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Constitution and society at disjuncture

Author
Siddarth Gautam



Constitution and society at disjuncture

Siddarth Gautam,
Advocate at Jharkhand High Court.

The judgement of the Honourable Supreme Court in the matter of the Sabrimala temple is a wonderful example to portray how the Constitution of India and the laws which are of course the genesis of the former and the social edifice needs to be in consonance, for a comprehensive and all inclusive development. Alluding the progressive and dynamic strands of the Constitution, former CJI Justice Dipak Misra held the fundamental right to equality and equality of opportunities under Article 14 and 15 as paramount. The judgement in a 4:1 verdict quashed the traditional custom barring the entry of woman to the temple from the age group of 10 to 50

predominantly due to an established dogma of menstrual cycle being impure in nature. Advancement and development don't mean simply to advance in the economic or political realm of the country, true emancipation as envisaged by B.R. Ambedkar is when the existing political democracy will lead to social democracy i.e. outcasting all the existing social evils and dogmas followed out without being questioned .Modernism and development can be realised only when these social taboos are questioned and cleared as being the impediments to the sense of social equality.

Now, interestingly the minority judgement or the view expressed by Justice Indu Malhotra put forward a food for thought .Indu Malhotra opined that *in a secular polity ,it was not for the courts to interfere in the matters of religion and the same must be left to those practising the religion.* Moreover, the review petition against the SC verdict has been filed by the National Ayyappa Devotees (women) Association which makes it quite difficult to digest the fact that woman themselves are standing tall against the judgement and are the forerunner of these protests against the verdict. They themselves are reluctant to refute the

customary practises which are archaic to them and don't want to break the celibacy of Lord Ayyappa by distraction due to an opposite sex. However it must not be forgotten that there was no blanket ban on women of fertile age going to the temple until 1991 when Kerala High Court acting on a complaint by an individual named S.Mahendran, gave an order that henceforth, no women aged between 10 to 50 can go to the temple. However, the judgement itself gave examples of how women, including the Maharani of Travancore in 1940 had not only worshipped at the temple but participated in many temple ceremonies. In recent years, many worshippers had gone to the temple with lady worshippers within the prohibited age group for the first rice feeding ceremony of their children. The Travancore Devaswom Board uses to issue receipt on such occasions on payment of the prescribed charges. The board changing stances to suit favourable positions and the ongoing turmoil in the state are self explanatory to indicate the implications of judgement of the Supreme Court. What seems more important is the fact that in such social unrest and political maneuvering, the need to strike a balance between Constitutional face off between article 14 & 15(3) and article 25 & 26 seems indispensable for mediating a tussle between the legality and social sides of existing customs.

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