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GOD FOR ALL: QUESTION OF CHOICE – THE REVOLUTION OF SABARIMALA VERDICT

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ABSTRACT

“Culture does not make people. People make culture. If it is true that the full humanity of women is not our culture, then we can and must make it our culture.”

Chimamanda Ngozi Adichie¹

Life is not always about deciding between right and the wrong. There comes the time when one is to choose between the two-rights. Whatever one may decide, somebody with all the good intentions will lose, and the other will win. The Hon’ble Supreme Court of India is faced with such quandary over and over again. The Judges are expected to uphold such decisions which will be visionary in nature, which will serve a greater purpose and do greater good to the humankind. The Sabarimala case in one such example of such predicament the Judges face. The beliefs and traditions of the devotees on one side and the rights of women on another. The change which will be revolutionary in nature and bring about a positive sentiment across genders, is undoubtedly worth incorporating. It has been more than one and half year since the historic judgment was pronounced, but the long applications to review the same continues to make its foray in the corridors of the Supreme Court. It was in February 2020, the Court decided to begin hearing to fifty such petitions, and referred the same to the historic nine-judge bench, not with the intention to over-rule the judgment rather to address even larger questions of religious discrimination against women. What appalls the one most is the practices are based upon the physiology and biology of a woman. The Sabarimala case highlights and questions the validity of age- old custom and belief under Hindu religion, where a menstruating woman is not allowed to freely practice her religion. But who decided this for Woman? Was it the Woman herself? The answer is ‘no’. It was the patriarchal society, deciding for the so -called lesser human, Females. The practice must change as is the need of the hour. The women are asking for equality, which is promised to them, by the Constitution of India under Article 14². Manusmriti, also points out how it should be a choice and not a compulsion. She is as much human, as much he is a human. Can we as a society let it be a question of Choice?

¹ Chimamanda Ngozi Adichie is an Nigerian Writer, expressing her thoughts in various novels, short stories and non-fiction. She is one of the most prominent writers in African Literature.

² Constitution of India, Article 14, “The State shall not deny to anybody equality before the law or the equal protection of laws within the territory of India.”

THE SABARIMALA VERDICT & THE AFTERMATH

It was 28 September, 2018 when the Hon’ble Supreme Court of India, with a 4:1 majority, struck down Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, paving way for entry of women between the ages 10 and 50 into the Sabarimala temple³. The judgment was received with much applause and criticism alike, creating debates and protests in the country. The petition was filed by the Indian Young Lawyers Association and others in the Supreme Court, after the High Court of Kerala passed a judgement in favour of the Devaswom Board of Travancore and the Chief Thantri of Sabarimala temple, thereby denying the right of worship of Lord Ayappa in the temple to Women of 10-50 years. The constitutional bench was headed by then CJI Misra and Justices Rohinton Nariman, AM Khanwilkar, DY Chandrachud and Indu Malhotra. The sole woman judge, Justice Indu Malhotra dissented from the judgment, thereby upholding the judgment in favour of the respondents. Justice Malhotra asserted that it is not for courts to decide what constitutes an “essential religious practice”, and that interfering with such practices, which are considered to be essential or integral to the temple, would conflict with the rights of devotees guaranteed by Article 25(1)⁴ to worship Lord Ayyappa in the form of a ‘Naishtik Brahmachari’.⁵

Since then Supreme Court has been flooded with the review petitions to review its own decision with the purpose of reversing the order. An approximate 50 review petitions filed, the five-judge bench now headed by Chief Justice S A Bobde made an observation that the seven questions of law relating to matters of religion under Constitution and faith will now be referred for further contemplation to the nine-judge bench. The hon’ble Chief Justice also clarified that discrimination against Women in various religious practices is not limited to Sabarimala temple, rather it extends to various other religious sects and societies in form of various practices like denial of entry of women to Mosques, female genital mutilation in Dawoodi Bohra Muslim community and also the denial of right to Parsi women who happen to marry outside the religion.⁶ The Article 25 and 26 of the Indian Constitution which are primarily related to grant of religious freedom to people of India, and also non-interference of the Judiciary as far as the question of carrying out “essential religious practices” is concerned, are the important questions that the review petition seeks to address. How

³ Indian Young Lawyers Association & ors. Versus State of Kerala & ors., Writ petition (civil) No. 373 of 2006

⁴ Constitution of India, Article 25 (1), states “subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.”

⁵ Apoorva Mandhani, “5 Days, 12 significant Judgments and 4 powerful dissents” available at <https://www.livelaw.in/5-days-12-significant-judgments-and-4-powerful-dissents/> accessed on 21 May 2020.

⁶ Samanwaya Rautrey, The Economic Times, Published on 12 May 2020, available <https://economictimes.indiatimes.com/news/politics-and-nation/can-refer-cases-rule-on-religious-rights-in-matters-of-pure-law-supreme-court/articleshow/75683941.cms> , accessed on 21 May 2020

far can one religion go in the name of “essential religious practice” in curtailing the basic freedom of women? Can the age-old practices with no scientific temperament continue to work only because the self-acclaimed stakeholders of that religion believe so? Should not religion also be an ever- evolving phenomena keeping the changing times in mind?

These are the balancing-out questions which the Hon’ble Supreme Court seeks to address. It is to no doubt that the Supreme Court through this case is headed towards a major reform by addressing the matters which are ingrained and manifest from the religion itself.

RELIGION & CULTURAL PRACTICES IN INDIA – A BRIEF HISTORY

What is a religion? It is a belief in some supernatural power, and involves worshiping the supreme one. A religion includes various traditions and customs, which when followed by a group of people are said to be belonging to that particular religion. India, as we know, is a land of many faiths and beliefs. Since ages people here have believed in the existence of supreme one, perhaps this is the reason that people from all around the world visit this country for spiritual gratification. Hindu religion worships the God in its human form, and as far as the popular perception goes there are about 33 million Gods in this religion, each worshipped by some sect or the another for various reasons.⁷ Every person worshipping any of these deities is well respected and is very much entitled to worship as also promised to them under Article 25⁸ of the Constitution of India, i.e., “Freedom of conscience and free profession, practice and propagation of religion”.

The people of South India, prominently the ones belonging to Kerala worship Lord Ayappa. As per the Hindu mythology, Lord Ayappa is a celibate god, the *Sribhutanatha Purana* text presents Ayyappan as an incarnation of the brahmanical deity [Hariharaputra](#), the son of Shiva and Mohini. The Hindu Legends present many forms of the Lord where he can be seen as a Warrior, as a married man living in a ‘grihstha jeevan’⁹. But of all his temples, most prominent Ayyappan shrine

⁷ Pandit Dasa, “The 33 Million Gods of Hinduism”, available at https://www.huffingtonpost.com/gadadhara-pandit-dasa/the-33-million-demigods-o_b_1737207.html accessed on 21 May 2020.

⁸ Supra Note 4.

⁹ Ayyappan, Wikipedia, available at <https://en.wikipedia.org/wiki/Ayyappan> accessed on 21 May 2020.

is at Sabarimala, nestled in the hills of Pathanamthitta of Kerala.¹⁰ The legend goes that Ayappan explained how the Sabarimala pilgrimage shall be undertaken thereby explaining the importance of Penance vratham and what the devotees can attain by his ‘darshan’¹¹. As has already been seen that in Hindu tradition we follow various ways of worshipping the God, that may be by way of utterances mainly, and not meditative, and comes in many forms, such as sacrifices and offerings; prayers, invocations, blessing and salutations; and intercessions¹². So the Ayappans (as popularly called) believed that to preserve the sanctity of the celibate Lord, the woman belonging to the age of 10-50 years (during menstrual age) should not be allowed in the Sabarimala temple premises. But why such a belief? The belief was based on an ancient dialogue where, “the Ayappa had himself explained the manner in which Sabarimala pilgrimage was to be undertaken emphasising the importance of ‘vratham’ which are special observances that need to be followed in order to achieve spiritual refinement, and that as a part of ‘vruthum’, the person going on pilgrimage separates himself from all family ties for 41 days and during the said period either the woman leaves the house or he does so. As per the contention laid down by the respondents in the Sabarimala case, the women cannot complete the 41 days of ‘vruthum’ as their periods will eventually fall in this period. The observance of ‘vruthum’ is a condition precedent for the pilgrimage.”¹³ The respondents further pointed out that this observance applies to those Men as well who cannot observe 41 days of ‘vruthum’ due to births and deaths in a family. The said condition does makes us to think that is this a case of essential religious practice, because if it qualifies to be so then the ban upon the entry of woman will stand justified, however irrational it may sound considering the rights guaranteed to all the people irrespective of their gender by the Constitution of the country. The whole idea derives its existence from the fact, that under Hindu religion as per ancient customs and usages, the menstruating woman are considered impure and are disallowed from worshipping the deity in those days. There is no denial of the fact that menstruation basically is cycle which drives out the blood from the woman’s body. The oxford dictionary defines menstruation as “The process in a woman of discharging blood and other

¹⁰ Ibid.

¹¹ Government of Kerala, available at http://sabarimala.kerala.gov.in/index.php?option=com_content&view=article&id=91&Itemid=93 accessed on 22 May 2020

¹² Paul H. Williams, “African traditional religions – the worship God (Part iii)”, The Gleamer, published in September 2016, available at <http://jamaica-gleaner.com/article/news/20160924/african-traditional-religionthe-worship-god-part-iii> accessed on 22 May 2020.

¹³ Supra Note 3, page 31.

material from the lining of the uterus at intervals of about one lunar month from puberty until the menopause, except during pregnancy”¹⁴. But this is no impure blood, rather it is as much part of blood in the body as is other. No study till date has concluded that it is the impure blood that comes out, the physiology of a woman is such that the lining around the uterus must break and discharge itself out of the body, so as to keep reproductive cycle healthy. But the ideology of everyone surrounding the fact, who treats women as unfit and impure, and look at them with a sense of disgust is itself extremely upsetting and disrespectful to the women. There is no acceptance in majority of people till date, to the physiology of a woman.

Manusmriti, the ancient legal text (dhrmashastra), gives the instruction that until a woman’s menstruation has ceased to flow (some say this is after the third day, while others say after the fifth, seventh, or even ninth day), her body is impure. Women are discouraged to do *puja* or to pray.¹⁵ They usually are not allowed to enter temples, and in some cases, are not allowed to cook or are kept separately from those in the rest of the village. What the Manusmriti, suggested is prominently being followed, but with no regard to reason behind it. The reasons have evolved out of time itself, as per the convenience of many, especially in a manner as was deemed fit by the society which is predominantly patriarchal in nature. Hence a no sense of sentiment was given to the fact, that how will a woman feel on being referred to as impure and ill-fit. India, a land of spirituality. Everything said here and done here, by the ancient rishis, had a lot more scientific backing to them which most of us have forgotten or are simply ignorant of it. The Indian Ayurvedic science believes in the existence of ‘prana’ in living beings, as per the author Garima Garg, who did lot of research on the subject, wrote in her article that “within our body is contained five *Pranas*. *Prana* can mean breath, energy, life, air, respiration or vitality – for now, we will just take its meaning as “energy.” There are five *Pranas* in the body: *prana*, which takes things in; *apana*, which takes things out; *samana*, which assimilates; *vyana*, which circulates and distributes; and *udana*, which expresses, especially in speech. Any obstruction to the free flow of any of these *pranas* causes imbalance and disease (e.g. obstruction to *samana* would appear to be a metabolic disorder, or perhaps a learning disorder). During *puja* and *homa*, a release of “pent

¹⁴ Oxford Dictionary, meaning of Menstruation available at <https://en.oxforddictionaries.com/definition/menstruation>

¹⁵ Garima Garg, “Three days of impurity : Menstruation and (In)Auspiciousness, available at <https://swordandflute.wordpress.com/2013/07/19/three-days-of-impurity-menstruation-and-inauspiciousness/> accessed on 22 May 2020.

up” *Prana* happens. *Pranayama*, or the practice by which *Prana* is controlled (*yama*), is also a means by which the movement of all five *Pranas* (or by which a single one of the five, depending on the needs of the practitioner) can be brought to balance. (More on the five *pranas* can be found in an easily accessible and brief Vedantic text, *Tattva Bodha*, though they are mentioned in a variety of other *shastras* as well). It is believed that menstruation is a time in which *apana* in the body is naturally predominant, and for good reason. It allows for the outward flow of impure physical elements (e.g. uterine tissue), as well as for repressed emotions (e.g. mood swings during PMS). Since *puja* etc. are meant to balance the *Prana*-s, it is not necessarily the best thing for one to engage in religious practices during menstruation when the body naturally needs *apana* to be dominant. (Here it is worth noting that by most accounts, mental *japa* and *manas puja* are usually considered to be allowed during menstruation. This may vary by *sampradaya* or your own personal belief.)”¹⁶

Now to the people willing to give themselves a better explanation as to why women are discouraged (yes I am using the word ‘discouraged’ here because, the word shall never be disallowed, as no person has got a right to make rules for a particular gender to follow), from following religious practices during menstruation, might like to apprise themselves with this. But being an ardent believer of ‘making your own choices’, so the ones who discard the view are always welcome. We live in a modern world now, there are various options open to us, to research and find out our own truth, and enlighten ourselves with better reasons, and not follow the odd-sedimentary rules which were solely the result of patriarchal society which we were victims off in recent past. Though such was not the case of ancient India, as we were always a nation where women were regarded as the symbol of ‘shakti’ the energy , the creator embodied with a gift of reproducing and letting the life thrive in.

THE BELIEFS OF DEVOTEES VS. THE RIGHTS OF WOMEN – A PANAROMA

¹⁶ Ibid.

The Sabarimala verdict, is actually not only a fight of rights, but is also a fight for respect and dignity, that the society has forgotten to give to the feminine energy present in the World. The irony of our nation is that we have everything ready on paper, but in practice we lack. The Constitution makers have given a lot of thought while framing the rights of every individual, keeping their best interests in mind and it is the result of their hardship that today our constitution stands among the best in the World. But the irony is not only with the nation, but with the legal system as well. Despite the law taking care of our rights, it does not take up the matters suo motu frequently, it waits to be approached. The Court of Law works its best to restore the rights of individual, because it is not mainly a case of creation of rights, rather a claim of rights pre-existing in Law. The Supreme Court of India undoubtedly restored the women's right to worship in Sabarimala temple, by taking off the decade old ban. This done, now tip the balance is inclined towards the women. But who lost here? Is it the State of Kerala, or the Board members of the Devaswom trust? Well the answer, when looked very deeply, is not these people on the losing side, rather it is the ardent devotees of the Lord Ayappa, who with all their heart believe that the sanctity and celibacy of the Lord will be hampered if the said custom is not followed. The sentiments of various Ayappans have been hurt, believing that the Court is interfering with their way of belief and method of worshipping. The belief is so strong that the Travancore Devaswom Board president A Padmakumar on said "real women devotees" of Lord Ayyappa are unlikely to visit the Sabarimala temple and only "women activists" will undertake the pilgrimage¹⁷. Further the President of the Ayappan Samajam, spoke about how the verdict must be overturned by the Supreme court as the sentiments of the devotees, men and women alike have been hurt.¹⁸ Such protests are happening all around the country majorly in the State of Kerala, where the people are on streets, raising slogans against the apex court. It has been more than one year since the judgment was passed, and the unrest does seem to have diminished with passing time. Memory of human is to be blamed for this. The stakeholders of the religion instilled the feeling of 'celibacy' being an 'essential religious practice' in the immediate case, so can we say that 'what the common followers of a religion should practice' is in the hands of those few people who are religiously superior and vested with the responsibility of upholding the belief system of a religion? Are not they self-acclaimed 'God' to the people of that religion, especially in a country like India where most of the population is illiterate and are prone to follow and preach, rather than question and explore? The respondents of the case are crying out loud that the judgment

¹⁷ The Hindu, available at <https://www.thehindu.com/news/national/real-women-devotees-of-lord-ayyappa-unlikely-to-visit-sabarimala-temple-tdb-chief/article25091504.ece> accessed on 23 May 2020

¹⁸ Swaraj, available at <https://swarajyamag.com/insta/lord-ayyappa-brings-tamil-and-malayali-women-together-in-punjab-stage-joint-protest-against-apex-court-verdict> accessed on 23 May 2020

was in violation of express constitutional provisions guaranteeing Ayyappa devotees' liberty of thought, expression, belief, faith and worship under Article 25¹⁹ of the Constitution.²⁰

We live in a democratic country and have been bestowed with a set of rights and also some adjoining duties. Everyone has the right to voice their needs and demands alongwith the opinions, but not all are meant to be fulfilled, like a kid who makes plenty of demands all throughout, but the parent, the guardian, knows what will be in the best interests of the child. Similarly, the guardian, the protector of the rights here is the Supreme Court of India, who is guided by the most sacrosanct law of the land ,i.e., the Constitution of India. Everyone's rights are important, but not all rights are revolutionary in nature and revolution does not comes easy, as *Che Guavera*, the Argentine Marxist Revolutionary once said "*The revolution is not an apple that falls when it is ripe. You have to make it fall.*"²¹ The Sabarimala case verdict is revolutionary in nature, as far as it fights for the dignity of the woman, as far as it establishes that let woman decide whether she wishes to worship during her menstruating days or not, as far as it lets woman take pride in the way she is made by nature and never ever made to feel guilty about it. Undoubtedly, the sentiments of the devotees have been hurt, and the protests are more of the result of having them to come out of their comfort zones and accept the must needed change. The change for which the ancient texts refer to, that is men are not to command women, rather they are to embrace the womanism in them. Let the World be a place where every individual can be themselves and take pride in who they are, a Man to be a Man and a Woman to be a Woman.

As the Hon'ble Supreme Court of India, moves to a *nine-judge* bench to hear the review petition, addressing the more prominent cases of injustice to women in the name of 'essential religious practices' like the prohibition of entry of women in mosques, the barbaric act of female genital mutilation in Dawoodi Bohra Muslim community or the denial of basic rights to Parsi women if they marry outside their religion, the excerpts from Sabarimala Judgment written by Justice Deepak Misra must be kept in mind, that "*woman are as much partners in search for divinity and spirituality as is a man. The attribute of devotion to divinity cannot be subjected to the rigidity and stereotypes of gender. Let the relationship with the Creator be a*

¹⁹ Supra Note 4

²⁰ Priyanka Mittal, available at <https://www.livemint.com/Politics/crYwTEvNxtTBDxOJquojGN/Sabarimala-review-petitions-Supreme-Court-to-decide-on-list.html> accessed on 23 May 2020.

²¹Ernesto Che Guavera,an Argentine Marxist Revolutionary, physician, author, guerrilla leader, diplomat and military theorist. The quote given by him is available at https://www.brainyquote.com/quotes/che_guevara_166469?src=t_revolution , accessed on 23 May 2020.

Transcendental one, crossing all the socially created artificial barriers."²² Let God be there for all. Let woman choose for herself what she wants to do, menstruating or not. Let her not feel disgusted about her physiology. Let it be her choice. And let us leave this question of choice, set free, for her, to be decided by her, with all her knowledge and beliefs held intact.

²² Supra Note 3, page 2 & 3.