant triple Talaq. Because triple Talaq (talaq-e-biddat) violates Articles 14, 15, 21, and 25 of the Constitution, the Supreme Court ruled that the practise is illegal. The Muslim Personal Board argued that because these practises are fundamental to Islam and are shielded by Article 25 of the Constitution, uncodified Muslim personal law is not susceptible to constitutional judicial examination. However, the Court dismissed this position. “It is clear that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation to save it,” the Bench, presided over by Justices R.F. Nariman and U.U. Lalit, held.⁴² As a result, it must be decided that this type of talaq violates the basic right guaranteed by Article 14 of the Indian Constitution.

The Transgender Persons Act, 2019, came into existence following the *Navtej Singh Johar*⁴³ verdict, which defines transgender persons as individuals who do not identify with the gender assigned to them at birth. It also acknowledges that their sexual orientation is independent of their gender identity. The act is all-encompassing, recognizing the LGBTQIA+ community as a whole, who are now referred to as ‘transgender’ under its umbrella. The petitioners in this legal battle expressed their democratic right to protest, contending that using a narrow interpretation of religious texts to justify discriminatory religious and customary practices based on biological factors is

³⁸ *Ibid.*

³⁹ *Maharshi Avadhesh v. Union of India*, 1994 Supp (1) SCC 713 (India)..

⁴⁰ *Daniel Latifi v. Union of India*, (2001) 7 SCC 740 (India).

⁴¹ *Shayara Bano*, *supra* note 34.

⁴² *Ibid.*

⁴³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

unacceptable. This petition aimed to limit religious practices that promote discrimination through judicial intervention. The Supreme Court upholds the core principles enshrined in part III of the Constitution.

The Sabarimala issue was handled by the Honourable Court in a similar manner. The Supreme Court's five-judge panel rendered its decision in the Sabarimala Temple Entry case. By a vote of 4:1, it was decided that the custom of barring women from the temple is unconstitutional and improper in a democracy with a written constitution. They added that this practise infringed the female worshippers' basic right to freedom of religion (Article 25(1)).⁴⁴ The Kerala Hindu Places of Public Worship Rules, 1965's Rule 3(b), which permitted the exclusion of women on the basis of tradition, was ruled illegal by the Bench. Article 25 guarantees the right to freedom of conscience for every individual. However, the state has the power to create laws regulating religious practices to bring about change. This could involve making Hindu religious institutions available to all classes and groups within the community. The Sabarimala verdict has significantly broadened the meaning of "life and liberty" as stated in Article 21 and has upheld the social inclusion principle. With this ruling, the Court has reaffirmed its position as the protector of the constitutional conscience and has refused to yield to popular morality or situational pressure. The Sabarimala ruling is a bold decision by the judiciary to liberate women from traditional norms and discriminative practices. Gender neutrality has been upheld to make everyone's equal right to worship and human dignity by taking a reformist and interventionist stance.

The Constitutional mandated freedoms must not be put into peril under social pressure. The concept of popular morality undermines the rule of rule and ethos of democratic principles, which need to be rectified if it persists. The Supreme Court must consistently acknowledge that the need for an egalitarian society is essential for civilized society. The nature of the Indian Constitution is a 'living document'; it is dynamic and can not be confined to traditional notions with limited interferences by the judiciary. The task of the judiciary is to apply restructuring strategies and advanced construction. To reform National Textile Workers, Justice PN Bhagwati advocated for a fundamental transformation in the well-known 1983 case *National Textile Workers Union v. P.R. Ramakrishnan*.⁴⁵ The ruling that follows demonstrates how justices are becoming more lenient in fostering equality in culture.

"We cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values. If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a

⁴⁴ INDIA CONST. art. 25, cl. 1.

⁴⁵ Navtej Singh Johar, *supra* note 43.

living tree, it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must, therefore, constantly be on the move adopting itself to the fast-changing society and not lag behind. It must shake off the inhibiting legacy of its colonial past and assume a dynamic role in the process of social transformation.”

6. CONCLUSION AND SUGGESTIONS

Apex Court allowed the entry of women, irrespective of age into the Sabarimala Temple because the ban violated the fundamental right of freedom of religion as per Article 25 of the Constitution. The provision restricting the entry of women into the state legislation was struck down and deemed unconstitutional. The decision proves that Constitutional morality has to be respected at any cost. The constitutional principles must be adhered to in letter and spirit. The gender discrimination is not a new issue; it is an age-old discrimination faced by the women. The North Star (Judiciary) is essential in defending equal rights. The egalitarian attitude must be preserved in a civilized democracy so that all freedoms mentioned and bestowed by the Constitution are enjoyed. Faith is the absolute right that the State or any Social compulsions cannot restrict. The Sabarimala Verdict hopes to address all customary discrimination, which is still prominent in many ways. The decision is historic because it aims to address religious discrimination towards women, the entry of women into the Sabarimala temple, which was previously prohibited. The Judiciary clarified that such discriminatory practices have no place in an egalitarian, democratic society that values equality and inclusivity. The positivistic approach that the Judiciary has taken has set a precedent for similar cases and has contributed to building a more just and fair society.

All the rights are worth nothing and are mere bubbles if not protected by the independent Judiciary. The Judges must be careful with their noble efforts to keep Sentinel of Justice away from all external forces. Apart from Jurisprudential abilities, judges must be of stern stuff and tough fibre, not to bend before any power. The Judiciary has yet to learn from the past collapses.

The Constitution represents the charter of power granted by liberty and not the charter of liberty granted by power. It is not the gift of the State to the people. The people enjoying liberty as citizens of a free republic have granted the power to the legislature and executive. Let us understand the Constitution founded in the history of multiple conflicts. The statesman who upholds the Constitution may go wrong, which is exactly what is happening in India. To the wisdom of our people, the Constitution trusts. *Dr. B.R. Ambedkar* said, “However good a Constitution may be, it is sure to turn out bad because those who hold it happen to be bad.”

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