

MOOT PROPOSITION

Disclaimer: The contents of this moot problem are entirely fictional and do not in any way aim to hurt the sentiments or degrade the values and ideologies of any group of people, religion or individual.

1. The Sabari temple located in the beautiful state of Kerala, the world popular religious and pilgrimage spot in Bharatvarsha. Around 40 Lakh pilgrims visit the place every year. The temple is situated between two rivers. The Sabari Temple is one of the few temples in Bharatvarsha that welcomes men and women of every caste. Devotees have to come barefoot wearing a mundu and it is mandatory to cover their head with a black cloth. This practice symbolizes a renunciation of all worldly pleasure.

2. But the temple also follows the strict custom and rituals. Although it allows women to pray Lord Sastavu, but they are restricted from entering inside the temple vault to do the inventory. The temple authorities follow this tradition of restricting women to enter particularly in sanctum sanctorum. However, there is no written instruction, but this tradition has been followed by temple authorities for over 600 years. The Sabari temples disallow girls and women between 10 to 50 years of age to enter the temple. The reason is that the women during their menstruation period are not supposed to enter the place of worship.

3. Lord Sastavu was a strict Bramachari so women are strictly restricted to enter the temple. Even pilgrims live an ascetic life for 41 days before undertaking the journey to Sabari Temple. During the time of prayer the dalits can also lead the prayers and a Brahmin in the group must touch his feet.

4. Apart from historical Sastavu, there is a puranic legend associated with him, which says he is the son of Lord Vishvendra and Shivendra. According to the Puranas, Sastavu was born to destroy a female demon who could only be vanquished by a child born of both Lord Vishvendra and Shivendra. When Sastavu fulfils his destiny by killing her, a beautiful woman emerges from her body. She was cursed to live as a demon, but her killing reversed the curse. Now free she asked Sastavu to marry her. He refused explaining to her that his mission is to go Sabari where he would answer the prayers of his devotees. However, he assures her, he will marry her when Kanni – Swamis stop coming to Sabari. She now sits and waits for him at a neighboring shrine near the main temple and is worshipped as Malikabimma. With hundreds and thousands of new devotees pouring in every year, hers will be a long wait. The reason that why women do not go to Sabari is partly out of empathy for Malikabimma and her wait and it is also out of respect for Sastavu commitment to answer the prayers of his devotees.

5. The Bharatvarsh Young Lawyers Association approached the Supreme Court of Bharat Varsha seeking a direction to allow entry of women into the temple without age restrictions.

6. Their petition contended that discrimination in matters of entry into temples was neither a ritual nor a ceremony associated with the religious text and beliefs. Such discrimination was totally anti-Hindu. The religious denomination could only restrict entry into the sanctum sanctorum and could not ban entry into the temple, making discrimination on the basis of sex.

7. The Travancore Board, which maintains the temple, had replied that the ban was in accordance with centuries-old tradition. Lord Sastavu, being a Naishtika Brahmachari (one who has vowed to remain celibate). Another argument put forth by the temple authorities is

that since the deity inside the temple is in the form of a 'Naistika Brahmcharya', therefore the women of certain age group are not allowed inside the temple since they are not in a position to observe penance for 41 days due to physiological reasons.

8. The on-going matter put the spotlight on a 1991 High Court judgment, wherein the division bench of the HC held that the restriction was in accordance with a usage from time immemorial and not discriminatory under the Constitution. Upholding the restrictions, the High Court, in its judgment, said: "According to "Keralam Hindu Places of Public Worship (Authorization of Entry) Act, 1965", these customs and usages had to be followed for the welfare of the temple. He said only persons who had observed penance and followed the customs are eligible to enter the temple and it is not proper for young women to do so.

9. The Hon'ble apex court declared that the custom or usage of prohibiting women between the ages of 10 to 50 years from entering the Sabari Temple is violative of Article 25(1), and violative of the Keralam Hindu Places of Public Worship (Authorization of Entry) Act, 1965 made under Article 25(2) (b) of the Constitution. Further, it is also declared that Rule 3(b) of the Keralam Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 is unconstitutional being violative of Article 25(1) and Article 15(1) of the Constitution.

10. Being aggrieved by the judgment of the Apex court the board decided to put a review petition. The petitioner contended that:

a) It suffers from several errors that have resulted in a "grave miscarriage of justice" in so far as the actual devotees of Lord Sastavu are concerned.

b) In applying the broad-brush approach, the court has completely ignored the diverse practices, traditions and schools which exist within the Hindu faith.

c) The discrimination allegedly practiced by the Sabari Temple is unrelated to any common sense meaning of the term, as women can always worship lord Sastavu in their homes or in hundreds of other temples across India. To claim one wants to worship lord Sastavu and not have respect for what he stands for is the worst form of hypocrisy. More so, when Hinduism does not restrict your choices of god in any manner, whatsoever

d) It interferes with the faith and belief of millions of devotees.

e) The practice of not permitting females between the age group of 10 to 50 is held to be exclusionary without any discussion, especially in the milieu of the argument to the contrary advanced. It is respectfully submitted that it is merely a restriction and not a ban. The reason for the restriction lies in the form of the deity which is that of a permanent celibate. Thus, the restriction of worship tantamounting to a total of 40 years of the life of a female does not amount to exclusion from worship. As such, the restriction based on age of a female is not a restriction which amounts to discrimination on the ground only of 'sex'. In other words, the restriction is not solely based on the ground of gender but is more importantly based on the form of the Lord manifested in the Idol, which is that of a "Naishtika Brahmachari".

11. Issues

1. Whether the previous judgment passed by the Supreme Court is constitutionally valid or not.

2. Whether bar to entry violates the right to equality under Article 14 and freedom of religion under Article 25.
 3. Whether biological differences violates the constitution of India.
 4. Whether Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 is the violation on the ground of sex
 5. Whether Sabarimala temple has a denominational character
12. The Supreme Court decided to hear the matter 22nd February 2020.

Note: The laws of Union of Bharatvarsha are pari-materia to that of Union of India.