

Revisiting the Sabarimala Debate: A Socio-Legal Evaluation of Justice Indu Malhotra's Dissent

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Abstract

The Sabarimala judgment sparked a controversial debate in Indian constitutional jurisprudence. In a country like India, where religious faith is deeply rooted in people's lives, this case highlighted the complex relationship between religious freedom, gender equality, and constitutional morality. In *Indian Young Lawyers Association v. State of Kerala (2018)*, the Supreme Court, by a majority of 4:1, held that the exclusion of women between the ages of 10 and 50 from the Sabarimala Temple was unconstitutional and allowed women of all age groups to enter the temple. Activists celebrated the judgment as a significant step towards equality. However, the followers of Lord Ayyappa, including many women, viewed it as a direct intervention in their right to religious autonomy and freedom of faith. Justice Indu Malhotra's dissenting opinion was particularly relevant in the Indian context. She presented a contrasting vision of judicial restraint, religious autonomy, and the rights guaranteed under Articles 25 and 26 of the Constitution of India. This paper critically examines Justice Malhotra's dissent and evaluates its contribution to the discourse on religious liberty and constitutional adjudication. The paper concludes that Justice Indu Malhotra's dissent offers an important constitutional perspective on religious autonomy and judicial restraint, emphasizing that sincerely held religious beliefs and denominational practices deserve constitutional protection unless they violate the constitutional limitations of public order, morality, or health.

Keywords: sabarimala, justice indu malhotra, religious freedom, constitutional morality, judicial restraint, essential religious practices.

Introduction

India is a land where religion forms an integral part of the social and cultural fabric of society. Across villages, towns, and cities, one can find temples associated with different deities, each carrying its own story and belief system. These narratives are deeply rooted among devotees, who often worship the deity as a living presence and follow rituals with devotion and respect. In such a framework, religious belief is voluntary, and individuals are free to follow or not follow a particular tradition, as well as to choose not to visit a particular temple and instead worship at another place of their choice. The Constitution of India recognises and protects this pluralism under Articles 25 and 26, which guarantee freedom of religion and the autonomy of religious denominations to manage their own affairs. In this context, temples such as the

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Kanyakumari Temple in Tamil Nadu, where entry of men is traditionally restricted up to certain designated areas, and the Kamakhya Temple in Assam, where it is believed that the goddess undergoes her annual menstruation period and the temple remains closed for a few days during that time, reflect diverse ritual practices rooted in faith and tradition. The Sabarimala dispute concerns the Lord Ayyappa Temple in Kerala, where entry of women

between the ages of 10 to 50 was restricted on the ground that the deity is considered to be in a state of eternal celibacy (naishtika brahmacharya). This restriction was challenged before the Supreme Court in *Indian Young Lawyers Association v. State of Kerala*, raising important constitutional questions regarding the scope of religious freedom and the limits of state interference in religious affairs, particularly in relation to Articles 14 and 25(1) and the autonomy of religious denominations under Article 26. The Supreme Court, by majority, held the exclusion unconstitutional, while the devotees of Lord Ayyappa viewed the judgment as an encroachment upon their religious autonomy and essential religious practice. The judgment highlights the continuing tension between individual rights and collective religious freedom in a constitutional democracy, and whether the State should interfere in practices internal to a denomination unless they violate public order, morality, and health. Against this backdrop, this paper critically examines Justice Indu Malhotra's dissent in the Sabarimala judgment and evaluates its contribution to Indian constitutional jurisprudence, particularly in balancing constitutional morality and religious autonomy.

Literature Review

The Sabarimala judgment has attracted significant scholarly attention in the field of constitutional law. Constitutional scholars such as Granville Austin (1999), H.M. Seervai (2015), D.D. Basu (2023), and V.N. Shukla (2023) have extensively examined the constitutional principles of religious freedom, denominational autonomy, constitutional morality, and the scope of Articles 25 and 26 of the Constitution. Most academic writings on the Sabarimala case have focused on the majority judgment and its implications for gender equality and women's right to worship. However, comparatively limited scholarly attention has been devoted to Justice Indu Malhotra's dissent, particularly from a socio-legal perspective. This paper seeks to address this gap by critically analysing her dissent and evaluating its continuing relevance in balancing religious autonomy, judicial restraint, and constitutional values.

Research Methodology

This study adopts a doctrinal research methodology. The analysis is based on primary sources including the Constitution of India, judicial decisions, particularly *Indian Young Lawyers Association v. State of Kerala* (2018), and relevant statutory provisions. Secondary sources such as books, journal articles, commentaries, and scholarly writings on religious freedom, constitutional morality, and judicial review have also been consulted.

Background

The Sabarimala Temple is located in the Periyar Tiger Reserve in Kerala and is a prominent Hindu pilgrimage centre dedicated to Lord Ayyappa. According to traditional belief, Ayyappa

is regarded as the son of Lord Shiva and Lord Vishnu in the form of Mohini. It is believed that he was born to defeat the demon Mahishi. After being killed, Mahishi is said to have been liberated from a curse and appeared in a divine form as a Malikappurathamma. As per belief, she developed affection for Lord Ayyappa and proposed marriage to him. However, Ayyappa is believed to have declined the proposal and stated that he would marry only when all Kanni Swamis (first-time devotees) stopped visiting him. In devotional tradition, Malikappurathamma, a goddess worshipped in a shrine located near the Sabarimala Temple complex in Kerala. According to belief, she continues to wait for Lord Ayyappa as thousands of new devotees undertake the pilgrimage every year, and her wait is considered eternal. The shrine of Malikappurathamma is situated close to the main Sabarimala temple and is an important part of the pilgrimage landscape. Based on this belief, devotees consider Lord Ayyappa to be a celibate deity, and this forms the religious foundation for the pilgrimage practices at Sabarimala. It is further believed that women belonging to the menstruating age group (10 to 50 years) traditionally do not undertake the pilgrimage to the temple out of respect for the celibate nature of the deity and the belief that Malikappurathamma continues to await his consent to marriage.

It is important to note that there are several other temples dedicated to Lord Ayyappa where women devotees are permitted to worship. However, in Sabarimala, the restriction is based on a specific traditional belief associated with the deity's ascetic character. Devotees who follow this practice do so out of reverence for the celibate nature of Lord Ayyappa, which forms the basis of the customary restriction linked to entry into the temple.

Analysis and Discussion: Justice Indu Malhotra's Dissent

While the majority held that the restriction on women between the ages of 10 to 50 in the temple premises was unconstitutional, Justice D.Y. Chandrachud and the other concurring judges emphasized the principles of constitutional morality, equality, and the rights guaranteed under Articles 14, 15, and 25 of the Constitution. They held that such exclusionary practices could not be justified under Article 25(1) and found that Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965, was inconsistent with the parent statute as well as the Constitution. Rule 3(b) had been interpreted as permitting restrictions on women's entry into temples, whereas Section 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965, mandates that all places of public worship of Hindus shall be open to all sections and classes of Hindus without discrimination. The Court held that any rule or practice allowing exclusion based on gender is contrary to the statutory mandate of equal access under Section 3 and cannot stand in light of the constitutional guarantees of equality and non-discrimination.

Amidst the majority opinion, Justice Indu Malhotra's dissenting argument remains highly relevant to the socio-cultural context of Indian society.

1. Judicial Restraint in Matters of Religious Faith

One of her key arguments is that courts should not determine the rationality of religious beliefs or practices. Hence, in a country characterized by diverse religions and faiths, no external authority, including the judiciary, should judge the rationality of another's faith. She

emphasized that a practice which may appear irrational, illogical, or discriminatory to one person may hold deep spiritual and religious significance for another who sincerely believes in it. Therefore, rationality must be understood from the perspective of the worshipper and the nature of sincerely and genuinely held religious beliefs, rather than from an external standard of reasonableness. She further stated that judicial review of religious practices must be exercised with great caution and must be understood within the constitutional framework that protects religious autonomy, especially under Articles 25 and 26 of the Constitution.

"Judicial review of religious practises ought not to be undertaken, as the Court cannot impose its morality or rationality with respect to the form of worship of a deity. Doing so would negate the freedom to practise one's religion according to one's faith and beliefs. It would amount to rationalising religion, faith and beliefs, which is outside the ken of Courts."¹

2. Religious Denomination under Article 26

The Sabarimala temple tradition has been argued to constitute a constitutionally protected religious denomination under Article 26 of the Constitution of India. The devotees of Lord Ayyappa possess a distinct religious identity and are commonly referred to as *Ayyappans*, while first-time pilgrims are known as *Kanni Swamis*. The pilgrimage is governed by a set of well-established religious practices and disciplines, including observances such as a strict period of austerity (*vratham*), typically for 41 days, which devotees undertake before visiting the temple. It is contended that the community of devotees satisfies the test of a religious denomination, as it has a common faith, distinct identity, and a shared system of beliefs and practices. Accordingly, it is argued that they are entitled to the protection guaranteed under Article 26 of the Constitution, which includes the right to manage their own religious affairs in matters of religion. Justice Malhotra said:

"The proper forum to ascertain whether a certain sect constitutes a religious denomination or not, would be more appropriately determined by a civil court, where both parties are given the opportunity of leading evidence to establish their case."²

2. Locus Standi and Public Interest Litigation in Religious Matters

Justice Indu Malhotra further emphasized that persons who are not directly affected by a religious practice should not ordinarily be permitted to challenge it. She highlighted the importance of the principle of locus standi in the context of religious matters in Indian society. In the present case, the petitioners were individuals who were geographically distant from the Sabarimala Temple and did not share the faith, belief system, or religious practices associated with the temple. Despite this, they challenged the customs and traditions of the temple. According to her, if such challenges are permitted without restriction, it could open the floodgates to numerous petitions questioning the religious practices of different communities without understanding their deep-rooted faith, traditions, and spiritual significance. She

¹ Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1 (per Indu Malhotra, J., dissenting)

² Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1 (per Indu Malhotra, J., dissenting).

cautioned that such interference cannot be justified in a pluralistic society like India. She further observed that, ordinarily, only persons who are part of the religious denomination or who are directly affected by the practice should have the standing to challenge it, unless the practice in question violates public order, morality, health, or involves manifest constitutional wrongs such as practices like Sati. She said:

"Permitting PILs in religious matters would open the floodgates to interlopers to question religious beliefs and practises, even if the petitioner is not a believer of a particular religion, or a worshipper of a particular shrine. The perils are even graver for religious minorities if such petitions are entertained."³

4. Essential Religious Practices Doctrine

With respect to the doctrine of essential religious practices, Justice Indu Malhotra held that courts should not determine what constitutes an essential practice of a religion in matters of worship and faith. She emphasized that such determinations fall within the domain of the religious community itself, and that only the followers of the faith are competent to decide what is essential to their religious beliefs and practices. According to her, judicial inquiry into the essentiality of religious practices risks interfering with matters of faith, which lie beyond the constitutional competence of courts. She maintained that what constitutes an "essential religious practice" is for the religious community to decide, and not the Court. She said:

"It is not for the courts to determine which of these practices of a faith are to be struck down, except if they are pernicious, oppressive, or a social evil, like Sati."⁴

5. Article 17 and the Scope of Untouchability

Justice D.Y. Chandrachud, in the majority opinion, held that the exclusionary practice in Sabarimala could attract the prohibition under Article 17 of the Constitution, which abolishes untouchability in any form. The majority viewed the restriction as discriminatory in nature and inconsistent with constitutional guarantees of equality and dignity.

However, Justice Indu Malhotra expressly disagreed with this view. She held that Article 17 could not be invoked in the present case, as the nature of the restriction was linked to the religious character of the deity and the essential practices of the denomination. According to her, the exclusion based on the unique religious belief regarding Lord Ayyappa as a *Naishtika Brahmachari* could not be equated with untouchability, which is a constitutionally prohibited social evil. She therefore maintained that the application of Article 17 in this context was misplaced.

Justice Malhotra said that all forms of exclusion "would not tantamount to untouchability." Stating that Article 17 of the Constitution pertains to caste prejudice and that "untouchability was never understood to apply to women as a class", she observed that women

³ Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1 (per Indu Malhotra, J., dissenting).

⁴ Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1 (per Indu Malhotra, J., dissenting).

between the ages of 10 and 50 are allowed into all other Ayyappa temples, and that the restriction in Sabarimala was because of the deity, not social exclusion. She said:

"Not a single precedent has been shown to interpret Article 17 in the manner contended by the Petitioners."⁵

Core Theme of the Dissent

The central message of Justice Indu Malhotra's dissent was: In a diverse and pluralistic society like India, courts must respect religious autonomy and exercise judicial restraint in matters of faith, intervening only when a religious practice violates the constitutional limitations of public order, morality, health, or other fundamental rights in a clear and substantial manner.

Questions Left Open by Justice Indu Malhotra's Dissent

The dissenting judgment leaves several important constitutional questions unresolved for further debate. These include:

- What are the limits of constitutional morality, and can it override sincerely held religious practices?
- Whether constitutional morality can be used to reform or alter religious beliefs and traditions.
- Who has the locus standi to challenge religious practices, particularly whether persons who are not directly affected by a religious practice can file such challenges.
- Whether Public Interest Litigations (PILs) should be entertained in matters of religion when filed by petitioners who are neither followers nor worshippers of the concerned faith.
- How courts should determine or identify what constitutes an essential religious practice.
- Whether courts are institutionally competent to adjudicate matters involving faith, belief, and theology.
- How the balance between the right to equality and the freedom of religion should be maintained.
- What should be the proper scope of judicial restraint in matters of religion.
- How unique, identity-based religious practices should be protected within India's pluralistic constitutional framework.

These unresolved constitutional questions contributed to the continued judicial reconsideration of the issues involved. Subsequently, the Sabarimala review matter was referred to a larger Bench by the Supreme Court in its review order dated 14 November 2019. A nine-Judge

⁵ Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1 (per Indu Malhotra, J., dissenting).

Constitution Bench referred the broader constitutional questions arising from the Sabarimala judgment for authoritative determination.

Conclusion

The Sabarimala controversy has, in many ways, become a battle between the protection of faith under Articles 25 and 26 and claims of equality under Articles 14 and 15 of the Constitution. In such cases, the Court is required to harmonise competing rights so that religious beliefs and sentiments are respected while constitutional guarantees are also protected. As the Supreme Court observed in *Subramanian Swamy v. Union of India*, it is the duty of the Court to maintain a balance between the fundamental rights of one person and the co-existing fundamental rights of another.

From this perspective, Justice Indu Malhotra's dissent remains highly relevant in the Indian context. Her opinion provided a balanced approach by analysing the dispute not only from a constitutional perspective but also from a socio-legal perspective. She examined all relevant aspects of the case, ranging from Articles 14, 25 and 26 to the validity of Rule 3(b), while simultaneously recognising the religious sentiments, traditions, and faith of the worshippers.

Rather than focusing solely on legal principles, Justice Malhotra emphasised that matters involving religion must also be understood through the lens of faith and social realities. She raised important concerns regarding the extent of judicial intervention in religious affairs, particularly when such challenges are brought through Public Interest Litigation by persons who are not followers of the faith or directly affected by the practice in question.

The aftermath of the judgment further revealed the deep religious sensitivities surrounding the Sabarimala tradition. The entry of two women into the temple following the verdict led to widespread protests and unrest, demonstrating that the dispute involved not only legal questions but also deeply held faith and religious sentiments. This highlights the need for a sensitive and nuanced approach in matters involving religion.

Therefore, disputes involving religious practices must be approached with greater sensitivity and a coherent understanding of their social and legal dimensions. Justice Indu Malhotra's dissent offers an important constitutional perspective that seeks to balance religious freedom, judicial restraint, and constitutional values. In doing so, it has contributed a significant and enduring dimension to Indian constitutional jurisprudence concerning religion and faith.

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