Women's Entry into Sabarimala Temple

Why in news?

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- Supreme Court is hearing petitions challenging the prohibition of women of 10 to 50 years of age to enter the Sabarimala temple.
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What is the temple's legal back up?

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- It relates to Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965.
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- It states, “Women who are not by custom and usage allowed to enter a place of public worship shall not be entitled to enter or offer worship in any place of public worship.”
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- It is based on this provision that the Sabarimala temple prohibits women aged between 10 and 50 years.
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- It claims, through the Travancore Devaswom Board, that its deity, Lord Ayyappa, is a “Naisthik Brahmachari.”
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- So allowing young women to enter the temple would affect the idol’s “celibacy” and “austerity”.
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What are the court's observations?

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- Tagging a woman’s right to enter a temple with her menstrual cycle is unreasonable.

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- Exclusion of menstruating women considered ‘impure’ could amount to the practice of untouchability.
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- And notably untouchability is a social evil which is abolished by law.
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- The CJI said there is no concept of “private mandirs (temples).”
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- Once a temple is opened, everybody can go and offer prayers and nobody can be excluded.
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- The Chief Justice noted that the Sabarimala temple drew funds from the Consolidated Fund.
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- It had people coming from all over the world and thus, qualified to be called a “public place of worship.”
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- So, clearly, in a public place of worship, a woman can enter, where a man can go, and what applies to a man, applies to a woman.
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What are the contentions?

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- The current ban is based on a biological factor (menstruation) exclusive to females.
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- There is thus a contention if the fundamental right of women can be discriminated solely based on such criteria.
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- Article 25 mandates freedom of conscience and right to practise religion, to which all persons are entitled.
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- There is nothing in *health, morality or public order* that prevents a woman from entering a public place of worship.
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- Thus the right as a woman to pray is not even dependent on a legislation as it is a constitutional right.
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- However, the religious freedom clauses in the Constitution are possessed of a special complexity.
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- Also, the court's own past jurisprudence seems to put forward contradicting arguments.
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What is the way forward?

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- Traditionally, to resolve such issues, the Supreme Court has relied on the "essential religious practice" doctrine.
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- It is carved out by the court for itself, to determine rituals and beliefs that deserve special constitutional protection.
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- Historically, such exclusion policies have been defended as extensions of faith, being rooted in culture and tradition.
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- But favouring the autonomy of the group over that of an individual would endanger the rights of socially subordinate members.
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- The court should thus see this as an opportunity to reassess and reform the historical shortcomings, if any.
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- The court has to look beyond the essential practices doctrine, to set a precedent for a radical re-reading of the Constitution.
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- Constitution could thus move from being a conception of boundaries to that of a transcendental tool for social revolution.
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Source: The Hindu

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