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Between Equality and Religion: A Critical Analysis of the Indian Supreme Court's Approach in the Sabarimala Case

ENTRE LA IGUALDAD Y LA RELIGIÓN: UN ANÁLISIS CRÍTICO DEL ENFOQUE DE LA CORTE
SUPREMA DE LA INDIA EN EL CASO SABARIMALAENTRE A IGUALDADE E A RELIGIÃO: UMA ANÁLISE CRÍTICA DA ABORDAGEM DA SUPREMA
CORTE DA ÍNDIA NO CASO SABARIMALAManisha Aswal¹

Abstract

In *Indian Young Lawyers Association v. State of Kerala (IYLA)*, the Supreme Court of India delivered a landmark ruling that declared the restrictions imposed on women's entry into the Sabarimala Temple unconstitutional. This decision was widely hailed as progressive and transformative, advancing women's right to equal access to places of worship. However, a closer examination of the judgment reveals a lack of substantive engagement with the principles of gender equality that have evolved over the years, despite the case being primarily concerned with gender-based discrimination. This article critically analyses the four separate opinions rendered in *IYLA* to illustrate how the Court focused more on issues of religious freedom than on those of equality and non-discrimination. It argues that the progressive outcome of the case was not sufficiently grounded in reasoning based on the right to equality under Articles 14, 15, and 17 of the Indian Constitution. Instead, the judgment predominantly rests on interpretations of the freedom of religion under Articles 25 and 26. As such, *IYLA* represents a missed opportunity to strengthen the Supreme Court's gender equality jurisprudence, particularly in the context of religion. The Court's approach reflects a broader concern that when gender equality intersects with religious freedom, the latter tends to overshadow the former.

Keywords

Sabarimala Temple Entry Case; Supreme Court of India; Gender Equality; Non-Discrimination; Freedom of Religion.

Resumen

En el caso *Indian Young Lawyers Association v. State of Kerala (IYLA)*, la Corte Suprema de la India emitió un fallo histórico que declaró inconstitucionales las restricciones impuestas al acceso de las mujeres al templo de Sabarimala. Esta decisión fue ampliamente aclamada como progresista y transformadora, pues promovía el derecho de las mujeres a la igualdad de acceso a los lugares de culto. Sin embargo, un análisis más detallado de la sentencia revela una falta de consideración sustancial de los principios de igualdad de género que han evolucionado a lo largo de los años, a pesar de que el caso se centraba principalmente en la discriminación por razón de género. Este artículo analiza críticamente las cuatro opiniones emitidas en el caso *IYLA* para ilustrar cómo la Corte se enfocó más en cuestiones de libertad religiosa que en las de igualdad y no discriminación. Argumenta que el resultado progresista del caso no se fundamentó suficientemente en el razonamiento basado en el derecho a la igualdad consagrado en los Artículos 14, 15 y 17 de la Constitución de la India. En cambio, la sentencia se basa principalmente en interpretaciones de la libertad religiosa consagrada en los Artículos 25 y 26. Por lo tanto, el caso *IYLA* representa una oportunidad perdida para fortalecer la jurisprudencia de la Corte Suprema en materia de igualdad de género.

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particularmente en el ámbito religioso. El enfoque de la Corte refleja una preocupación más amplia: que cuando la igualdad de género se cruza con la libertad religiosa, esta última tiende a eclipsar a la primera.

Palabras clave

Caso acerca de la entrada en el templo de Sabarimala; Tribunal Supremo de la India; igualdad de género; no discriminación; libertad religiosa.

Resumo

No caso *Indian Young Lawyers Association v. State of Kerala (IYLA)*, a Suprema Corte da Índia proferiu uma decisão histórica que declarou inconstitucionais as restrições impostas à entrada de mulheres no Templo de Sabarimala. Essa decisão foi amplamente aclamada como progressista e transformadora, promovendo o direito das mulheres à igualdade de acesso a locais de culto. Contudo, uma análise mais aprofundada da sentença revela uma falta de engajamento substancial com os princípios da igualdade de gênero que evoluíram ao longo dos anos, apesar de o caso tratar principalmente de discriminação baseada em gênero. Este artigo analisa criticamente os quatro votos distintos proferidos no caso IYLA para ilustrar como a Corte se concentrou mais em questões de liberdade religiosa do que em questões de igualdade e não discriminação. Argumenta-se que o resultado progressista do caso não foi suficientemente fundamentado no direito à igualdade previsto nos arts. 14, 15 e 17 da Constituição Indiana. Em vez disso, a decisão baseia-se predominantemente em interpretações da liberdade religiosa nos termos dos arts. 25 e 26. Como tal, o caso IYLA representa uma oportunidade perdida para fortalecer a jurisprudência do Supremo Tribunal em matéria de igualdade de gênero, particularmente no contexto da religião. A abordagem do tribunal reflete uma preocupação mais ampla de que, quando a igualdade de gênero se cruza com a liberdade religiosa, esta última tende a se sobrepor à primeira.

Palavras-chave

Caso sobre a entrada no Templo de Sabarimala; Supremo Tribunal da Índia; igualdade de gênero; não discriminação; liberdade religiosa.

INTRODUCTION¹

The tension between gender equality and religion is evident across jurisdictions. From *burqa* bans in several European countries (Cox, 2022) to mandatory *hijab* laws in Iran (Kayyal; Ali, 2023), and from recent reforms in Saudi Arabia allowing single women to perform certain pilgrimages without a male guardian (Akhtar, 2023) to the systemic exclusion of women from public life under the Taliban regime in Afghanistan (Afghan Women [...], 2025), these instances highlight the complex contestations between women's rights and religious norms.

India has long witnessed similar contestations. Given the presence of multiple religions, diverse cultural traditions, and the co-existence of personal laws alongside secular laws, these issues are even more varied. However, a consistent judicial reluctance to apply the principles of gender equality has been observed when matters involving religion, particularly those related to personal laws, are brought before the courts (MacKinnon, 2006). Courts often find ways to deliver progressive or forward-looking outcomes that appear to advance equality yet have little or no grounding in the principles of equality and non-discrimination (Herklotz, 2018, p. 256).

This trend is evident in numerous landmark rulings that, for instance, recognised divorced Muslim women's right to maintenance under the Code of Criminal Procedure (*Mohd. Ahmed Khan v. Shah Bano Begum*, 1985), affirmed Christian women's equal share in their father's property (*Madhu Kishwar v. State of Bihar*, 1996), acknowledged mothers as the natural guardian in the absence of the fathers (*Gita Hariharan v. Reserve Bank of India*, 1999), held that a husband's liability to provide maintenance to his divorced wife extends beyond the *iddat* period (*Danial Latifi v. Union of India*, 2001), and set aside the practice of instantaneous triple *talaq* (divorce) (*Shayara Bano v. Union of India*, 2017). Each of these decisions certainly expanded the scope of women's rights, albeit without invoking equality-based reasoning.

This article contributes to the broader discourse on gender-based discrimination in the context of religion through an analysis of the recent judgment of the Supreme Court of India in *Indian Young Lawyers Association v. State of Kerala (IYLA)*, popularly known as the Sabarimala Temple Entry Case. This case arose from a Public Interest Litigation filed in the Supreme Court under Article 32 of the Constitution of India, challenging the custom that prohibited women aged ten to fifty years from entering the Sabarimala Temple in Kerala.²

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- 1 This article is based on the author's Master of Laws (LLM) dissertation, which was conducted under the supervision of Professor N. Vasanthi at NALSAR University of Law, Hyderabad, India. She would like to express her sincere gratitude to Professor Vasanthi for her invaluable guidance, support, and encouragement during the course of this study. Any errors are the author's own.
- 2 Article 32 of the Constitution of India guarantees the right to approach the Supreme Court for the enforcement of fundamental rights conferred under the Constitution. It further empowers the Court to issue order, directions or writs for the enforcement of these rights.

The practice was supported by Rule 3(b) of The Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 (State Government of Kerala, 1965), which allowed restricting women from offering worship in any place of public worship during times when, by custom or usage, they are not permitted to enter it. It was rooted in the notions of purity and pollution often associated with the physiological process of menstruation that women undergo. The petitioners contended that the rule violated Articles 14, 15, 25, and 51A(e) of the Constitution (India, 1950), and sought a direction to ensure the entry of women into the Sabarimala Temple. After more than a decade of litigation, a five-judge bench of the Supreme Court delivered a landmark judgment declaring the restrictions imposed on women's entry into Sabarimala unconstitutional.

On the surface, the Court's decision appears to have advanced women's rights by ensuring equal access to religious spaces. However, a closer look at the judgment reveals that it did so without firmly grounding its reasoning in the principles of gender equality. The restrictions on women's entry were challenged as violations of Articles 14 (equality before law), 15 (prohibition of discrimination), 17 (abolition of untouchability) and 25 (freedom of religion) of the Constitution, but the Court largely addressed the matter as one of religious freedom, focusing more on the issues related to freedom of religion than on those of equality and non-discrimination.

Moreover, when the matter came before the Supreme Court for review, it referred several overarching questions of law to a larger bench that primarily pertain to the scope and extent of religious freedom under Articles 25 and 26 of the Constitution. In doing so, the Court once again portrayed the matter primarily as a question of religious freedom. In addition, it tagged three other matters relating to the entry of Muslim women into mosques (*Yasmeen Zuber Ahmad Peerzade v. Union of India*, 2019), entry of Parsi (Zoroastrian) women married to a non-Parsi into *Agyari* (Fire Temples) (*Goolrokh Gupta v. Burjor Pardiwala*, 2012), and the practice of Female Genital Mutilation (FGM) in the Dawoodi Bohra community (*Sunita Tiwari v. Union of India*, 2017), with the Sabarimala review petitions. Consequently, the review of *IYLA* has been kept pending until the reference questions are answered. However, the larger bench has not pronounced any verdict to date.

This article argues that the progressive outcome of *IYLA* was not sufficiently grounded in reasoning based on the right to equality under Articles 14, 15, and 17, but instead rests predominantly on interpretations of the freedom of religion under Articles 25 and 26 of the Indian Constitution. Therefore, *IYLA* was a missed opportunity to strengthen the Supreme Court's gender equality jurisprudence in religious contexts. Since it was primarily a case of gender-based discrimination, the Court should have prioritised the matter as one pertaining to gender equality.

The analytical approach adopted in this article draws on the interrelated ideas of feminist constitutionalism, substantive equality, and anti-stereotyping. Feminist constitutionalism seeks to rethink constitutional law to make it responsive to "feminist thought and

experience” (Baines; Barak-Erez; Kahana, 2012, p. 1). It urges constitutionalists to critically examine how questions are framed and engaged within constitutional discourse, *inter alia*, by “asking the woman question” (Barak-Erez, 2012 p. 95), integrating “constitutional norm of sex equality into their argument” (Baines, 2012, p. 453) and employing “substantive feminist reasoning” in constitutional interpretation (Atrey, 2022, p. 613). Thus, feminist constitutionalism aims to bring feminist perspectives into constitutional law in order to address gender bias, dismantle hierarchies, and advance gender equality. The idea of substantive equality, also central to feminist constitutionalism, is itself deeply contested. However, Fredman offers a compelling framework that consists of redressing disadvantage, addressing stereotypes, enhancing participation, and accommodating difference (Fredman, 2016, p. 713). From a transformative view, substantive equality seeks to challenge and dismantle the underlying structures that produce and perpetuate inequalities in society (Albertyn, 2018, p. 465). Furthermore, the concept of anti-stereotyping considers the dismantling of harmful stereotypes as necessary to eliminate discrimination against women (Cook; Cusack, 2010; Timmer, 2011). In particular, it challenges sex-based classifications that rest on or reinforce stereotypes about the roles, attributes, or capabilities of women and men (Franklin, 2010). While the article does not strictly apply these frameworks, the broader analytical approach taken in this article is informed and shaped by these theoretical perspectives.

Methodologically, this article adopts a doctrinal approach, drawing on constitutional provisions, case law, and judicial reasoning to critically examine how the Supreme Court in *IYLA* approached the interplay between gender equality and religious freedoms. It does so through a close reading of the four separate opinions delivered in the judgment, analysing how each interprets and applies Articles 14, 15, 17, 25, and 26 of the Constitution of India in assessing the constitutional validity of the practice restricting women’s entry into the Sabarimala Temple. It further contrasts the Court’s approach in *IYLA* with its existing jurisprudence on equality and non-discrimination.

Following this introduction, Section 1 provides an overview of the history of the Sabarimala litigation. Section 2 examines how the issues of religious freedom under Articles 25 and 26 of the Constitution overshadowed those of equality and non-discrimination under Articles 14, 15, and 17 of the Constitution, in *IYLA*. It analyses how the equality and religious freedom considerations were addressed in the four different opinions rendered in the case. Thereafter, Section 3 discusses the aftermath of the *IYLA* verdict, highlighting how the matter continues to be viewed primarily as one of religious freedom. The article concludes by summarising the key insights and briefly reflecting on the future implications of *IYLA*.

1. HISTORY OF SABARIMALA LITIGATION

1.1. THE SABARIMALA TEMPLE

The Sabarimala Temple is a prominent pilgrimage site located atop a hill named Sabarimala in the Pathanamthitta district of Kerala, a state in southern India. The temple is dedicated to Lord Ayyappa, a male deity believed to have been born from the union of two male gods, Lord Shiva and Lord Vishnu, with Vishnu taking the female form of Mohini. Lord Ayyappa is regarded as a *Naishtika Brahmachari*, i.e., a lifelong celibate who abstains from all sexual activities. In accordance with this belief, devotees are required to observe a *Vratham* (penance) for a period of forty-one days before embarking on the pilgrimage. During this time, they are expected to practice celibacy, abstain from meat and intoxicants, etc. A distinctive feature of the Sabarimala Temple is that it is open to people of all castes and religions. However, it is believed that menstruating women should not enter the temple in order to preserve the deity's celibate austerity (SC Observer-I, 2006). Thus, women aged ten to fifty years have been restricted from entering the temple. This practice was supported by Rule 3(b) of the 1965 Rules, which permits restricting women from offering worship in any place of public worship during times when, by custom or usage, they are not allowed to enter it.

1.2. BEGINNING OF THE LITIGATION

In 1990, a native of the State of Kerala sent a petition to a judge of the Kerala High Court complaining that women were entering and offering prayers at the Sabarimala Temple, which he contended was contrary to the customs and usages of the temple. The petition also referred to the first rice-feeding ceremony of the granddaughter of S. Chandrika, the former Commissioner of Travancore Devaswom Board, an organisation that manages temples in southern India, which was performed at the Sabarimala Temple and attended by several women, including the child's mother. A two-judge bench of the Kerala High Court opined that the matter involved questions with far-reaching consequences and, therefore, treated it as a Public Interest Litigation titled *S. Mahendran v. The Secretary, TDB*. The key questions before the bench were whether women could be permitted to enter the Sabarimala Temple at any time of the year, and if not, whether denial of access to the temple violated Articles 15, 25, and 26 of the Constitution.

According to the Chief *Thantri* (Priest) of the Sabarimala Temple, since the deity situated at the temple, Lord Ayyappa, is in the form of a *naisthik brahmachari* who observes celibacy and austerity, young women are not allowed to worship at the temple to prevent any deviation from this observance. Furthermore, as per practice, every pilgrim who undertakes the pilgrimage to Sabarimala is required to observe forty-one days of *Vratham* (Penance) while maintaining purity in thought, words, and deed throughout the penance. The Travancore Devaswom Board contended that the restrictions were imposed on women due to the strenuous

nature of the pilgrimage and their inability to observe the penance because of physiological reasons. In other words, women who menstruate, *i.e.*, women between menarche and menopause, are considered incapable of maintaining purity continuously for forty-one days and, therefore, ineligible to observe the penance.

Relying upon the testimonies of witnesses who have firsthand and personal knowledge about the usage followed at the temple, such as the Chief *Thanthri* (Priest), the Kerala High Court concluded that the practice of not allowing women aged ten to fifty years to worship in the temple is a usage prevalent from time immemorial. It held that the restriction imposed on women does not violate Articles 15, 25, and 26 of the Constitution and that the restriction is not based on women as a class, but rather it is in respect of women of a particular age group. Thus, it directed that women in the age group of ten to fifty years cannot be permitted to enter the Sabarimala at any time of the year.

1.3. JAIMALA CONTROVERSY

Between 2003 and 2004, two notable events happened at Sabarimala. In 2003, a fire broke out in a building, and in 2004, during a religious procession, an elephant that was supposed to carry a divine movable image refused to do so (Tarabout, 2015, p. 71). Following this, a religious ritual called *Devaprasanam* was performed at Sabarimala in 2006. This ritual is generally performed to resolve questions regarding religious practices when the *Thantris* (Priests) are unable to make a decision. The astrologer who performed the ritual claimed, among other things, that Lord Ayyappa was displeased with the fact that a woman had entered the temple.

Later, an actress named Jaimala confessed that she accidentally stumbled into the inner sanctum of the temple and touched the image of Lord Ayyappa when she visited the temple in 1987 (Actress [...], 2010). Thereafter, the authenticity of *Devaprasanam* was called into question, and claims were made that the whole incident was staged. Jaimala and the astrologer who conducted *Devaprasanam* were prosecuted on the charges of attempting to outrage the religious sentiments of devotees of Lord Ayyappa under sections 295(A) and 120(B) of the Indian Penal Code, 1860;³ however, they were discharged due to lack of evidence in July 2012 (Sabarimala Case [...], 2012). The Jaimala case prompted the filing of a Public Interest Litigation in the Supreme Court of India challenging the restrictions on women's entry at Sabarimala. Thus, the validity of the restrictions once again came up before the Court, however, this time before the country's apex court.

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3 The Indian Penal Code (India, 1860) has now been replaced with Bharatiya Nyaya Sanhita (India, 2023), which came into effect on July 1, 2024.

1.4. PUBLIC INTEREST LITIGATION BEFORE THE SUPREME COURT

On 4 August 2006, the Indian Young Lawyers' Association filed a Public Interest Litigation in the Supreme Court of India under Article 32, challenging the restrictions on women's entry into Sabarimala Temple (Chronology [...], 2019). The State of Kerala, the Travancore Devaswom Board, the Chief *Thanthri* (Priest) of the temple, Pandalam Family, who are believed to have built the temple, were made the respondents (SC Observer-II, [s.d.]). Except for the State of Kerala, all the respondents opposed the entry of women into the Sabarimala.

Since the matter raised significant questions, a three-judge bench of the Court consisting of Chief Justice Dipak Misra, Justice R. Banumathi, and Justice Ashok Bhushan, referred the matter to a larger bench (*IYLA*, 3-Judge Bench). Subsequently, a five-judge Constitution Bench was constituted, comprising Chief Justice Dipak Misra, Justice R.F. Nariman, Justice A.M. Khanwilkar, Justice D.Y. Chandrachud, and Justice Indu Malhotra. Among the five judges, four were male, with Justice Malhotra being the sole female member. On 28 September 2018, by a 4:1 majority, the Court held that the restrictions imposed on women's entry into the Sabarimala Temple were unconstitutional (*IYLA*). The bench delivered four opinions: Chief Justice Misra authored an opinion on behalf of himself and Justice Khanwilkar, Justices Nariman and Chandrachud each delivered separate concurring opinions, and Justice Malhotra delivered a dissenting opinion.

Although all four male judges ruled in favour of allowing women to enter the Sabarimala temple, they differed in their interpretation and application of the constitutional provisions. Chief Justice Misra held that the custom restricting the entry of women was not an essential religious practice of the Hindu religion and therefore was not protected under Article 25. He further determined that the devotees of Lord Ayyappa did not constitute a separate religious denomination that could claim the freedom to manage their affairs under Article 26. In his concurring opinion, Justice Nariman concluded that, irrespective of whether the practice qualified as an essential religious practice, both women and other Ayyappan devotees are equally entitled to the right to practice their religion. He also stated that the rule that gives backing to the exclusionary practice discriminates against women based on their sex. Justice Chandrachud, in his concurring opinion, similarly held that the practice was not an essential religious practice, nor did the worshippers of Lord Ayyappa form a separate religious denomination. He further opined that the exclusion of women amounts to a denial of substantive equality and is rooted in stereotypical notions of women as the weaker sex, as well as ideas of purity and pollution associated with menstruation.

In contrast, Justice Malhotra, the only female judge on the bench, refused to apply Article 14 to a religious practice of this nature and found no violation of Article 15, reasoning that the restriction was based on the deity's celibate nature. She further asserted that the practice could be considered an essential religious practice as it was linked to the celibate

character of the deity situated at the temple, and that the followers of Lord Ayyappa could be regarded as a separate religious denomination.

2. ANALYSIS OF THE DECISION IN *IYLA*

While referring the matter to the five-judge bench, the three-judge bench framed several questions for its consideration. Among these, the two key issues were:

1. Whether the exclusionary practice[,] which is based upon a biological factor exclusive to the female gender[,] amounts to “discrimination” and thereby violates the very core of Articles 14, 15, and 17, and [is] not protected by “morality” as used in Articles 25 and 26 of the Constitution?
2. Whether the practice of excluding such women constitutes an “essential religious practice” under Article 25[,] and whether a religious institution can assert a claim in that regard under the umbrella of the right to manage its own affairs in matters of religion? (*IYLA*, 3-Judge Bench, para. 26).

This section analyses all four opinions delivered in *IYLA* to assess the treatment of equality and religious freedom considerations. It illustrates how the Court prioritised the concerns pertaining to religious freedom over those of equality and non-discrimination.

2.1. EQUALITY AND NON-DISCRIMINATION

2.1.1. EQUALITY UNDER ARTICLE 14

The first question required the court to address the issues of equality, non-discrimination, and untouchability in order to determine whether the exclusionary practice at Sabarimala Temple violated Articles 14, 15, and 17 of the Constitution. Article 14 guarantees that all persons are entitled to equal treatment before the law. However, none of the judges specifically addressed the matter under Article 14.

Chief Justice Misra began his discussion by highlighting how women have been fighting against patriarchal notions of society for equal rights, but the principles of equality are not mentioned in the rest of his analysis. Similarly, the opinion of Justice Nariman lacks any discussion on Article 14, which is in stark contrast with his approach in the *Shayara Bano* case, where the practice of instantaneous triple *talaq* (divorce) was under scrutiny.⁴ In *Shayara*

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⁴ *Talaq-e-biddat* or instantaneous triple *talaq* is a form of divorce practiced in certain Muslim communities, where a Muslim man can divorce his wife by pronouncing the word ‘*talaq*’ (‘divorce’) three times.

Bano, he extensively expounded upon the doctrine of manifest arbitrariness under Article 14. Justice Chandrachud opined that excluding women from a place of worship amounts to the denial of “equal citizenship and substantive equality under the Constitution” (*IYLA*, Chandrachud J., para. 102). However, he did not record any finding explicitly declaring the exclusionary practice as violative of Article 14.

On the contrary, Justice Malhotra, in her dissenting opinion, ruled out the applicability of Article 14 to religious practices, stating that the Court cannot undertake judicial review of religious practices to determine whether a practice is rational or not. She opined that courts should refrain from striking down religious practices unless “they are pernicious, oppressive, or a social evil, like Sati” (*IYLA*, Malhotra J., para. 8.2).⁵ However, if this reasoning is accepted, it would mean that women must continue to endure unjust religious practices until their suffering becomes oppression, which sets a harmful precedent for future cases. Moreover, it is unclear whether a practice must involve some bodily harm to be considered oppressive, as in the case of the *Sati*, which involved the burning of widows.

As is evident, no judge delved into the two prominent tests under Article 14—the test of reasonable classification and the doctrine of manifest arbitrariness, both of which have been usually applied in gender equality cases. For instance, in *Navtej Singh*, where the constitutionality of section 377 of the Indian Penal Code, which criminalised same-sex activity between consenting adults, was challenged, the Supreme Court applied the test of reasonable classification and the doctrine of manifest arbitrariness before reading down this provision.

As per the doctrine of reasonable classification, Article 14 prohibits class legislation but permits reasonable classification. For a classification to be reasonable, it must be based on an intelligible differentia that distinguishes those included in the group from those excluded and the differentia must have a rational nexus to the object that the law in question seeks to achieve (*Budhan Choudhry v. State of Bihar*, 1954, para. 5). In *IYLA*, since the restriction was imposed on women between the ages of ten and fifty years owing to the notions of purity and pollution associated with menstruation, the differentia was the physiological process of menstruation. The respondents in *IYLA* averred that the object was to prevent the deity from being polluted and to preserve the observance of celibacy. But the object itself was based on stereotypical notions of purity and pollution, which are contrary to the principles enshrined in our Constitution. However, the Court did not address these concerns.

Furthermore, the issue in *Shayara Bano* was quite similar to that in *IYLA*. In both cases, the validity of a religious custom enforced by statutory law was challenged under Articles

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5 *Sati* refers to the ancient Hindu practice of widow burning which was outlawed under the Commission of Sati (Prevention) Act, 1987.

14, 15, and 25 of the Constitution. In *Shayara Bano*, it was observed that the Muslim Personal Law (Shariat) Application Act, 1937, recognised and enforced the practice of instantaneous triple *talaq* (divorce). Similarly, in *IYLA*, the exclusionary practice was backed by Rule 3(b) of the 1965 Rules. In both cases, the Supreme Court evaluated the essentiality of the religious practice in question against the principles laid down in the landmark cases of *Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Tirtha Swamiar of Shirur Mutt* (1954) and *Commissioner of Police v. Acharya Jagdishwarananda Avadhuta* (2004). Furthermore, as mentioned above, in *Shayara Bano*, Justice Nariman extensively elaborated upon the doctrine of manifest arbitrariness. According to this doctrine, a law that is capricious, irrational, or lacks an adequate determining principle constitutes a violation of Article 14 of the Constitution (*Shayara Bano v. Union of India*, 2017, Nariman J., para. 55). Justice Nariman held that the practice of triple *talaq* is manifestly arbitrary as it allows a man to end a marital relationship capriciously and whimsically, without making any effort to reconcile with the spouse. In addition, this form of *talaq* is both instantaneous and irrevocable. However, none of the judges in *IYLA* referred to or applied the doctrine of manifest arbitrariness.

In *IYLA*, the respondents could not establish that the restrictions imposed on women were in accordance with a usage that had been prevalent from time immemorial. Justice Chandrachud cited various instances noted by the Kerala High Court when women entered the temple. As Justice Misra observed, there was “no continuity in the exclusionary practice followed at the Sabarimala Temple” (*IYLA*, Misra C.J., para. 126). Furthermore, the restriction imposed a blanket ban on the entry of women in the age group of ten to fifty. However, women can undergo menarche before the age of ten and menopause after the age of fifty. It is also possible that some women may not undergo the physiological process of menstruation. Therefore, the exclusionary practice could have been held to be manifestly arbitrary in nature.

Similarly, in *Joseph Shine*, Justice Malhotra applied both the tests of reasonable classification and manifest arbitrariness to hold Section 497 of the Indian Penal Code, which criminalised adultery, unconstitutional. However, in *IYLA*, Justice Malhotra found it difficult to apply these tests to religious practices. It is also significant to note that the coram of judges who decided *Navtej Singh*, *Joseph Shine*, and *IYLA* was the same.

2.1.2. PROHIBITION ON DISCRIMINATION UNDER ARTICLE 15

With respect to Article 15 of the Constitution, which prohibits the State from discriminating against its citizens on the grounds of sex, except for Justice Nariman, no other majority judge recorded any conclusion while making observations regarding this provision. Chief Justice Misra does not even make any reference to Article 15 in his opinion. Justice Nariman merely mentions Article 15(1) to hold Rule 3(b) of 1965 Rules, which gives backing to the custom prohibiting entry of women, unconstitutional as it “discriminates against women based on their sex only” (*IYLA*, Nariman J., para. 29). Justice Chandrachud refers to the principles emanating from Article 15 and observes that the

respondent's claim that women cannot observe the *Vratham* (Penance) or complete the arduous journey of the Sabarimala trek due to physiological reasons stigmatizes and stereotypes women. He opined that the aforesaid claim is deeply rooted in the stereotypical notion that women are the weaker sex. However, he falls short of explicitly declaring the practice to be violative of Article 15. Conversely, Justice Malhotra rules out the applicability of Article 15, stating that the differential treatment of women is not on the grounds of sex, but on the belief that Lord Ayyappa has manifested in the form of a *naishtik brahmachari* at Sabarimala.

A law can be declared discriminatory not only based on sex but also on gender stereotypes, gender identity, and sexual orientation. The Supreme Court has significantly broadened the application of Article 15 by expanding the scope of the term 'sex'. In numerous cases, the Court has declared laws premised on gender-based stereotypes unconstitutional. It has been acknowledged that social norms often perpetuate stereotypical assumptions based on gender roles, women's domestic obligations, women being the weaker sex, physiological features of women, etc. Some of these cases include *Anuj Garg* where Justice Sinha struck down a law prohibiting the employment of women in bars as it suffered from stereotypical assumptions about gender roles, *Babita Puniya* where Justice Chandrachud rejected the stereotype-based justifications which prescribed gender roles and perpetuated systemic discrimination against women, and *Joseph Shine* where all judges recognized that Section 497 of the Indian Penal Code was based on gender stereotype that women are property of their husbands. However, any reference to the principle of anti-stereotyping is absent in the opinions of Chief Justice Misra and Justice Nariman.

The Kerala High Court in *S. Mahendran* noted that restrictions were imposed due to the belief that women, from menarche to menopause, cannot observe the forty-one days of penance, which is believed to be an essential part of the Sabarimala pilgrimage, due to physiological reasons. It also cited the "peculiar nature of the pilgrimage", "arduous nature of trekking the forest," and "long period of the journey" as reasons behind the restrictions (*S. Mahendran v. The Secretary, Travancore Devaswom Board*, 1993, para. 43). All these justifications were rooted in stereotypical notions about women being the weaker sex and the ideas of purity and pollution associated with menstruation. Such assumptions based on the physiological features of women not only stereotype them but also create systemic barriers that act as obstacles to equality. Furthermore, the exclusionary practice clearly discriminates against women based on sex since only women can undergo the physiological process of menstruation.

2.1.3. ABOLITION OF UNTOUCHABILITY UNDER ARTICLE 17

The question of whether the exclusionary practice violates Article 17 of the Constitution was examined only by Justice Chandrachud and Justice Malhotra. Article 17 abolished the practice of untouchability in all its forms. Untouchability generally refers to a social practice that discriminates against persons perceived as inferior based on their membership in certain

groups who are considered lower castes. However, Galanter broadly defines untouchability to include all cases where a person is regarded as “unclean,” “polluting,” or “source of pollution” (Galanter, 1969, p. 139).

None of the other judges even referred to Article 17 in their opinions. Justice Chandrachud emphasised that untouchability includes any form of social exclusion that is rooted in the notions of purity and pollution. Since menstruation is conventionally associated with impurity, he found the restriction on women from entering the temple based on their menstrual status to be a violation of Article 17. On the other hand, Justice Malhotra limited the scope of Article 17’s application to caste-based untouchability, asserting that the restriction imposed on women was not grounded in any form of social exclusion.

2.2. FREEDOM OF RELIGION

2.2.1. PROTECTIONS GRANTED TO RELIGIOUS DENOMINATIONS UNDER ARTICLE 26

With respect to religious considerations, the Court first examined whether the devotees of Lord Ayyappa form a separate religious denomination within the meaning of Article 26 of the Constitution. A religious denomination has been defined as a collection of persons who share a “common faith, common organization and designation by a distinctive name” (*S.P. Mittal v. Union of India*, 1983, para. 80). Under Article 26, religious denominations or sections thereof are granted the freedom to manage their own religious affairs subject to public order, morality, and health. This implies that religious denominations, subject to these limitations, have the right to regulate their religious practices.

In *IYLA*, all the majority judges opined that the devotees of Lord Ayyappa do not constitute a separate religious denomination, and therefore, are not entitled to the freedoms granted under Article 26. Chief Justice Misra ruled out the applicability of Article 26 to the devotees of Lord Ayyappa by declaring them to be “just Hindus” (*IYLA*, Misra C.J., para. 96). He opined that there is neither any identified group called ‘Ayyappans’ nor do the devotees have any common religious tenets peculiar to themselves. Both Justices Nariman and Chandrachud shared this view of Chief Justice Misra. Justice Chandrachud added that since pilgrims of all religions can participate in the pilgrimage, religion is not the basis of the collective of individuals who worship Lord Ayyappa. To seek protection under Article 26, the religious denomination must be a religious sect or body. Conversely, Justice Malhotra held that the Ayyappan devotees form a distinct religious denomination and have the right to regulate their religious practices. She further stated that this is a mixed question of fact and law that ought to be decided before “a civil court, where both parties are given the opportunity to lead evidence to establish their case” (*IYLA*, Malhotra J., para 12.10).

The majority of judges’ finding that devotees of Lord Ayyappa do not constitute a separate religious denomination effectively excluded the respondents from the rights and privileges guaranteed to religious denominations under Article 26. As a result, the practice of

restricting women's entry to the Sabarimala Temple could not be accorded any protection under this provision.

2.2.2. ESSENTIAL RELIGIOUS PRACTICE UNDER ARTICLE 25

Article 25 of the Constitution guarantees the fundamental right to freedom of religion to all persons equally. According to the essential religious practices doctrine, this right also extends constitutional protection to religious practices that are considered to be an “integral part of religion” (*Commissioner of Police v. Acharya Jagdishwarananda Avadhuta*, 2004, para. 86). Thus, if the Court finds a practice to be an essential religious practice, it is entitled to protection under the Constitution.

In *IYLA*, all the judges engaged with the issue pertaining to the essentiality of the practice prohibiting women aged ten to fifty years from worshipping at the Sabarimala Temple. Chief Justice Misra opined that the exclusionary practice does not form an essential part of the doctrines and tenets of the Hindu religion and therefore is not protected under Article 25. This means that the right of women to enter the temple cannot be undermined by the right to exclude them unless the exclusionary practice is an essential religious practice. Justice Chandrachud observed that the material before the Court did not establish the essential nature of the practice. He further held that there is no right to prohibit women's entry, as such a practice runs counter to the principles of equality, liberty, and dignity that run through the entire Constitution. Conversely, Justice Malhotra found sufficient evidence to establish the essentiality of the practice.

Justice Nariman, instead of determining the practice's essentiality, proceeded on the assumption that the practice forms an essential part of the devotees' faith. However, he held that both women and other Ayyappan devotees are equally entitled to the right to practice religion, and the right of women under Article 25 would be rendered “meaningless unless they were allowed to enter the temple” (*IYLA*, Nariman J., para. 29). This implies that, according to Justice Nariman, there is no right to exclude women even if such exclusion is considered an essential religious practice because of their right to freedom of religion.

While the opinions of Justices Chandrachud and Nariman emphasised that there can never be a right to prohibit women from entering the temple, Chief Justice Misra's opinion indicates that a right to exclude exists when the exclusionary practice forms an essential part of the religion. Thus, Chief Justice Misra's opinion suggests that an exclusionary practice, if essential to the tenets of the faith, cannot be interfered with even if it violates the women's right to equality.

It is worth noting that Justices Chandrachud and Malhotra also questioned the use of the essential religious practices doctrine, as it requires the Courts to engage with theological principles. Justice Chandrachud asserted that the essentiality test warrants reconsideration in the future. He suggested that a more deferential approach to the ERP test would release the courts from the task of adjudicating on religious materials and allow

religious institutions to decide on their own religious tenets. However, he remarked that this approach would remain subordinate to the principles of liberty, equality, and dignity. As an alternative to the essentiality test, he proposed the anti-exclusion principle propounded by Gautam Bhatia which states that “where a religious practice causes the exclusion of individuals in a manner which impairs their dignity or hampers their access to basic goods, the freedom of religion must give way to the over-arching values of a liberal constitution” (Bhatia, 2016, p. 354).

Furthermore, Justice Malhotra also opined that the essentiality of religious practices should be decided by the respective religious communities alone. However, she did not propose any alternative to the doctrine of essential religious practices. Though she suggested that unless a religious practice is harmful, oppressive, or a social evil, such as *Sati*, the court should not invalidate the practice, it is unclear on what basis religious practices like *Sati* should be considered to infringe on fundamental rights, and therefore, struck down (Parthasarathy, 2020, p. 125).

Since the practice of restricting women from entering the Sabarimala Temple was not deemed to be an essential religious practice by the majority of the judges, the claim that this exclusionary practice was protected under Article 25 was rejected. The Court, instead, affirmed that all devotees, irrespective of gender, are equally entitled to freedom of religion. It ruled that the restrictions violated women’s right to freely practice their religion, including the right to worship, under Article 25.

2.3. EQUALITY V. RELIGIOUS FREEDOM CONSIDERATIONS

Over the years, the Supreme Court of India has delivered several progressive rulings that have consistently broadened the horizons of gender equality in India.⁶ In cases involving issues of gender equality, the Court’s usual practice has been to adjudicate upon the principles of equality and non-discrimination, which run through the entire Constitution. However, as Kothari argues, the Supreme Court has been selectively progressive in dealing with cases involving questions of gender equality. She notes how the Court is more likely to make equality-based pronouncements in easy cases, such as those that do not involve personal laws or religious matters. It is often observed that issues of equality and non-discrimination take a secondary role when it comes to matters involving religion (Kothari, 2021, p. 71).

The outcome of *IYLA*, as discussed above, mainly depended on the interpretations of the right to freedom of religion under Articles 25 and 26 of the Constitution. While the Court

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⁶ Examples of such cases include *Independent Thought v. Union of India* (2017), *Shayara Bano v. Union of India*, (2017), *Shafin Jahan v. Asokan K.M.* (2018), *Navtej Singh Johar v. Union of India* (2018), *Joseph Shine v. Union of India* (2019), and *Secretary, Ministry of Defence v. Babita Puniya* (2020).

upheld women's right to freedom of religion under Article 25, its reasoning falls short of adequately addressing the gender equality considerations under Articles 14, 15, and 17. It focused more on the issues pertaining to freedom of religion than those of equality and non-discrimination. Despite the case primarily being a matter of gender-based discrimination, the Court refrained from invoking the well-established principles of equality in relation to the exclusion of women from places of worship. This is not to suggest that the Court in *IYLA* should have necessarily relied on the equality tests discussed earlier, or that these tests are definitive or infallible. Rather, the point is that the Court failed to engage adequately with even the well-settled equality jurisprudence, let alone build upon it. This highlights a difference between the Court's approach to gender equality cases that do not involve religious concerns and those where gender equality intersects with issues of religious freedom. In the latter, equality considerations appear to be overshadowed by concerns about religious freedom. Thus, *IYLA* was a missed opportunity to strengthen the Court's gender equality jurisprudence, particularly in religious contexts.

3. POST-SABARIMALA VERDICT

Following the Supreme Court of India's decision in *IYLA*, huge protests ensued across the State of Kerala. Several Hindu right-wing organisations staged protests at over two hundred locations to demonstrate their outrage over the *IYLA* verdict (Jacob, 2018). Some protestors also demanded that the State legislative assembly bring a law against the judgment (Sabarimala Verdict [...], 2018). Furthermore, numerous inflammatory statements were made by public figures. A famous actor named Kollam Thulasi was reported as saying, "Women coming to Sabarimala Temple should be ripped in half" (Women [...], 2018). Even a former president of the Travancore Devaswom Board stated: "Let the women come to Sabarimala, but when they come, they can be caught by both tigers and men" (Let Women Come to Sabarimala [...], 2018).

As a result of the aftermath of the Sabarimala verdict, more than fifty review petitions were filed against it, along with fresh writ petitions challenging the judgment.⁷ Interestingly, the Travancore Devaswom Board, which had earlier supported the custom prohibiting the entry of women at Sabarimala, is now opposing the review petitions along with the State of Kerala (Rajagopal, 2019). The petitions challenge the jurisdiction of the Supreme

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7 The petitioners include Kantaru Rajeevaru (the Chief Priest of Sabarimala Temple), Prayar Gopalakrishnan (the former chair of the Travancore Devaswom Board), National Ayyappa Devotees (Women's) Association, All Kerala Brahmin's Association and Nair Service Society.

Court to entertain the matter on the ground that there was no cause of action since the Public Interest Litigation was not filed by devotees of Lord Ayyappa,⁸ and the petitioners in the original case had no *locus standi*.⁹ They argued that the practice is not derogatory to women since the basis of the practice is the *naishtika brahmachari* character of the deity and not the physiological process of menstruation. Another petition questions the testing of the essential religious practices on the touchstone of rationality.

The matter was placed before a review bench comprising the same set of judges who had delivered the judgment under review, except for Chief Justice Misra, who was replaced by Chief Justice Rajan Gogoi following the former's retirement. On 14 November 2019, the bench hearing the review petitions (review bench), by a majority of 3:2, referred certain overarching questions of law for consideration by a larger bench (*Kantaru Rajeevaru-I*, 2020). The majority consisted of Chief Justice Gogoi, Justice Malhotra, who had delivered the dissenting opinion in *IYLA*, and Justice Khanwilkar, who had been part of the majority in that case. Whereas the minority consisted of Justices Chandrachud and Nariman, who had formed the rest of the majority in *IYLA*. The decision also tagged the Sabarimala review petitions with three other similar matters, which were already *sub judice* before different benches of the Supreme Court. These matters concern the entry of Muslim women into Mosques (*Yasmeen Zuber Ahmad Peerzade v. Union of India*, 2019), the entry of Parsi (Zoroastrian) women married to a non-Parsi into *Agyari* (Fire Temples) (*Goolrokh Gupta v. Burjor Parodiwalla*, 2012), and the legality of the practice of Female Genital Mutilation (FGM) in the Dawoodi Bohra community (*Sunita Tiwari*). Consequently, the review petitions were adjourned until the larger bench answers the reference. Nonetheless, the operation of the *IYLA* decision has not been stayed.

The Supreme Court, however, did not examine the error apparent, *i.e.*, whether any grounds for review had been made, before making the reference. The majority asserted the need for an authoritative pronouncement over certain constitutional principles relating to Articles 25 and 26. It opined that the issues arising in the other three matters might be overlapping and covered by the Sabarimala case, and there is a possibility that those issues might be referred to a larger bench. Furthermore, it opined that there seems to be a conflict between the decisions of the Supreme Court in the context of essential religious practices.¹⁰

8 Review petition filed by the National Ayyappa Devotees (Women's) Association.

9 Review petition filed by the Nair Service Society and All Kerala Brahmins Association.

10 The decision of a seven-judge bench in *Shirur Mutt* and the subsequent view of a five-judge bench in the *Durgah Committee*.

On the contrary, the minority opined that the narrow question before the bench is whether any grounds for review have been made.¹¹ If any issues arise in the future, they can be appropriately dealt with by the bench hearing the relevant matter. It stated that the benches hearing the other three matters will have the liberty to either apply or distinguish from *IYLA*. They may also refer any issues which the majority judgment anticipates might arise to a larger bench. However, since those matters were not before the review bench, the minority opined that the court cannot tag them with the Sabarimala review petitions.

Thereafter, a nine-judge bench (reference bench) was constituted to answer the reference, which reframed the questions as follows:¹²

1. What is the scope and ambit of [the] right to freedom of religion under Article 25 of the Constitution of India?
2. What is the interplay between the rights of persons under Article 25 of the Constitution of India and [the] rights of religious denomination under Article 26 of the Constitution of India?
3. Whether the rights of a religious denomination under Article 26 of the Constitution of India are subject to other provisions of Part III of the Constitution of India apart from public order, morality and health?
4. What is the scope and extent of the word ‘morality’ under Articles 25 and 26 of the Constitution of India and whether it is meant to include Constitutional morality?
5. What is the scope and extent of judicial review with regard to a religious practice as referred to in Article 25 of the Constitution of India?
6. What is the meaning of [the] expression “Sections of Hindus” occurring in Article 25 (2)(b) of the Constitution of India?
7. Whether a person not belonging to a religious denomination or religious group can question a practice of that religious denomination or religious group by filing a PIL? (*Kantaru Rajeevaru-II*, 2020).

When the review bench made a reference to a larger bench without examining the error apparent, the Court once again portrayed the matter as a question of religious freedom. The reference questions mainly deal with the scope and extent of Articles 25 and 26

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¹¹ The minority opinion was delivered by Justice Nariman on behalf of Justice Chandrachud and himself.

¹² The nine-judge bench comprised Chief Justice S.A. Bobde, and Justices R. Banumathi, Ashok Bhushan, L. Nageswara Rao, Mohan M. Shantanagoudar, S. Abdul Nazeer, R. Subhash Reddy, B.R. Gavai, and Surya Kant.

as well as the interplay between them. They also inquire into the scope of judicial review under Article 25 and the maintainability of Public Interest Litigation filed by a person outside of a religious denomination.

Moreover, the review bench tagged two completely different issues of entry of women into religious spaces and FGM with each other. Since the practice of FGM involves bodily harm to young girls, it *prima facie* raises questions regarding the right to life, dignity, privacy, and bodily integrity of an individual. The immediate complications of FGM include severe pain, haemorrhage, shock, fracture, and infection, while long-term complications may include pelvic infections, infertility, cysts, and problems in childbirth (WHO, 2001, p. 28-30). However, the other matters do not involve any physical harm to an individual. Furthermore, given the distinct nature of each religious practice, each matter would eventually require separate scrutiny by the Court in the background of its specific context.

Thus, instead of examining the issue at hand, the Supreme Court chose to expand the jurisprudence on religious freedom by referring such questions to a larger bench. The Court's position, following *IYLA*, demonstrates that it continues to prioritise the religious aspects of the matter over its implications for gender equality.

CONCLUSION

The decision in the *IYLA* or the Sabarimala Temple Entry Case advanced women's equal right to access places of religious worship. However, the judgment as a whole lacked substantive engagement with the principles of gender equality that the Supreme Court of India has developed, particularly in recent years. The restrictions imposed on the entry of women at the Sabarimala Temple were challenged as a violation of Articles 14, 15, 17, and 25 of the Constitution of India. Despite the questions of equality and non-discrimination being central to the matter, the Court predominantly addressed the matter in terms of freedom of religion through the lens of Articles 25 and 26. Even when the matter came up for review, the Court once again portrayed it as a question of religious freedom by referring such questions to a larger bench that mainly deals with the scope and extent of religious freedom under the Constitution.

The Court's approach in *IYLA* reflects a broader pattern in which issues of gender equality are often sidelined or overlooked when intertwined with religious concerns. Consequently, *IYLA* was a missed opportunity to strengthen the Supreme Court's gender equality jurisprudence, especially in the context of religion. A more equality-centred approach could have served as a meaningful precedent for pending and future cases involving gender discrimination in religious contexts and helped challenge other discriminatory practices rooted in religious customs and traditions. Nonetheless, the pending review petitions and reference present the Supreme Court with an opportunity to re-examine the issue of women's entry into the Sabarimala Temple. In its future deliberations, the Court can still

choose to take into consideration the questions of equality in light of recent developments in equality jurisprudence, which were scarcely addressed in the *IYLA* judgment.

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