

A Significance of Temple Customs through Legal Lens: Shabarimala Judgement

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Abstract: Customs have always been subject to scrutiny by the society and legal institutions. Customs need to be classified properly to understand them better. Today with modernisation we are on the verge of losing customs that hold certain principles and values. Certain customs do have scientific base. How has customs been interpreted by the law is important. It is important for society to understand that some customs have been the backbone of the laws. Can society give away all customs? New customs will replace the old ones. When religious institutions are concerned customs cannot be given away easily as it forms the core foundation of faith and belief. Why only Hindu customs are at stake? Will the society exist if religious customs are given away?

Key Words: Customs, Temple customs, Hindu customs, Shabarimala Judgement, NarasuAppa Mali Judgement.

Date of Submission: 22-12-2018

Date of acceptance: 07-01-2019

I. INTRODUCTION

“Acharathlabhathehiayu: acharathdhanamakshayamacharathlabhathesuprajaa: aacharoahanthyalakshanam”¹ explains the need for acharas because they lay a strong foundation to the society.

The other name for custom is Acharas. These Acharas can be divided into three that is Sadachara, Anachara and Durachara which can be simplified as good customs, superstitions and bad customs. Anachara and Durachara has hairline difference which actually means bad acharas. These acharas are a part of smritis and hence are subject to changes according to the need of the society. Acharas has been researched and modified since ages by the people in India, hence it forms a strong foundation of the society. These acharas were not created within a day. These were created with ages or with time polished into a practice. Some are written and some are followed without written notes to justify. Vyavahara are the rules relating civil law and are considered as extended version of acharas.

Customs are age old practices followed by society and when these customs get the sanction of the society it becomes law. Customs were identified into different types, family customs, class customs and local customs.² However, there was no classification as temple and other customs, which has become the need of the hour. All those customs had a mixed version of both, temple and other customs. Customs have always been the torch for societal progress. But customs do become redundant with time. Some customs that harm the societal progress are completely wiped out. Art 13 of the Constitution of India³ clearly states that laws inconsistent with Part III of the constitution shall be void with respect to the inconsistency. NarasuAppa Mali judgement⁴ added feather to the validity of customs where Justice Gajendragadkar interpreted laws in force stating serious doubt, if custom or usage having the force of law was really included in the expression "laws in force." Since personal laws back then was kept out of the ambit of Art 13, customs were not challenged by violation of fundamental

¹These customs are beneficial for mankind. <http://comprehending-the-way-of-life.blogspot.com/2008/07/is-indus-valley-civilization-same-as.html>

² Those customs specifically followed by families were considered as family customs and those followed by a particular class was considered as class customs, and it was same with local customs.

³ Constitution of India clearly states that the laws made before and after the commencement of the constitution made if not inconsistent with Part III of the constitution shall be void with respect to the inconsistency. The State shall not make laws inconsistent to Part III. Law includes Ordinance, order, Bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law

⁴ In State of Bombay v. NarasuAppa Mali: The appeal was filed against the Bombay Prevention of Hindu Bigamous Marriages Act, 1946. The issue being Hindu marriage was considered as sacrament and bigamous marriage being a custom for having a male child was considered as void.

rights. Today the scene has changed with the Shabarimala judgement. Customs are under the threat of extinction.

There are many customs that forms the base of the societal values and they become law like kanyadaan and saptapadi under Hindu marriage laws. Many customs, in marriage, inheritance, adoption etc has become an integral part of the personal laws that govern the civil law in India. There are prohibiteddegrees of rules for marriage laid down in the marriage laws, but if custom permits, then these degrees are set aside and custom is upheld. Most of the personal laws were identified as customs in the ancient times and eventually with modernisation there were changes, some of the customs were removed. There are customs like Sati, child marriagewhich was removed legally as they do not form the core foundations of the society and were also considered as duracharas. Certain customs form the basic foundation of the society which continue as in case of personal laws. However, in the coming years may be these personal laws governing the civil law may change. The present topic is about taking temple customs into consideration.

II. CAN TEMPLE PRACTICES BE IDENTIFIED AS CUSTOMS?

Yes, Temple practices are customs and they can also be classified into two,

- a. **Mandatory customs:** They are the ones considered to be the moral and core values of the temple without which the existence of the temple is lost.
 - i. Wearing footwear inside the temple is not accepted.
 - ii. Tantras and Mantras inside the temple grabh-griha has to be done by person learned in vidhis. (Not necessary that he should be a brahmin)
 - iii. Common people are not allowed inside the grabh-griha of the temple in Kerala and Tamil nadu.
 - iv. Shiva temples have a unique way of pradikshana. (taking rounds) and so on there are many customs based on the formation of the temple.
- b. **Non- Mandatory traditions:** The other one is the customs that have less significance and be modified with changing times.
 - i. Certain temples have restriction in dress code, this does not affect the conduct of pooja vidhi in temple.
 - ii. Taking bath and being clean while entering the temple is personal and does not form the core and basic structure of the temple.
 - iii. Some temples are secular and may permit everyone irrespective of religion. But there could be a temple which may not permit persons other than Hindu.
 - iv. There is no force upon the followers of Hindu religion to visit temple. People go by choice and not by force, unlike in other religions.

Whereas the pooja vidhi in temples of Kerala, Tamil nadu and certain parts of Karnataka is based on the tantras and mantras laid down in the agama schools. These pooja vidhi differs from one deity to another. According to the consecration of the deity the pooja vidhi is laid. Since the consecration is different, the laws are also laid differently in differenttemples, which eventually forms the constitution of the temple. The one who believes will follow the practice and the one who does not believe need not visit the place.

III. CUSTOMS IN SHABARIMALA:

Kerala is a state which has highly literate population and majority of the society followed matriarchal pattern of society. Lord Ayappa himself has given lot of respect to women as he chose to reside on a hill where Shabari the tribal women meditated for Lord Rama. The hill being surrounded by tiger forests and it is quite difficult to reach the place where he resides. Taking the Shabarimala issue into consideration, the deity is consecrated in that bhava of naishtika brahmachari. The deity is sitting in yoga pattasanam. Only three deities are seen in this posture, one being Lord Ayappa himself and the other two are Yogi Narasimhamurthy and Yogi Dakshinamurthy. Due to the bhava of the deity, the rule laid down are strict.

The mandatory temple customs believed to be laid down by Lord Ayappa himself to the king of Pandhalam during the discourse of BhoothanandaUphakhyanam⁵atShabarimala are:

- a) The initiation ceremony or wearing of holy mala
- b) 41 days of fasting as a part of celibacy. (A disciplined way of life where there are lot of restrictions laid. A normal human cell undergoes changes in 21 days, in this process of celibacy a human cell undergoes transformation twice and that is 41 days.⁶)

⁵However, the discourse is silent about the rituals and deals more with the philosophical aspect. The discourse of Lord Manikantan to King Rajashekharan of Pandalam. <https://sreyas.in/8588>. Hence the presumption lies that the pandhalam royal family is aware of the rituals and practices.

⁶<https://www.livescience.com/33179-does-human-body-replace-cells-seven-years.html> and http://www.medicineatmichigan.org/sites/default/files/archives/21days_0.pdf

- c) The irrumudikettu or the sacred bag to step on the holy 18 steps in the temple. (This sacred bag has coconut filled with clarified butter or ghee, which signifies the draining of worldly attachments and becoming one with spiritual being, hence the coconut resembles one's soul. Besides coconut offering of aval (rice flakes), mallar etc for malikapurathamma.)
- d) The individual devotee after initiation ceremony is called ayappa, thus he lives a disciplined life for 41 days and completes the process after removal of the holy mala.

There are many more customs but since the judgement revolves around these customs, the focus is more on them here. In the acharas at Shabarimala temple it is laid down that there is a need for 41 days of fasting as a rule to reach the deity crossing the 18 holy steps where each of the step of the holy 18 steps have a meaning and significance. With the 41 days of fasting when a person climbs the first five steps it is believed that he has control over his five senses beginning with kama (control over sexual desires which becomes difficult when husband and wife together make a journey to shabarimala). Once when the senses are controlled, the next 8 steps are ashtaragas and then the focus on energy centres begin so three gunas being controlled, the 17th step is avidhya where a person should give away the knowledge and pride thus leading to the 18th step that is poornatha meaning completeness of human life making the person, tatvamasi ("I am that" or "Thou art that"⁷). That is the dharma or constitution of shabarimala. Every person practicing this fast step on the 18 steps believed to be laid by the deity through kali shreechakra where the purity of mind and body holds significance. The 41 days of fasting is not an easy task again which a woman would find it difficult to follow since she has her monthly periods which may restrict her in the fast. This period of abstinence actually purifies a human being. It helps a person to live a disciplined life. The prana has to be uplifted from mooladhara to sahasrachakra during the process of celibacy, not necessary that it will raise but an effort as an ascetic need to be taken. A fertile woman cannot raise her prana levels to sahasrachakra due to monthly periods. During periods the prana level goes down. Hence a woman is restricted to go to temple. It is not the question of purity or impurity. Sanatana Dharma looked upon this period as impurity because of the hormonal changes and the negativity of mind which further lowers the prana level of a woman. This forms an integral part of shabarimala acharas. There are other temples of Lord Ayappa that does not restrict women where 41 days of celibacy is not mandatory.

IV. CAN CUSTOMS BE REMOVED AFTER BEING FOLLOWED FOR MANY YEARS?

Those customs which have become redundant over a period of time can be removed, but if those customs form the core foundation of the temple existence then they cannot be removed. Law can be enforced when it does not form the core foundation of the temple. Taking the example of Shani temple in Maharashtra, the entry of woman was modified, since there was court intervention and the custom followed was the constitution of the temple and they invented a pipe mechanism for oil abhishekam. Practically this cannot be implemented at shabarimala. Another example is the temple of Kumaraswamy in Karnataka, which opened the gates for woman after 1000 years. The entry to woman was banned on some mythological story and had nothing to do with the core constitutional foundation of the temple. Moreover, it was a complete ban at Kumaraswamy temple whereas in Shabarimala it is not a complete ban but a partial ban to women belonging to a particular age group.

V. CAN RIGHTS OF ONE SEGMENT OF THE SOCIETY OVERRIDE THE RIGHTS OF ANOTHER SEGMENT?

The custom of banning a particular age group of women in Shabarimala had lot of reasons. One of the reasons which can be averted is the safety of woman as the surroundings of the mala or hill is covered by forests and today this reason can be set aside as woman are capable of climbing and trekking. The major reasons are 41 days of celibacy which a woman cannot follow due to menstrual cycle. The ladies who do not get the cycle or have early menopause are also restricted when they fall in the age group because there is no medical check-up that can be done, at the time of trekking, so the strict rule is followed. The holy eighteen steps can be touched only when 41 days of celibacy is followed. This right of women was challenged in 2006 writ petition decided by SC on 28th of September 2018 in Indian Young lawyers Association versus State of Kerala.

Today according to the judgement there is gender discrimination, in Shabarimala and hence justice is provided through the judgement. Injustice happens when women in that state are the aggrieved persons. Majority of the women in Kerala protested against the practice. Today the communist government in Kerala showed the adamant nature to understand the feelings of majority of people, where by the other political parties took advantage leading to violation of law and order in state. In future if the court may lay down saying wearing of footwear in temple should be permitted as it discriminates and affects the fundamental right of individuals who want to be clean and healthy, under Art 21 of the constitution. Will the practice be changed? In both these cases the entire purpose with which vidhis are laid in temple, is lost.

⁷<https://www.yogapedia.com/definition/10744/tatvamasi>

If the devotee is true in the worship shall abide by the traditions laid down in the temple. Taking the example of animal sacrifice in temples, some places the ban on animal sacrifice exists and is followed. In some temples especially in eastern part of India it continues. Something which does not affect the constitutional base of the temple can be set aside. But not every tradition be taken away in the name of modernisation as it may break the temple constitution.

When a woman is allowed between the age group of 10 to 50 to Shabarimala, she practically cannot undergo 41 days of fasting, and it violates the rules laid down in the temple. This may lead to further discrimination where a man follows 41 days of celibacy strictly and it becomes flexible for women. If it is made flexible for both man and women then the constitution of the temple gets affected. When the constitution of the temple gets destroyed, there is no point observing the celibacy and going to Shabarimala thus making the temple another tourist centre. The conflict of one fundamental right over the other cannot be resolved by killing the constitution of the temple.

There is lot of respect given to this custom by women in Kerala and so the ready to wait campaign, was successful. It affects the rights of other devotees too. Art 25 guarantees right to practice one's religion. Art 26, (b) provides right to manage its own affairs in matters of religion and since the 28th September 2018 judgement does not consider Shabarimala as a religious denomination, Art 26 (b) fails. But the rights of deity and other devotees also needs to be balanced. The judgement is tilted more towards gender neutrality and lacks the balance where faith of other devotees is not considered at all. Taking personal laws into consideration when custom prevails, the law made by the legislature is ignored like for example, marriage between first cousins, marriage between uncle and niece etc. Custom is considered supreme to law in certain cases. The same logic can be extended further to temple practices too. Those customs that form the constitutional base and is a part of the temple rituals if given away, it destroys the temple.

Hence customs that have an effect on constitutional base of the temple should be preserved even though it may affect the fundamental right of one section of the society. Deity is considered as the living person according to the Sanatana Dharma. So, something that is laid down as a rule by the deity, cannot be taken away by mere court procedure. Taking the rights of the deity into consideration, it has a fundamental right to manage its own affairs. Deity also has fundamental rights which cannot be ignored or considered supreme to the other fundamental rights.

Now if at all a change has to be brought in the existing acharas, which is possible as acharas are a part of smriti that are subject to change then the change needs to be brought about by the concerned authorities like Guru Swamy, Acharyan or pundits or religious leaders, Tantrics etc. In temple Tantrics have the authority. Let there be an initiative to constitute a common Hindu religious sabha which has the authority to bring a change. There is a need for supreme court to take the advice of persons learned in Agama Schools for bringing a change in custom that forms the part of temple constitution. Equating these customs with the practice of untouchability or with Sati is foolish approach.

A Society free from customs are impossible. Otherwise the concept of religion should be set aside. Not every custom should be looked upon with patriarchal values or feminist perspective. For feminist approach there are many issues in India that needs attention, like the women of Prerna community in north India is married only to push the women into prostitution. The custom of Prerna community being men stay idle at home and women earn through prostitution. Women are forced to earn their livelihood through this practice. This is just one example of such customs that needs attention of feminist and activist. Temple is not the place to show feminism but a place for practicing one's belief and faith, hence the one who believes in the customs may come according to the rituals laid. Others who do not believe are free to stay away from it and practice what they believe rather than destroying the constitution of the temple. Every religion has customs to follow and there are different ways to achieve moksha. Why hit upon one religion. Either let us give away all customs irrespective of religion and lay down Uniform Civil Code or there is a need to protect the sanctity of temples, churches and mosques if religion and right to religious freedom is sanctioned by constitution. Hindu religion being more flexible in approach today has become victim to modernisation. Hence it is time for every Hindu to rethink about the sanatana dharma and the line that needs to be drawn between modernisation and customs.