

Issues, Arguments, Outcomes: Sabarimala Temple Entry

Issues	Petitioner	Respondent	Kerala High Court	Possible Outcome
Does the SC have the power to intervene in this case?	Yes. They point out that that the exclusion of woman is a State law. Hence, Article 13 covers it.	No comment.	State can intervene to examine the validity of Rule 3(b), which prohibits entry of menstruating women on basis of Sabarimala custom.	Most likely, the SC will rule that it can intervene as the exclusion is based on rule 3B of Kerala Act 1965. Also, Sabarimala is a not a private temple as it receives State funds.
Does rule 3B supplant Section 3* of the 1965 Kerala Act and need to be struck down? (Note that, only if Rule 3B is valid, the Court will look into fundamental rights violations claim)	Yes, they point out that Rule 3B not only undoes Section 3, but it also does the exact opposite of the Act aims to achieve. The Act aims to end discriminatory practices. The rule does the opposite, restricting women.	No. They argue that Rule 3B recognizes the uniqueness of a long-standing religious custom and is in the spirit of the Act.	Rule (3b) is a reasonable restriction as it restricts a section of menstruating women and not women as a class.	The SC might strike down Rule 3B because of 'excessive delegation'. Meaning, rule-making is an executive power and it cannot undo the objective of a legislative Act.
If Rule 3b is <i>intra vires</i> to the 1965 Act, then does it violate the fundamental rights to religion and equality?				
Does the Sabarimala custom violate a woman's freedom of religion under Article 25(1)?	Yes, they claim that access to a place of worship is essential for the freedom to practice one's faith.	No, on the grounds that it is an essential custom and hence places a reasonable restriction on a section of worshippers.	The custom of excluding menstruating women draws from respecting the celibacy status of the deity Lord Ayyappa	The Court can harmonize competing rights under Article 25(1) – women's right to enter Sabarimala and upholding celibacy to be a core tenet by restricting ambit of celibacy to not biological construct but adherence to certain acts common to both genders

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Is the custom essential to the Sabarimala worshippers, such that it is protected under Article 25(1)?	No, on the grounds that the custom is not essential. It was not in place 2 C. ago.	Yes, customary exclusion protects the celibacy of Lord Ayyappa, so it is an essential religious practice of the sect. Also, essential practice has to be derived from followers faith in the tradition and custom and not independent scrutiny on the need of the practice.	The court held that what is essential has to be determined by the followers and cant be scrutinized by courts. Held that celibacy of Deity is a essential tenet of the sect.	The court might hold that while practice of penance or celibacy for the followers might be core tenet, but such practice need not extend to excluding women on basis of biological construct.
Does the Devasam Board, the administering body of Sabarimala temple, have autonomy in managing religious affairs under Article 26(b)?	No, on the grounds that the Board is not a separate religious 'denomination'. They argue it is a sub-sect of Hinduism and cannot decide internal religious affairs.	Yes, religious denomination because: -unique practices -non-Hindus can be Lord Ayyappa devotee	Yes, the Sabarimala temple has autonomy in managing its customs even to the exclusion of menstruating women	The Court is unlikely to decide that Sabarimala is a separate religious denomination because: -Religious customs have Hindu roots. -Having non-Hindu followers is not threshold enough for claiming non-Hindu denominational status. The court might decide that Sabarimala follwers are a sub-sect of Hinduism.
Can a group's right to manage its own religious affairs under 26(b) trump an individual woman's right to practice her faith under 25(1)?	No, because the Board is not a religious denomination so Article 26 does not apply. Secondly, 26 is subject to 'constitutional morality', i.e. other fundamental rights	Yes, on a literal reading of the Constitution the individual right to faith is subject to a group's freedom of religion under 26.	Yes, on literal interpretation, Sabarimala denomination right to determine religious customs can override individual right to worship of menstruating women	When there is a conflict between two fundamental rights, the Court has a history of relying on a harmonious interpretive strategy rather than a literal one. Further, the Constitution gives rights to groups in order to protect individuals.
Does the Kerala 1965 Rule that protects the custom, violate the constitutional mandate of opening Hindu institutions to all class/sections under 25(2b)?	Yes, rule 3B not only violates the Act it belongs to, but also violates the specific constitutional mandate of 25(2b). The rule prevents a class/section of worshippers, namely women, from accessing a Hindu institution.	No, the respondent made two arguments: -25(2b) only applies to Hindu worshipper, whereas Lord Ayyappa worshipers can be non-Hindu -Women are not a class/section of Hindus, such as for example Dalits are.	Article 25(2a) doesn't come into picture, as the restriction on entry is not on a class of worshippers – women but a section of women. So, it is a reasonable restriction.	The Court will likely find Rule 3B to violate 25(2b).

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Does the Sabarimala custom violate women's right equality under Article 14?	Yes, the petitioners have violated both tests of equality: reasonable classification and arbitrariness. 2 points on reasonable classification. First, by definition menstruation only applies to women so it is gender classification. Second, the objective of the custom is illegitimate as it is based on a notion of purity, which is unrecognized by the Constitution. Regarding arbitrariness, the age boundaries of menstruation are in reality fluid.	No, the custom does not restrict women's entry in general, rather restricts persons who are menstruating.	The classification between menstruation and non-menstruation is a reasonable classification for the purpose of upholding notion of celibacy, which is a core tenet of the sect.	The Court will likely find the custom fails the tests of reasonable classification and arbitrariness. The Court will likely find the custom discriminatory.
Does Article 17, prescribing untouchability, extend to gender-based discrimination?	Yes, the custom treats women as impure because they menstruate. Untouchability pertains to discrimination on the notion of impurity and thus should extend to women.	No, a contextual reading of the Constitution treats untouchability as a Caste category.	No findings	The Court will most likely rely on the Constituent Assembly Debates and find that untouchability refers to Caste. Untouchability cannot include gender untouchability.
Does Lord Ayyappa, a judicial identity**, have fundamental rights?	No, a deity is a legal fiction and cannot enjoy the same fundamental rights	Yes, as far as freedom of religion as an essential part of his identity is religious.	No findings	Unsure?

Courts view on freedom of religion:

Unlikely that the respondent's freedom of religion claims under 26(b) and 25(2b) will hold. Even if they hold, the respondent's freedom of religion claims hold, they are subject to constitutionality morality. At this point the respondents need to demonstrate that their custom does not infringe upon the fundamental right to equality and non-discrimination.

*Section 3 of 1965 Kerala Act, provides that no Hindu, of whatever section or class, shall in any manner be prevented, obstructed or discouraged from entering such place of public worship (meant for Hindus), or from worshipping or offering prayer, there at, or performing any religious service.

**Sai Deepak argued that based on Hindu custom, a deity gains life when it is installed in a temple and it can only be kept alive by observing its customs. Lord Ayyappa is celibate and its essential to observe his celibacy by not menstruating.