

Sabarimala and higher bench

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Manifest pedagogy: This entire topic is highly multifaceted. It has many aspects to it. It should be studied within Polity at following levels

1. Link it with Right to Religion
2. Associate it with role of Judiciary in Religion
3. Also link it with concept of Review Petition

In news: A nine-judge Constitution Bench of the Supreme Court upheld the decision of the Sabarimala review bench to refer to a larger bench

Placing it in syllabus: Fundamental rights

Dimensions:

- Seven questions of law to be examined by a higher bench on Sabarimala
- Can the Supreme court refer an issue to the higher bench?

Content: Seven issues to be examined by a higher bench on Sabarimala:

The **nine-judge bench, led by Chief Justice of India (CJI) S.A. Bobde** recently said that a bench engaged in the review of a particular judgment could indeed refer other questions of law to a larger Bench. It framed **seven questions of law** which would be examined by the higher bench:

- Scope and ambit of right to freedom of religion
- Inter-play between the rights to practice religion and rights of religious denomination
- Whether rights of a religious denomination are subject

to fundamental rights, apart from public order, morality and health

- Scope and extent of the word 'morality' under Art 25 and 26 and whether it is meant to include Constitutional morality
- Scope and extent of judicial review with regard to a religious practice
- Meaning of expression "Section of Hindus" in Art 25 (2) (b)
- Whether a person not belonging to a religious denomination or religious group can question a practice of that denomination or group by filing a PIL

Can the Supreme court refer an issue to the higher bench?

- By a 4:1 majority verdict, a **five-judge bench on September 28, 2018**, had set aside prohibition on entry of women between 10 and 50 years of age to Lord Ayappa temple at Sabarimala and held that the centuries-old Hindu religious practice was illegal and unconstitutional.
- After a lot of review petitions were filed, on **November 14, 2019**, five-judge **Sabarimala Review Bench led by then CJI Ranjan Gogoi**, in a majority judgment, did not decide the Sabarimala review cases before it.
- It went on to **frame "larger issues" concerning essential religious practices of various religions.**
- It had **clubbed other pending cases** on subjects such as *female genital mutilation among Dawoodi Bohras*, *entry of Parsi women who married inter-faith into the fire temple* and *Muslim women entry into mosques* and **referred them all to a larger Bench.**
- The reference order also asked the larger Bench to consider the Rule pertaining to the prohibition of entry to women of menstruating age into the Sabarimala temple.
- **Chief Justice Bobde**, who succeeded Justice Gogoi set up

a nine-judge Bench to hear the reference.

However there are for and against arguments in this regard.

For:

- It is necessary to evolve a judicial policy to do **“substantial and complete justice”** in matters of freedom of religion.
- As the Sabarimala case had its genesis in public interest petitions, the **case was not an in personam** (affecting a specific person) litigation.
- As the questions like entry of Muslim women into mosque, the practice of female genital mutilation, Parse women issue arose during the hearing of the review petitions in the Sabarimala case, the **bench found that the answer to each case would involve Article 25 and other fundamental rights and their balancing.**
- **In a case emanating from a PIL,** there was no restraint on a constitutional court in extending the scope or questions to be examined.

Against:

- Senior lawyers have argued that the **apex court was wrong in making a reference of broad contours** while deciding the review petition against the 2018 verdict.
- The **court should not enter into matters of faith** and decide the essential religious practice while entertaining a PIL filed by a person not belonging to a particular faith.
- **In previous cases, the Supreme Court bench had held that** holding that a bench sitting in review cannot frame new issues and refer them to larger Bench.
- **Review jurisdiction is rare and limited.** The **task of a review Bench is only to** ascertain there is no apparent error or gross miscarriage of justice in the original judgment.

- The President, and not the CJI, consults the Supreme Court under **Article 143** of the Constitution on questions of law and facts.