

TEMPLE ENTRY: EXAMINING THE INTERSECTION OF CASTE, GENDER AND RELIGION

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ABSTRACT

Temples in India have immense political and social power. Two groups have been historically marginalized and face strong opposition to temple entry: Dalits and women. This thesis, in particular, it explores the Dalit temple entry movement in Travancore that took place in the 1920s. On the women's issue, it focuses on the Sabarimala temple entry by critically examining the litigation histories of the Kerala High Court and Supreme Court of India cases that form the legal basis for their temple entry. It provides a socio-legal narration in how these two groups responded to the temple entry issue and establishes the interlinkages between caste, religion and gender.

INTRODUCTION

Bindu Ammini, and Kanakadurga, Lord Ayyappa Devotees, finally managed to visit the Sabarimala temple in January 2019. The Supreme Court of India September 2018 had held the custom of banning menstruating women and girls from entering the Sabarimala temple as unconstitutional. Ammini and Kanakadurga's visit had to be arranged in the early hours of the day and with guards for security. Post their visit, the State of Kerala had to give police protection as their lives were in danger due to the heavy opposition to their temple entry.¹

This highlights the political and social power temples hold India: they even exert considerable influence in shaping the socio-political lives. The attempt to regulate temples and assume some extent and form of sovereignty began with the British. The unique legal and policy relationship that developed between the state and the temples thereafter, reiterated Brahminical supremacy to govern and regulate temples with some level of state involvement.

Two groups have faced exclusion: lower caste community and women during menstruation. This capstone thesis explores how these two communities navigated temple entry in southern parts of the State of Kerala. Two reasons have informed this choice. First, one of the most popular temple entry movements originated in Travancore, erstwhile kingdom, that is currently a part of the southern Kerala, that led to a proclamation allowing temple entry to Dalits. Second, Sabarimala temple which has garnered a lot of attention from the media, courts and scholars for the controversy regarding temple entry ban on women and girls aged between 10 and 50, is located in the Southern Kerala.

¹ Desk, 'Sabarimala: Indian women make history by entering temple' (*BBC*, 2 January 2019) < <https://www.bbc.com/news/world-asia-india-46733750>> accessed 23 June 2022.

The first chapter of the thesis unpacks, with closer examination, the relationship between the state and the temples beginning from the colonial times to the Constitution of India, 1950. Further, it focuses on the legal and regulatory framework governing the Sabarimala temple. The second chapter looks at the how the excluded groups navigated the temple entry issue. The Dalits, through social movements, and the women through courts. The section on Dalits, focuses on the prominent Vaikhom Satyagraha prior to independence and the Constitution of India, 1950 post-independence. A Kerala High Court judgment and a Supreme Court judgment form the crux of the analysis for women entry. This section maps the socio-legal history of the demand for temple entry into Sabarimala by women.

The final chapter fleshes out the ways in which the dominant force of caste shapes temple entry issue for Dalits and women and its intersection with religion.

THE PRIEST, THE KING, THE EMPIRE AND THE STATE

Temples and the State: A Case of Colonial Continuity?

Temples in India are an important site of political power.² The first marked instance of state intervention with the temples can be traced to colonial India. The British Colonial state began exercising control over the temple administration and affairs. By examining the numerous laws passed by the colonial state, one can trace the first attempt at institutionalizing control over temples during the colonial era.³

The British policy began with an approach characterized by a high level of intervention by directly assuming sovereign authority over the temples. However, this move was heavily criticized within the British community for its blatant endorsement of idol worship. This marked a shift in the colonial policy⁴: in 1863, the Religious Endowments Act was passed which predominantly gave control over temples to a committee appointed under the Act. The members of the committee comprised of qualified people from the respective faith. Further the

² Orr, Leslie C., 'Temple: Form and Function', in: Brill's Encyclopedia of Hinduism Online, Editor-in-Chief Associate Editors Knut A. Jacobsen, Helene Basu, Angelika Malinar, Vasudha Narayanan. Consulted online on 21 April 2022 <http://dx.doi.org/10.1163/2212-5019_BEH_COM_2040010>

³ G Ramesh, 'Governance and Management of Temples: A Framework' (Working Paper No 621, IIM B) <https://repository.iimb.ac.in/bitstream/2074/16705/1/WP_IIMB_621.pdf> accessed 10 May 2022

⁴ Ibid

Act gave courts jurisdiction over cases pertaining to breach of duties of the committee members in administering the temples.

Thereafter, the Government of India Act, 1919 allowed provincial legislatures to legislate on temple endowments. A year later, the Charitable and Religious Trusts Act, 1920 provided for provisions for audits of trust accounts including that of trusts governing temple among other regulatory provisions. The State of Madras passed the Madras Hindu Religious Endowments Act of 1925, a first law in India that was passed to regulate the endowments related to Hindu temples.⁵

Post-independence from the colonial rule, the framers of the Indian Constitution and the state cultivated and encoded a special brand of secularism that is distinct to the Indian historical and cultural legacy. As Rajeev Bhargava describes⁶, the Indian brand of secularism takes a "principled distance" between the state and the religion/religious institutions. In other words, there is no strict separation of state and the church in India. This constitutive decision of the founders of independent India and the framers of the Indian Constitution led to the colonial legal and regulatory framework around temples to continue post the independence. The Madras Religious Endowment Act, 1925 became the inspiration for other regional laws in Kerala (where Sabarimala is located), Andhra Pradesh, Karnataka, Rajasthan and other states.⁷

While the colonial laws around temple administration survived the Indian independence, the understanding of the relationship between the state and temples is incomplete without

⁵Vineeta Sinha, "Religion-State Encounters in Hindu Domains: From the Straits Settlements to Singapore" (ARI - Springer Asia Series, 2011) [97]

⁶Rajeev Bhargava, *Modes of Secularism*. In *Secularism and Its Critics*, ed. Rajeev Bhargava, (Oxford University Press, 2008) [31-53]

⁷ Supra note 2

examining the constitutional provisions around religion. These provide details on state intervention or non-intervention with religious institutions including temples.

Article 25 of the Constitution of India, 1950 (“Constitution”) guarantees the freedom to “profess, practice and propagate religion”. It also allows for the state to regulate “economic, financial, political or other secular activity associated with religious practice”. Additionally, the Article enables state to pass laws for the purposes of “social welfare and reform” of Hindu religious institutions. Another crucial article for consideration is Article 26 of the Constitution which allows for religious denominations to administer their own religious affairs.

One of the most pronounced themes of constitutional contestations arising out of these provisions is assessing the meaning of religion especially in the context of Hinduism.⁸ The Supreme Court of India has innovated a test to respond to constitutional claims brought with respect to freedom of religion: essential religious practices. As a preliminary examination, the Court decides if the practice in question/spotlight is imperative/fundamental to the existence of a religion. If so, it garners constitutional protection.⁹ In other words, the state intervention is dependent upon whether the issue in question passes the essential religious practice test: if the answer is affirmative, then it is beyond the scope of state intervention. On the other hand, if the practice is found to be inessential then it can be governed and regulated by the state.

⁸ Ronojoy Sen, *Secularism and Religious Freedom*, In the Oxford Handbook of the Indian Constitution, Ed. Sujit Choudhry et al (Oxford University Press 2016).

⁹ Rajeev Dhavan and Fali Nariman, ‘The Supreme Court and Group Life: Religious Freedom, Minority Groups, and Disadvantaged Communities’ in BN Kirpal and others (eds) *Supreme But Not Infallible: Essays in Honour of the Supreme Court of India* (Oxford University Press 2000)

Sabarimala Temple and the State of Kerala

Two legislations are key to understanding the relationship between the Sabarimala Temple and the State of Kerala. First, the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965 (hereinafter referred to as “Places of Public Worship Act”) and the rules made under this. Second, Travancore-Cochin Hindu Religious Institutions Act, 1950 (hereinafter referred to as “Religious Institutions Act”) before Kerala was constituted under the States Reorganization Act, 1956. The objective of the Places of Worship Act was to “make better provisions for entry of all classes and sections of Hindus into public places of worship”. Section 3 of the act makes all places of Hindu public worship open to all sections of the Hindu community irrespective of caste or other factors. It penalises contravention of this provision with an imprisonment up to six months and/or a fine.¹⁰ However, access to public places of worship is qualified by other existing laws or customs which have the effect of the laws.¹¹ The Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965 (hereinafter referred to as “Places of Worship Rules”) further supplements its parent Act. Rule 3 (b) of the Places of Worship Rules allows for banning temple entry of: “*Women at such time during which they are not by custom and usage allowed to enter a place of worship*”. This Rule became the legal basis for banning the entry of menstruating women aged between 10 and 50 years.¹²

One of the key purposes of the Religious Institutions Act was to administer and oversee the endowments of temples in Kerala. Keeping in line with the colonial blueprint, this Act constitutes the Travancore Devaswom Board (hereinafter referred to as “TBD”) ¹³ which is

¹⁰ Section 5 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965.

¹¹ Section 3 of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, 1965.

¹² Krishna Sarma, ‘Constitutional and legal bases of Sabarimala verdict’ (*Financial Express*, 17 October 2018) <[https://www.financialexpress.com/india-news/the-constitutional-and-legal-bases-of-the-sabarimala-verdict-october-17-2018/1352605/#:~:text=The%20Rule%203\(b\)%20of,10%20through%20to%2050%20years](https://www.financialexpress.com/india-news/the-constitutional-and-legal-bases-of-the-sabarimala-verdict-october-17-2018/1352605/#:~:text=The%20Rule%203(b)%20of,10%20through%20to%2050%20years)> accessed 10 January 2022

¹³ Sections 3 to 17 of the Travancore-Cochin Hindu Religious Institutions Act, 1950.

entrusted with the administration of all funds and properties of temples under its ambit. The Board consists of three male Hindu members.¹⁴ One shall be nominated by the Council of Ministers in Kerala and one member shall be elected by the Legislative Assembly of the State of Travancore-Cochin.¹⁵ The Devaswom Board currently administers 1,248 temples in the State of Kerala.¹⁶ The Sabarimala Temple is one of them and constitutes the largest and the most significant temple under the Board's oversight.¹⁷

The nature of state intervention as envisaged by the Constitution of India, the Places of Public Worship Act and the Religious Institutions Act serves distinct purposes. While the Constitution carves out a test to check against zealous interventionist approaches of the state, the function of the state laws is different. The Places of Public Worship Act seems to be motivated by a social reform function: to break open previously inaccessible public worship spaces to predominantly people from the 'lower' castes. On the other hand, the Religious Institutions Act, has an administrative purpose: to ensure that the vastly wealthy temples, like that of Sabarimala, are entrusted with proper administration.

While this section gave a short primer on the relationship between states and temples and the State of Kerala and the Sabarimala temple, the bone of contention that became a key issue, was the statutorily recognised custom exception to deny women entry into temples including Sabarimala.

¹⁴ Section 4 of the Travancore-Cochin Hindu Religious Institutions Act, 1950.

¹⁵ *Ibid.*

¹⁶ Official Website of Sabarimala, Travancore Devaswom Board, <https://sabarimala.tdb.org.in/node/148>.

¹⁷ *Ibid.*

SOCIAL MOVEMENTS AND TEMPLE ENTRY

Mapping the Dalit Temple Entry Movement: From Vaikom Satyagraha to the Constitution of India, 1950

The Dalit temple entry movement has its origins in the colonial period. The British were keen on maintaining the caste hierarchy because of their arrangements with the feudal classes and landlords. This political alliance strengthened the caste hierarchy and the status of untouchables as the lowest group relegated to the margins of socio-political-religious life in a community.¹⁸ Moreover, the changed British practiced a policy of non-interference in religious and social lives of the Indians.¹⁹ This policy enabled the courts to reinforce socially exclusionary practices including access to temples. Any attempts to rebel or challenge the status quo was quashed by the landlords using various “disciplinary mechanisms” including use of force; even then, the legal framework and the courts refused to entertain proceedings against the landlords. This created a situation where “formal” equality to Dalits that was ensured on paper in terms of access to temples, roads etc., was never actualized.

Alongside the Indian independence movement, that intensified in the early 20th century, one could trace strands of Dalit movements that called for social emancipation of the lower caste in the form of a ban on untouchability; access to temples, roads, wells; and social and economic upliftment. Efforts to solidify and organize Dalit liberation movements, they were formalized and gained traction in the 1920s.²⁰ While the non-cooperation²¹ movement spear headed by Gandhi was gaining foothold at a national level, Dalit movements, inspired by the nationalistic

¹⁸ Bharat Patankar and Gail Omvedt, ‘The Dalit Liberation Movement in Colonial Period’ (*EPW*, February 1979) <<https://www.jstor.org/stable/4367359>> accessed 8 November 2021

¹⁹ Ibid

²⁰ Id

²¹ Noncooperation Movement in Britannica <<https://www.britannica.com/event/noncooperation-movement>> accessed 9 November 2021

movements began demanding civil rights. Strikingly, Travancore, which houses the Sabarimala temple, became a site of one of the foremost Dalit movements.

Travancore is a formerly princely state that is now a part of south-western Kerala.²² One of the main protagonists of the Dalit movement in Travancore was T K Madhavan, who was born into an Ezhava family: considered as lower “polluting” caste.²³ Madhavan engineered the Dalit liberation movement in Travancore whose primary objective was to ensure temple access to the lower caste community. He first raised this issue in an editorial in *Deshabhimani* in December 1917. Further, he introduced resolutions in the Travancore Assembly to outlaw denial of temple access. A few years later, taking inspiration from the national non-cooperation movement, he advocated for more “direct methods” including marching into temples and roads alongside temples.²⁴ The Maharaja of Travancore, Sri Moolam Thirunal, who ruled Travancore during this time, was a conservative who did not consider liberalising access to temples an option. Another problem was that the elite from the lower caste community who served the British and the king did not lend support to the liberation movement. This motivated Madhavan to build support outside of his community’s elite.

When Gandhi travelled to South India in 1921, Madhavan used it as an opportunity to meet and forge an alliance. Gandhi counselled him to adopt “civil disobedience” to make temple access to Dalits a reality. This was important on two levels: Madhavan could leverage Gandhi’s popularity to invite people to join the Dalit liberation movement and to advocate among caste-Hindus among whom Gandhi was extremely popular.²⁵ In this context, one of the most popular

²² Travancore in Britannica <<https://www.britannica.com/place/Travancore>> accessed

²³ Robin Jeffrey, ‘Temple Entry Movement in Travancore, 1860 – 1940’ (1976) 4 (6) Social Scientist <<https://www.jstor.org/stable/3516377>> accessed 7 November 2021

²⁴ Ibid

²⁵ Id

Dalit liberation movements began in Travancore: the strategy was to gain access to roads surrounding a temple in Vaikom. Madhavan and his colleagues were aware of the intensity of resistance for giving Dalits access to temples. Therefore, they began with gaining access to roads surrounding temples. Denial of access to roads around temples is rooted in the same ideology of caste impurity: Dalits' presence is presumed to pollute the "holy" temples and their surroundings. Framing access for Dalits as a right to movement issue, Madhavan, strategized, would have a higher chance of success.²⁶

The Vaikom Satyagraha aimed at ensuring that a crowd of Dalits could access the roads around the temples. The district magistrate ordered the police to have pickets to ensure that the Satyagraha did not proceed. The crowd showed up every day for twenty months: their motto was that they would show up every day until they gained access.²⁷ *The Hindu*, which reported on the movement characterized the Satyagraha as "a truly glorious fight to establish the dignity of man and his right to free movement".²⁸ Strikingly, caste-Hindus, mostly from the middle-class, supported and participated in the movement.²⁹ The movement catapulted and inspired other temple entry movements in Kerala.³⁰

K. Kelappan led the temple entry movement in Guruvayur in 1931 which lasted ten months, but was suspended on Gandhi's advice. The movement was successful in bringing the Dalits' temple entry agitation to the national level.³¹ Thereafter, the Temple Entry Enquiry Committee, set up in 1932, was to decide on the issue of temple access. It recommended not granting

²⁶ Supra note 22

²⁷ Ibid

²⁸ Id

²⁹ Id

³⁰ A. Srivathsan 'When God's doors were thrown open to all' (*The Hindu*, 12 November 2011) <<https://www.thehindu.com/opinion/op-ed/when-gods-doors-were-thrown-open-to-all/article2619107.ece>> accessed 12 November 2021

³¹ Ibid.

complete access to Dalits, but instead suggested that the roads and public water spaces were made accessible.³² This was rejected as it “did not meet the present need.”³³ In May 1936, the All Kerala Temple Entry Conference furthered the protest against Dalit discrimination and sought immediate temple entry for Dalits.³⁴ Five months later, Maharaja Chithira Thirunal Balarama Varma issued a historic proclamation declaring that the temples under the administration of his kingdom would open to all Hindus irrespective of caste.³⁵ This marked a huge success in Dalit liberation movement in Kerala.

Dr. B. R. Ambedkar’s, a prominent Dalit scholar and the Chair of the Drafting Committee of the Constitution of India, 1950, reflecting on the Travancore Proclamation noted that it was “not the be-all and end-all of social reforms.”³⁶ Ambedkar argued that the Dalits civil liberties movement must first focus on securing access to public places to ensure access to water, schools etc.³⁷ The focus must be to outlaw and make the practice of untouchability criminal: temple-entry would be an inevitable consequence of this. He sought for ensuring equality in opportunities for Dalits and facilitating solidarity building in the form of “social intercourse” between the Dalits and the upper-caste Hindus. He was suspicious of an excessive focus on temple-entry and instead advocated for a broader Dalit civil liberty framing and making temple entry a small part of it³⁸.

The protections that the Constitution of India, 1950, offers are largely built around Ambedkar’s arguments. In this context, two fundamental rights are significant. Article 15 prohibits

³² Supra note 29

³³ Ibid.

³⁴ Supra note 22

³⁵ Ibid

³⁶ Supra note 29

³⁷ Malik SK, ‘Dalit and the Historiography of Temple Entry Movements in India: Mapping Social Exclusion and Cultural Subjugation’ (2022) Contemporary Voice of Dalit <10.1177/2455328X211063340> accessed 10 November 2021

³⁸ Ibid

discrimination on the basis of caste and explicitly stipulates that caste, among other protected grounds, cannot be used to deny access to “wells, tanks, bathing ghats, roads and places of public resort” that receive any form of state aid. Article 17 *abolishes* and *prohibits* the practice of untouchability *in any form*. However, it does not define untouchability and makes no reference to caste. During the constitution making process, Naziruddin Ahmad, a Constituent Assembly member, introduced a proposal to qualify untouchability on the basis of caste or religion.³⁹ Ahmad worried that the vagueness of the Article would allow for even applying it to an “epidemic or contagious disease”⁴⁰. K.T Shah, another Constituent Assembly member, echoed Ahmad’s concern and raised if menstruating women would be covered under this Article. He asked “we all know that at certain periods women are regarded as untouchables. Is that supposed to be, will it be regarded as an offence under this article?”⁴¹ Ultimately, Ahmad’s proposal to make untouchability caste and religion specific failed to pass in the Constituent Assembly resulting in a broad and general prohibition of untouchability.⁴² The resulting questions and concerns remain relevant even today and played a crucial role in the Sabarimala litigation. The choices of the framers to not define or qualify the meaning and scope of untouchability became of the key constitutional contestations in the Sabarimala litigation.⁴³

³⁹Naziruddin Ahmad, 7.62.163

<https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-29#7.62.163> accessed 19 February 2022

⁴⁰ Naziruddin Ahmad, 7.62.164

<https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-29#7.62.163> accessed 19 February 2022

⁴¹K T Shah,

7.62.177 <https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-29#7.62.177> accessed 10 February 2022

⁴²Vice President,

7.62.183 <https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-11-29#7.62.183> accessed 10 February 2022

⁴³Vineeth Krishna, ‘Lawyers argued women are untouchables at Sabarimala, because Constitution left term vague’ (*The Print*, 22 July 2018) <<https://theprint.in/opinion/lawyers-argued-women-are-untouchables-at-sabarimala-because-constitution-left-term-vague/86225/>> accessed 10 February 2022

While the temple entry movement in Travancore, which began as a social movement succeeded in ensuring that the temples are open to Dalits and the Constitution of India, 1950, made caste a protected characteristic and outlawed untouchability, the ground reality is quite stark. Even today, there are instances of harassment and denial of temple entry for Dalits: In September 2020 Dalits in Hassan (a district in Karnataka) required police presence to enter into a temple;⁴⁴ in January 2022, Dalits were denied entry into a newly built temple in Anantapur (a district in Andhra Pradesh); in May 2022, a temple in Tamil Nadu denied entry to Dalits after the temple was renovated.⁴⁵ These are merely examples of the social reality of the temple-entry issue. Despite constitutional and other legal protections, access to temples is mired in caste prejudice.

Tracing the Sabarimala Temple Entry Ban for Women

The Sabarimala temple is open to all caste-men. Customarily, women devotees do not visit the temple during their menstruation.⁴⁶ Social life is built to ensure that women do not violate this custom. The Sabarimala temple bans women and girls between ages 10 and 50 from entering the temple, i.e., the temple uses a general ban that is not limited to the days women are menstruating. One of the main reasons for restricting women from entering the temples is attributed to impurity due to menstruation and women being an impure sexual distraction to the Lord Ayyappa thereby impacting his celibate status.⁴⁷

⁴⁴ Special Correspondent, 'Tension over temple entry by Dalits' (*The Hindu*, 2 September 2020) <<https://www.thehindu.com/news/national/karnataka/tension-over-temple-entry-by-dalits/article32505553.ece>> accessed 18 February 2022

⁴⁵ The Desk 'Temple entry denied to Dalits in Tamil Nadu; peace meet on May 18' <<https://www.daijiworld.com/news/newsDisplay?newsID=958036>> accessed 18 February 2022

⁴⁶ Aarefa Johari, 'Why just Sabarimala? It is time to discard menstrual taboos in all social spaces' (*Scroll*, 1 October 2018) <<https://scroll.in/article/896400/why-just-sabarimala-it-is-time-to-discard-menstrual-taboos-in-all-religious-spaces>> accessed 22 June 2022

⁴⁷ Parvathi Menon, 'Sabarimala and Women's Identity in Kerala' (2020) 48 (3) *Social Scientist* <<https://www.jstor.org/stable/26979095?seq=1>> accessed 1 June 2022

While the Places of Worship Rules and customary practice form the basis for the women temple entry ban, strikingly there was little public regard and rigidity in how these rules were applied. It did not become a matter of public contestation until 1991.

Mahendran's Petition to the Kerala High Court

In 1991, Mahendran, a devotee of Lord Ayyappa, approached the Kerala High Court with a complaint: he alleged that several women were found hiking in the hills that house the Sabarimala temple, and that they were violating the ban on temple entry by visiting the temple. The trigger for this complaint seems to be one particular incident:⁴⁸ S. Chandrika, a temple commissioner along with her daughter and her granddaughter entered the temple to conduct a traditional rice-feeding ceremony.⁴⁹ The petition framed this as a violation of temple entry ban not just in terms of general systemic violations, but also rooting in this high-profile incident.

The High Court converted Mahendran's regular petition into a public interest litigation:⁵⁰ this would loosen the standing threshold for the petition to succeed at the admission stage. As a result of this technicality and the publicness of the issue, the Court added Travancore Devaswom Board and the State of Kerala as the respondent parties. One line of argument that the respondents, including TDB made is striking: they argued that the ban on women's entry into the temple was not strongly enforced. In fact, women of all ages, in the twenty years prior to the petition, had entered the temple. There was documentary evidence in the form of receipts given by the TDB authorities demonstrating the presence of women in the temple. A

⁴⁸Shaju Philip, 'Sabarimala temple: Women entry issue first came up in Kerala High Court 28 years ago' (*The Indian Express*, 29 September 2018) <<https://indianexpress.com/article/india/sabarimala-templewomen-entry-issue-first-came-up-in-kerala-high-court-28-years-ago-5378916/>> accessed 18 June 2022.

⁴⁹Deepa Das Acevedo, 'Gods' homes, men's courts, women's rights' (2018) 16 (2) *International Journal of Constitutional Law* <<https://academic.oup.com/icon/article/16/2/552/5036456>> accessed 19 June 2022

⁵⁰ *Mahendran v. The Secretary, Travancore* AIR 1993 Ker 42 [2]

prohibition on women's entry was strictly enforced only during the annual season of pilgrimage which occurs between November and January and during one particular festival of *Vishu* which usually occurs in the month of April.⁵¹ During the rest of the year, women were allowed to enter the temple.

Notwithstanding the arguments of the respondents that cast suspicion on the rigidity of the application of the temple entry ban, the Kerala High Court deemed it necessary to declare that women and girls between the ages of 10 and 50 are prohibited from entering the temple. This ban would extend to all days that the temple is operational. The fact of women openly visiting the temple for the past several decades with the knowledge of the TBD authorities did not dilute the legitimacy of the custom of the temple entry ban.⁵² The ban was “*in accordance with the usage prevalent from time immemorial*”.⁵³ The Court reiterated anachronistic and conservative notion of custom as static and constant— while the temple authorities, who are understood of gatekeepers of custom recognized the dynamism of it, the Court, an organ of State, chose a highly narrow interpretation of custom. The Court missed an opportunity frame custom as “dynamic” and “changing” having the potential to hold “progressive values within it”.⁵⁴

With respect to the constitutional compatibility of a categorical ban on temple entry, the Court considered that it did not violate Article 15 which guarantees prohibition of discrimination on the grounds of sex. As there was no restriction on women as a class but only women between

⁵¹ *Mahendran v. The Secretary, Travancore* AIR 1993 Ker 42 [9]

⁵² *Mahendran v. The Secretary, Travancore* AIR 1993 Ker 42 [43]

⁵³ *Mahendran v. The Secretary, Travancore* AIR 1993 Ker 42 [44]

⁵⁴ Mariam Rawan Abdulla ‘Culture, Religion, and Freedom of Religion or Belief’, (2018) 16 (4) *The Review of Faith & International Affairs*, <<https://www.tandfonline.com/doi/full/10.1080/15570274.2018.1535033>> accessed 11 June 2022

a certain age, the ban did not violate the equality and anti-discrimination protections under the Constitution.⁵⁵

On the question of the right to freedom of religion of the women and girls, the High Court characterized this right as one subservient to the right of religious denomination to manage and run their own affairs.⁵⁶ In essence, the temple and its governing authorities can frame rules, including for its entry. The right to freedom of religion of individuals is understood as subservient and qualified by the right of the temple to manage its own affairs. Ironically, this ruling highlights an inherent contradiction: while the Court recognized the right of the temple Board to regulate its own affairs, it did not rely on the Board's willingness to not have a complete ban. The Court in essence, by adopting a conservative approach, sidelined the Board's autonomy to self-regulate.

The Kerala High Court's judgment, became the first legal and judicial basis for strictly interpreting temple ban to Sabarimala and extending its scope. This ban was unchallenged for fifteen years.

The Indian Young Lawyers Association Before the Supreme Court

The challenge to this judgment was filed fifteen years later in 2006. The Indian Young Lawyers Association (hereinafter referred to as "IYLA"), a registered group based in New Delhi and five women practicing advocates filed a writ petition challenging the constitutionality the practice of ban on women entry in the Sabarimala temple.⁵⁷ They relied on a host of newspaper

⁵⁵ *Mahendran v. The Secretary, Travancore* AIR 1993 Ker 42 [26]

⁵⁶ *Mahendran v. The Secretary, Travancore* AIR 1993 Ker 42 [22]

⁵⁷ *Indian Young Lawyers Association v. The State of Kerala*, Writ Petition No. 373 of 2006, <https://scobserver-production.s3.amazonaws.com/uploads/case_document/document_upload/387/wp_indian_young_lawyers.pdf> accessed 10 June 2022

coverage around the ban and the Places of Worship Rules to claim that the custom of banning women and girls from 10-50 from the Sabarimala temple violates the fundamental rights guaranteed in the Constitution of India, 1950. In particular, the argued that it violated the fundamental right to equality⁵⁸, fundamental right against discrimination⁵⁹ and fundamental right to freedom of religion.⁶⁰

Similar to the *Mahendran* case, one specific incident catapulted the Sabarimala temple entry into public discourse and led to the IYLA filing the public interest litigation. In the June of 2006, an astrologer contracted to oversee a set of rituals at the Sabarimala temple, announced that the deity, Lord Ayyappa, was displeased because of the mismanagement of the temple's affairs; in particular the violation of the temple entry ban by women of menstruating age.⁶¹ Soon after, Jaimala, a South Indian actress, confessed to have entered the Sabarimala temple in 1987 in her twenties. This led to a huge controversy and garnered intense media attention. Investigation would soon reveal that the actress and the priest were previously acquainted and potentially acted in consort to get publicity.⁶²

The IYLA relied on the Jaimala incident in their petition to establish the immediate necessity of its filing.⁶³ Relying on the public interest litigation jurisprudence, they cited and referred to the news reports on the specific controversy and the resulting public debate around temple entry of women.

⁵⁸ Constitution of India 1950, a 14

⁵⁹ Constitution of India 1950, a 15

⁶⁰ Constitution of India 1950, a 25

⁶¹ Staff Reporter, 'Devaprasnam' at Sabarimala Reveals Flaws in Temple Affairs' (*The Hindu*, 17 June 2006) <<http://www.thehindu.com/todays-paper/tp-national/tp-kerala/devaprasnam-at-sabarimala-reveals-flaws-in-temple-affairs/article3120547.ece>> accessed 8 May 2022

⁶² Supra note 63

⁶³ Supra note 61

None of the women petitioners in this case came from Kerala and claimed to be the devotees of the deity, therefore they were unable to establish a direct locus. Instead, their petition was framed as a public interest litigation, where they, as litigants, are devoted to “social development” causes, particularly those around the “upliftment of women and helping them become aware of their rights.”⁶⁴ Public interest litigation inherently has relaxed locus standards to ensure that social transformation is achieved irrespective of issues regarding access to court.⁶⁵ However, one concern arises with respect to claims around religion: there exists a possibility of filing cases motivated from religious prejudice and might put the practices of religious minorities at risk⁶⁶. In the current case, such motivation is unfound, however, the petitioners while may belong to the same religion, do not share the same faith of Lord Ayyappa.

The petition was filed in 2006, and would remain dormant until 2015. This is not unique to the IYLA petition: the Supreme Court of India has a huge pendency problem.⁶⁷ A series of online social campaigns around the temple entry to Sabarimala put the case on the Court’s cause list in 2015.

⁶⁴ Ibid

⁶⁵ Mate, M. (2013). Public Interest Litigation and the Transformation of the Supreme Court of India. In D. Kapiszewski, G. Silverstein, & R. Kagan (Eds.), *Consequential Courts: Judicial Roles in Global Perspective* (Comparative Constitutional Law and Policy, pp. 262-288). Cambridge: Cambridge University Press. doi:10.1017/CBO9781139207843.013

⁶⁶ Deepa Das Acevedo, ‘Pause for Thought: Supreme Court’s Verdict on Sabarimala’ (*EPW*, 27 October 2018) <<https://www.epw.in/journal/2018/43/commentary/pause-thought.html>> accessed 7 June 2022

⁶⁷ Sudhir Krishnaswamy, Jai Brunner, Kruthika R, ‘Statistics Pack 2018, (*Supreme Court Observer*, July 2018) <https://www.scobserver.in/wp-content/uploads/2019/07/Statistics_Pack_SCO-2018.pdf> accessed 10 June 2022

#HappyToBleed Campaign and the Temple Entry

Prayar Gopalakrishnan, a newly appointed president of the TDB, in November 2015, while giving an interview made the following remarks when asked whether he would take a decision to allow women and girls in menstruating age to enter the Sabarimala temple:

A time will come when people will ask if all women should be disallowed from entering the temple throughout the year. These days there are machines that can scan bodies and check for weapons. There will be a day when a machine is invented to scan if it is the 'right time' for a woman to enter the temple. When that machine is invented, we will talk about letting women inside.⁶⁸

Gopalakrishnan's comments caused great outrage, especially on the social media. A week later, Nikita Azad, a student, in her open letter was deeply critical of his comments for perpetuating menstrual stigma.⁶⁹ This became viral on social media and morphed into a "generalized objection to patriarchy and misogyny."⁷⁰ The hashtag #HappyToBleed began to garner wide response and people used Facebook to post pictures of themselves holding placards with messages tackling menstrual stigma.⁷¹ This prompted another movement: #ReadyToWait⁷²: a section of women argued that the unique customs that govern each temple must be respected

⁶⁸ Desk, 'Outrage on Facebook After Sabarimala Board Wants Machine That Scans Menstruating Women', (*Times of India*, 23 November 2015) <<https://timesofindia.indiatimes.com/india/Outrage-on-Facebook-after-Sabarimala-board-wants-machine-that-scans-menstruating-women/articleshow/49888621.cms>> accessed 8 June 2022

⁶⁹ Nikita Azad, 'A Young Bleeding Woman' Pens an Open Letter to the Keepers of Sabarimala Temple' (*YouthKiAwaz*, 20 November 2015) <<https://www.youthkiawaz.com/2015/11/open-letter-to-devaswom-chief-sabarimala/>> accessed 8 June 2022

⁷⁰ Supra note 63

⁷¹ Nikita Azad, '#HappyToBleed: An Initiative Against Sexism' (*CounterCurrents*, 23 November 2015) <<https://www.countercurrents.org/azad231115.htm>> accessed 10 June 2022

⁷² Express Web Desk, '#ReadyToWait: These Kerala women devotees campaign against women entering Sabarimala shrine' (*Indian Express*, 29 August 2016) <<https://indianexpress.com/article/trending/trending-in-india/women-devotees-in-kerala-say-readytowait-to-enter-sabarimala-shrine-3002027/>> accessed 9 June 2022

and instead of the demands from “insensitive atheists from alien cultures”⁷³ Nikita Azad would file an intervening petition in the IYLA case.⁷⁴

Another incident is crucial to understand the social engagement with the temple entry issue: In 2014 Zakia Soman and Noorjehan Safia Niaz filed a public interest petition before the Bombay High Court, seeking access to the Haji Ali Dargah for women,⁷⁵ thus raising similar questions in the context of another religion: Islam. The petitioners claimed that the dargah authorities raised barricades that disallowed women from accessing the inner parts of the mosque. During the hearings the dargah authorities alluded to menstruation being a reason for not allowing women’s entry. The Bombay High Court, on a technical matter of law, declared that the dargah representatives did not have the authority to regular religious matter such as entry: they could only govern “secular matters” such as providing loans, education etc.⁷⁶ The dargah authorities, on their own volition, revoked the ban on women’s entry in the midst of appealing the High court decision.⁷⁷

These online movements aided in creating a platform for women to speak about menstruation and critically comment on how religion informs and shapes their menstrual experience. One can also trace an emerging polarity between women’s groups. The #HappyToBleed campaigners are viewed as liberal, west-influenced feminists with no disregard to the Indian religious tradition.⁷⁸ On the other hand, the #ReadyToWait camp are seen as flagbearers of

⁷³The Facebook post of Anjali George with the #ReadyToWait messaging began the counter campaign. More: Vinot VK, ‘Sabarimala row: women devotees say they’re #ReadyToWait...’ (*Onmanorama*, 30 August 2016) <<https://www.onmanorama.com/news/kerala/sabarimala-entry-ready-to-wait-women-devotees.html>> accessed 8 June 2022

⁷⁴ Application for Intervention, <https://www.scobserver.in/wp-content/uploads/2021/10/Sabarimala_Intervention_Application_-_Indira_Jaising.pdf> accessed 14 June 2022

⁷⁵*Noorjehan Safia Niaz and Ors.v. State of Maharashtra* PIL No. 106 of 2014

⁷⁶ Ibid.

⁷⁷ Supra note 63

⁷⁸ Supra note 77

conservative, patriarchal and discriminatory practices.⁷⁹ In the midst of this extreme polarity, there was a missed opportunity to identify who actually wanted enter the temple and examine their agency is shaped by the intersection of religion and gender. The #HappyToBleed campaign risked falling into the trope of the liberal feminist temptation to categorize non-western, in this case, non-modern women as those lacking agency.⁸⁰ As post-colonial feminist scholars argue, when examining menstruation linked religious practices, one should consider that women observing or practicing religion is also a matter of their choice and agency.⁸¹

The Supreme Court on the Sabarimala Temple Entry

Two years after the online movements and the Haji Ali Dargah case, the Supreme Court's Constitution Bench consisting of five judges began hearing the Sabarimala case on July 18th, 2018.⁸² After seven full days of hearings, the Court reserved its judgment on August 1st, 2018.⁸³ Almost two months later, on September 28th, 2018, the Supreme Court announced its verdict.⁸⁴ The Supreme Court justices did not deliver a unanimous judgment: there was a 4:1 split. The majority concluded that the Sabarimala temple ban did not meet the test of constitutionality. Justice Indu Malhotra, the only woman on the bench, dissented.

⁷⁹ Isha Purkayastha, 'Why We're Not #ReadyToWait: Sabarimala IS a 'Gender Issue' (*The Quint*, 31 August 2016) <<https://www.thequint.com/voices/women/why-were-not-readytowait-kerala-sabarimala-gender-issue-bombay-high-court-haji-ali-dargah-womens-entry-anjali-george>> accessed 17 June 2022

⁸⁰ Trisha Maharaj and Inga T. Winkler, 'You don't just do it because someone else said so': Menstrual practices and women's agency in the Hindu diaspora of Trinidad, (2021 *Culture, Health & Sexuality* <0.1080/13691058.2021.1887938> accessed 23 June 2022

⁸¹ Ibid

⁸² Desk, "Day 1 Arguments (Morning) | Sabarimala Temple Entry", (*Supreme Court Observer*, 18 July 2018) <<https://www.scobserver.in/reports/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-day-1-arguments/>> accessed 10 June 2022

⁸³ Desk, Sabarimala #7: Amicus Submits Article 14 Not Applicable to Essential Religious Practices' (*Supreme Court Observer*, 1 August 2018) <<https://www.scobserver.in/reports/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-day-7-arguments/>> accessed 18 June 2022

⁸⁴ Desk, "Judgment in Plain English", *Supreme Court Observer*, 28 September 2018, available at <https://www.scobserver.in/reports/sabarimala-temple-entry-indian-young-lawyers-association-kerala-judgment-in-plain-english/>.

The opinion that Chief Justice Misra authored, for himself and Justice Khanwilkar largely focused on testing whether the Sabarimala temple ban violated the right to freedom of religion under Article 25 of the women and girls who are aged between 10 and 50 years.⁸⁵ Gender cannot constitute as a justification for the realization and fulfillment of the freedom of religion: gender discrimination at the cost of violating the right to worship is unconstitutional.⁸⁶ Justice Nariman, in his concurring but separate opinion, had a similar focus on examining the Sabarimala Temple Entry issue mostly through a religious freedom lens.⁸⁷

J. Chandrachud's concurring but separate opinion extended the analysis beyond religious freedom and examined the Sabarimala temple entry issue from a menstruation lens as well. J. Chandrachud characterized the temple entry issues as one that is rooted in "freedom from societal oppression, which comes from a stigmatized understanding of menstruation."⁸⁸ His analysis of the temple entry ban through menstrual stigma is based on three constitutional arguments.⁸⁹ First, menstrual status constitutes an integral aspect of a person's right to privacy: any exclusion or discrimination on this ground is untenable.⁹⁰ Second, "exclusionary disabilities" via social and religious norms and practices on the basis of menstruation infringes the right to dignity.⁹¹ Third, the existing framework that informs menstrual stigma is based on the "notion of impurity" and is akin to caste-based discrimination. Therefore, the ban violates the fundamental right to untouchability under Article 17.⁹² The constitutional ambiguity around Article 17 and the express choice to not define "untouchability" became a vehicle for J. Chandrachud to further the transformative constitution agenda.

⁸⁵ Indian Young Lawyers Association and Ors. vs. The State of Kerala and Ors. (2019) 11 SCC 1

⁸⁶ Ibid

⁸⁷ Id

⁸⁸ Indian Young Lawyers Association and Ors. vs. The State of Kerala and Ors. (2019) 11 SCC 1 [216]

⁸⁹ Srinivasan, D. and Kannan, B, 'Establishing the Unconstitutionality of Menstrual Exclusion Practices in India', (2021) 41 (1) Columbia Journal of Gender and Law <10.52214/cjgl.v41i1.8837> accessed 18 June 2022

⁹⁰ Supra note 89

⁹¹ Ibid

⁹² Id

J. Malhotra, in her dissent, largely focused on the religious freedom and the fundamental right of the religious denomination to carry on their own affairs: the rights of the temple would take precedence over that of an individual.⁹³ She presented her views on J. Chandrachud's Article 17 argument: according to her, the prohibition on "untouchability" and the framing of Article 17 has been primarily motivated by caste-based discrimination: extending it to other forms was not a part of the original constitutional scheme.⁹⁴ This form of interpretation, has been argued have subscribed to an originalist approach while missing an opportunity to examine the traditional religious and caste framework from "novel approaches."⁹⁵

The judgment in effect recognized the women's right to enter Sabarimala temple within the constitutional scheme. Religion cannot be used as an excuse to perpetrate gender-based discrimination. Similar to how the Justices could not deliver a unanimous judgment, the reaction to it was extremely polar.

The Judgment's Impact: A Tale of Political Polarization

The judgment, some argue, embodies the same "egalitarian spirit" as the Dalit temple entry movement in ensuring access to temples irrespective of an "identity".⁹⁶ The judgment was subject to a high degree of political polarization in Kerala. The immediate reaction to the judgment by all the relevant political parties in Kerala was that of acceptance: the ruling Communist Party of India, the regional chapter of the Indian National Congress and the

⁹³ Supra note 89

⁹⁴ Ibid

⁹⁵ Prakhar Singh, Pragya Roy, 'Questioning the Dissenting Voice in the Sabarimala Verdict (*EPW Engage*, 3 November 2013) 53 (44) <<https://www.epw.in/engage/article/questioning-dissenting-voice-sabarimala>> accessed 15 June 2022

⁹⁶ Supriya Nair, 'Two Women Enter a Temple. A Country Erupts' (*The New York Times*, 8 January 2019) <<https://www.nytimes.com/2019/01/08/opinion/india-women-sabarimala-temple.html>> accessed 10 June 2022

Bhartiya Janata Party welcomed the Supreme Court's judgment.⁹⁷ However, this was to change quickly: in the aftermath of several demonstrations against the judgment for hurting religious sentiments, all the parties except the ruling Communist Party of India changed their stance and opposed the decision.⁹⁸

The Sangh Parivar (the right-wing organization) backed several demonstrations opposing the lifting of ban. Several other upper-caste associations joined forces including the Nair Service Society. For the agitators, faith came before the law.⁹⁹ Women from upper caste communities participated in these protests, echoing the sentiments of the #ReadyToWait campaign.

The protests against the judgment were spearheaded by upper-caste groups in order to preserve their patriarchal caste hegemony. Noticeably, caste groups and leaders from lower caste and Dalits recognized this hegemonic stance, and came in support of the judgment.¹⁰⁰

The Chief Minister Pinarayi Vijayan of the ruling Communist Party in Kerala, has indicated his commitment to ensure that the judgment is enforced at the State level. He took the judgment as an opportunity to call for a "second renaissance" to take forward Kerala's historical legacy of social movements. Further, to uproot the social and economic inequalities including the gender and religion based discriminatory practices. In this context, in association with caste and women's rights organizations, Vijayan called for a "Women's Wall" to campaign against patriarchy.¹⁰¹

⁹⁷Jipson John and Jitheesh P.M, 'Constitution is supreme and above all the customs and beliefs: Kerala CM Pinarayi Vijayan' (*The Hindu*, 7 March 2019) < <https://www.thehindu.com/news/national/kerala/constitution-is-supreme-and-above-all-the-customs-and-beliefs-kerala-cm-pinarayi-vijayan/article26459728.ece>> accessed 18 June 2022

⁹⁸Ibid

⁹⁹ Supra note 51

¹⁰⁰ Ibid

¹⁰¹ Id

The result of the polarizing politics was the filing of around 50 petitions before the Supreme Court to review the Supreme Court judgment.¹⁰² Organizations including the National Ayyappa Devotees (Women's) Association, the Nair Service Society, and the All-Kerala Brahmin's Association were among the petitioners claiming that the IYLA did not have any locus standi to file the public interest litigation as the association does not represent Ayyappa devotees. Moreover, the petitions claim that the judgment has mischaracterized the issue and has refused to test religious practice against rationality.¹⁰³

The Battle for Temple Entry by Dalits and Women: Understanding the Intersections of Caste, Gender and Religion

The historical, cultural explanation for excluding Dalits and women from temples, to a large extent, is rooted in the concept of "purity". This can be traced back to the Manu Smriti which likened menstruating women to "low-caste" persons. This impurity association with menstruation and caste was to serve one purpose: to ensure that the status of Brahminical Hinduism, and more importantly that of Brahminical men is preserved.¹⁰⁴ As Deepthi Sukumar argues, restrictions around menstruation is symptomatic of larger societal inequalities that caste system sustains.¹⁰⁵ Extending this argument to the temple entry issue yields the same analysis: both Dalits and women, have been historically kept out of temples to preserve the Brahminical, patriarchal order.

¹⁰²Desk, 'Sabarimala Temple Entry' (*Supreme Court Observer*) <<https://www.scobserver.in/cases/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-background/>> accessed 10 June 2022

¹⁰³ Satya Prasoon, 'Review Petitions in Sabarimala' (*Supreme Court Observer*, 17 October 2018) <<https://www.scobserver.in/journal/review-petitions-in-sabarimala/>> accessed 10 June 2022

¹⁰⁴ Cohen I. 'Menstruation and Religion: Developing a Critical Menstrual Studies Approach'. 2020 Jul 25. In: Bobel C, Winkler IT, Fahs B, Hasson KA, Kissling EA, Roberts TA, editors. The Palgrave Handbook of Critical Menstruation Studies [Internet]. Singapore: Palgrave Macmillan; 2020. Chapter 11. PMID: 33347144.

¹⁰⁵ Sukumar, D, 'Personal Narrative: Caste Is My Period'. In: Bobel, C., Winkler, I.T., Fahs, B., Hasson, K.A., Kissling, E.A., Roberts, TA. (eds) The Palgrave Handbook of Critical Menstruation Studies. Palgrave Macmillan, Singapore <https://doi.org/10.1007/978-981-15-0614-7_13> accessed 18 June 2022

Kerala is an interesting state to examine how the Dalits and women navigate the issue of temple entry. Kerala has witnessed challenges to its deep-seated caste issue from social movements, including the Dalit temple entry movement. The Communist Party, which has predominantly been in power in Kerala and has been prominent for its anti-feudal and anti-imperialist politics,¹⁰⁶ has also sought to maintain a progressive agenda for women's rights which in the temple entry issue translates to supporting women's entry.¹⁰⁷ However, the politicization of the Supreme Court judgments and the counter movement, including protests against and for the temple entry by women, demonstrates that there are certain areas, those guarded by religion, within the politics of Kerala that are immune from being challenged and changed:¹⁰⁸ the "pervasive religiosity" of the Kerala society might be a cause for this type of tailored and selective approach towards a progressive agenda.¹⁰⁹

The anti-casteism temple entry movement, was a carefully crafted social movement that adopted the tools of civil disobedience and protests, taking inspiration from the Indian independence movement that ran alongside the Dalit liberation movement. It emerged from grass root level advocacy led by community leaders. The Sabarimala temple entry issue does share the same origin story. The battle ground for the temple entry for women seemed to be the courts without a grassroots level movement. Interestingly the first petition filed before the Kerala High Court was to strictly enforce the temple entry ban: it was not a petition filed by a woman to allow temple access. This reactionary petition to strictly apply the custom, played a huge role legally and socially solidifying the ban.¹¹⁰

¹⁰⁶Supra note 53

¹⁰⁷ Supra note 101

¹⁰⁸ Supra note 53

¹⁰⁹ Ibid.

¹¹⁰ Id.

Parvathi Menon argues that the heavy politicization of the judgment and the protests that Kerala witnessed could be because there was no indigenous women's movement to enter the Sabarimala temple in Kerala.¹¹¹ The Supreme Court litigation was led by women based in Delhi, as a public interest litigation. Despite this, Menon argues that the post-judgment "Women's Wall" and related women's rights movements demonstrate the demand for social justice in Kerala. While the

The "Kerala model" of governance has been praised for its commitment to liberal social development politics. The Communist Party of India, has been in power for decades and has managed to deeply entrench itself into the polity of Kerala. The Sabarimala temple entry issue brought to fore some of the feminist and Dalit critiques of the "Kerala model".¹¹²

Rekha Raj argues that while Dalit women are required to fill up numbers and participate in strikes and protests, they are invisibilized when it comes to "discourses and organizational structure of leftist politics at all levels".¹¹³ When it comes to the civil society sphere, Raj argues that Dalit women are subjected to similar exclusion. As Annie Namala argues, the analysis of issues and struggles that Dalit women face is usually collapsed under the general women's rights analysis, without taking into account the intersectional experience of the Dalit women.¹¹⁴

These arguments echo true in the Sabarimala context as well.

¹¹¹ Supra note 53

¹¹² J. Devika, 'Egalitarian Developmentalism, Communist Mobilization, and the Question of Caste in Kerala State, India' (2010) *The Journal of Asian Studies* 69 (3) [799-820]

¹¹³ Rekha Raj, 'Dalit Women as Political Agents: A Kerala Experience' (*EPW*, 4 May 2013) <<https://www.jstor.org/stable/23527309?seq=1>> accessed 10 June 2022

¹¹⁴ Namala, Annie. 'Dalit Women: The Conflict and the Dilemma' in *Women's Studies in India: A Reader*, Mary E. John (ed.) Penguin Publishing House (2008, New Delhi)

The patriarchal and Brahminical prescription of gender seeks to protect and preserve the upper caste women via the notions of “chastity, virginity and docile femininity”.¹¹⁵ As Carmel Christy K J points out, the media coverage of the “Women’s Wall” movement portrayed the picture of “demure, devotes *Savarna* (upper-caste) woman”.¹¹⁶ This essentially invisibilised the scores of Dalit women that took part in the protests to seek gender justice. Further, their experience of intersecting identities of caste and gender present them with a unique experience that is not comparable to upper caste women. These experiences were ignored in the conversations and advocacy around the Sabarimala Temple entry issue.

¹¹⁵Jenny Rowena, ‘The ‘dirt’ in the Dirty Picture: Caste, Gender and Silk Smitha’ (*Dalit Web*, 17 June 2012) <<http://www.dalitweb.org/?p=736>> accessed 10 June 2022

¹¹⁶Carmel Christy K J, “Sabarimala temple: How the Indian media fell into the trap of caste and gender stereotypes”, *The Conversation*, 21 January 2019, available at <https://theconversation.com/sabarimala-temple-how-the-indian-media-fell-into-the-trap-of-caste-and-gender-stereotypes-109897>.

CONCLUSION

The close examination of the Dalit temple entry movement and the women's temple entry to Sabarimala demonstrates the role caste and religion plays in shaping temple entry rights. The Kerala High Court and Supreme Court judgments and the social events around it made it evident that the issue of Sabarimala Temple Entry is not just a gender justice one. It is deeply intersectional with a complex web of caste, gender and religion weaving threads in different directions. It threw up the inter linkages between caste-based, gender-based and menstruation-based discrimination. Ilana Cohen's claim that close examination of menstruation related inequalities and discrimination demonstrates and highlights "larger issues of systemic discrimination" was proved true in this context.¹¹⁷

While the Dalits succeeded in obtaining legal guarantees, the women's issue was pursued before the Courtrooms and a social movement emerged as a reaction to that litigation. These movements were however, narrow and lacked intersectional approach: the Dalits movement in Travancore was largely led by men, the temple entry issue around Sabarimala did not feature and give space for Dalit women. With the legal reform and court judgments being victories, the access to temple is even now a contested right for Dalits and women in ground reality.

The inter-linkages this thesis demonstrates might serve as a starting point to weave a cohesive, intersectional social movement that reinforces human rights.

¹¹⁷ Supra note 103

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