

RULE OF LAW MUST IN MATTERS OF FAITH

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India is a country which follows the rule of law; professing a rule that there should be supremacy of the Constitution and not of any man or religion because of which we enjoy Article 14 (right to equality) unhindered. The Sabarimala controversy has shown that our foundations of justice and equality may still not have firmed up yet



When I was a child, my mother would take me to Satsangs hosted by influential families where I would listen to the Pundit say: "If you have faith in God, you must surrender your logic unto him". I was too young to fathom the depth of those words then. Today, however, as I scroll through social media or turn on the TV, I am compelled to think if this country with an abundance of faith, has given up on logic and reasoning.

Undoubtedly, religion has become one of the most sensitive points of debate in the courts. The term 'Rule of Law' is derived from the French phrase, 'la principe de legalite', which means 'the principle of legality.' This refers to a government based on principles of law and not of men. It is a basic necessity for a democracy.

Whether religious beliefs should be tested on rationality or whether the Constitution should apply to religious and matters of faith, is a debate that will define who we are as a people. Despite the separation between the secular and religious domains, there are litigations regarding civil rights that are concerned with religious issues on which civil courts may have an explicit duty to rule.

To be clear, the September 2018 Supreme Court judgment in the matter relating to the Sabarimala case rekindled this debate when, by a majority 4:1 verdict, it allowed girls and women of all ages to visit the Ayyappa temple at Sabarimala. The verdict stated that discrimination on physiological grounds was violative of the right to equality, a fundamental rights as enshrined in the Constitution.

Within two months, however, the matter was referred to a seven judge bench following pleas seeking a review with the contention that the matter was emotive. In the fight between Constitutionality and religious belief, the state government in Kerala had a hard time trying to take control of the emergent situation as ortho-

dox Hindu groups launched strong protests.

A reading of the subsequent November 2018 judgment is a must for law students. While the then Chief Justice of India, Ranjan Gogoi, Justice AM Khanwilkar and Justice Indu Malhotra decided on referring the matter to a larger seven-member bench, Justice RF Nariman and Justice DY Chandrachud dissented to state that rule of law must prevail and the earlier judgment must be implemented.

The CJI also referred other pending petitions, with regard to entry of Muslim women in a Durgah/Mosque as well issue of female genital mutilation in Dawoodi Bohra community. "It is time that this Court should evolve a judicial policy befitting to its plenary powers to do substantial and complete justice and for an authoritative enunciation of the Constitutional principles by a larger bench of not less than seven judges. The decision of a larger bench would put at rest recurring issues touching upon the rights flowing from Articles 25 and 26 of the Constitution of India," the judgment said.

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Female genital mutilation in the Dawoodi Bohra community, ban on entry of Muslim women into mosques and ban on entry of Parsi women married to a non-Parsi man in their religious places still haunt the society or at least the women of the society to this date. Yet, the debate is still open on the extent to which religious beliefs and faith can be held accountable to the Constitution. Even if this does happen, then the question remains whether it can be enforced or not.

Today's India boasts of welcoming liberal ideologies, but gender discrimination continues to stare at us while attempting to address such issues. This brings me back to the question "Can courts interfere in matters of religion and faith"? Yes, they can; although some people might not believe the Courts to be proper forums competent to challenge the "divine rules" set by a religion, it is the duty of the judiciary to uphold justice and make sure that there is no perversion of rule of law and to make sure that the society does not plunge into anarchy.

We must remember that the Rule of Law is an idea about law, justice and morality. It considers what laws, norms, rules, procedures, systems and structures should be and what they should not be. There are three realities which are inherent in this formulation. One is that the law governs people as well as the government itself. Next, people should obey the law. Third is that the norms we call law need to be obey-able not only in the sense of being known, knowable and predictable, but in the deepest sense of being just.

When a person's right of movement is restrained merely on the basis of its gender or when a girl's genitalia is mutilated without her consent, it is a violation of every possible right that the girl or woman possesses. The façade of faith and religion should not be permitted to bar the judiciary from deciding on such heinous practices. Religion and faith are subjective and vary at a personal level. They should be kept separate from the rights of an individual. Only then, true justice can be served.

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