GOD IN THE COURTROOM:

A COMPARATIVE ANALYSIS OF RELIGIOUS REPRESENTATION IN THE UNITED STATES SUPREME COURT VERSUS THE INDIAN SUPREME COURT

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ABSTRACT

Religion often twists the ropes of the legal system, enforcing religious morale on court holdings at all levels of the government. However, the ethics of the collision of religion and government is questionable when a country holds secularism to be a tier-one priority. Though many outwardly "democratic" countries claim to be secular, one major religion often dominates the country's political decision-making, even if not explicitly. Sabarimala, a large temple in Kerala, India, exemplifies the convergence of religious superiority and legally identified human rights. The temple is devoted to the deity Ayyappan, who traditionally has been considered a celibate God. Prior to visiting the shrine, devotees must undergo a 40-day period of abstinence, ritual purity, and prayer" (Vijay 719). According to Hindu tradition, menstruation is perceived as impure, and therefore, menstruating women cannot "observe this ritual purity for 40 days," and have been consequently prohibited from entering the temple (Uma 288). This prohibition has recently been questioned by the Indian Supreme Court, with the prosecution representing the deity Ayyappa himself. In this paper, I will analyze the Indian Supreme Court holdings, and assess how religion is represented in these cases, then compare this ruling to religious representation in the American courtroom. Specifically, I will assess the cases of Mormon polygamy, Amish education, and abortion, to seek out similarities and differences in U.S. Supreme Court cases in which religion and individual rights intersect. Supreme Courts in both countries purportedly play a secular role, but it's virtually impossible to completely separate one's religious values from the legal decisions they make. Though the cases I will discuss may seem secular to the public eye, the United States and India both allow for religious representation and thereby a particular perspective of gods in the courtroom. Therefore, state interventions in religious controversies cannot be inherently neutral. Because the Court intervenes in cases with two diametrically opposed interests, it is clear that the Court's judicial power can advance one

group's rights at the expense of others. By analyzing the cases of *Sabarimala, Reynolds v. United States, Wisconsin v. Yoder, and Roe v. Wade,* I will illustrate through an intersectional lens how the Courts have used their power to advance privileged groups' cases at the expense of disadvantaged ones.

BODY

"To treat women as lesser children of God is blinking at the Constitution" Justice Chandrachud exclaimed in *The Indian Young Lawyers Association vs The State of Kerala*. At first glance, Justice Chandrachud's statement seems like an empowering, progressive statement, providing strong support for the Indian women's religious equality movement. In a 4-1 majority, Chandrachud uplifted the ban on women's entry into Sabarimala, a famous temple in Kerala, India, pacifying many women's rights activists throughout the nation. However, Justice Chandrachud's opinion was dissented by only one Justice: Justice Indu Malhotra, the only woman on the Indian Supreme Court at the time. Immediately I was intrigued, if not taken aback. "How could the only woman on the Court be the one to disagree on such a freeing holding for female devotees across the country?" I thought. In accordance with the Indian Constitution, the Indian Supreme Court aimed to be "neutral" in their decision making to ensure that no one religious group was prioritized over another. However, because of the fine line between individual human rights and religion, the execution of this was extremely difficult.

The Court system of most liberal democracies aim for judicial activism while simultaneously promoting neutrality towards all types/denominations of religions. Yet taking an intersectional approach to religious issues makes neutrality near impossible. One outcome often favors a certain set of women over another, meaning the rights of women as a whole are never completely satisfied. Figure 1 and Figure 2, shown below, exemplify this dichotomy. Following the heated debate on women's prohibition into Sabarimala, many women came together to protest the ban (Figure 1). They formed what was called the "Women's Wall" to portray unity in support of women's entry into Sabarimala. However, following the Court's decision to allow women to enter the temple, several Indian women protested the allowed entry (Figure 2). They

believed that allowing women in was a violation of religious tradition and demonized the Indian government for overstepping their boundaries. As we see in Sabarimala, and Justice Malhotra's dissent, the intersection of gender and religion binds people to the privileging of one group over another. Though exclusion may be an inevitable part of democracy, the judicial decisions I will discuss shed light on how more privileged actors can profit off of the exclusion of certain groups.

Figure 1: The "Women's Wall" in protest against the ban on women's entry to Sabarimala and to show unity in support of women's entry.

Figure 2: Protest against women's entry into Sabarimala, protesters hold up signs of the Indian Prime Minister as the devil for supporting the uplifting of the ban.

INDIA

S. Mahendran v Travancore Devaswom Board (TDB) and *Indian Young Lawyers Association & Ors vs. The State of Kerala & Ors*., the two main Indian Supreme Court cases dealing with Sabarimala, have created tension between religious and governmental decision makers in the South Asian subcontinent. In the United States, many individuals would look at such a climate and respond with the catch-all phrase of "separation of church and state!" But what does that truly mean? Does the Indian government forgo this separation which is key to their Constitution by addressing women's restriction into Sabarimala? And does the United States approach such religious issues in a similar manner? These are the questions I aim to answer as I begin to contrast Sabarimala to the representation of religion in the United States Supreme Court.

To begin to deconstruct the root of the prohibition of women's entry into the Sabarimala temple, it is critical to dig deeper into the history of women's so-called "impurity." Menstruation, according to long-lived Hindu mythology is considered the 'Rajaswala Dosha' which came from the legend of Lord Indra killing "Vishwaroopacharya, the second teacher of the gods," and since Vishwaroopacharya was a Brahmin, a sacred religious position, he was punished by receiving a 'Brahmahatya dosha,' the deep affliction given for committing such a sin (Bhartiya 524). To get rid of this affliction, Lord Indra apparently redistributed it "amongst the prithvy (land), samudra (water), vriksha (tree)and stree (women folk) (Bhartiya 524). From then on, Hindu legend claims that women began to menstruate and since the blood which women produced was an "excretion from the body" it was considered "tamas," which like "sweat, tears etc. are toxic," (Bhartiya 524). Tamasic qualities are observed as "darkness or obscurity," leading to the tradition that menstruating women are impure. This long-standing custom translated to women not being allowed in temples, and they were often told not to touch certain foods or plants to make sure these

items would not be “dirtied.” In fact, in some parts of India, women have separate living quarters during their menstrual cycle, and even have “menstrual huts,” a practice called chaupadi (Bhartiya 524).

Social constructions of menstruation vary from culture to culture, even within different Indian states, with striking similarities and differences amongst the many regions. Janet Chawla researched the taboos surrounding menstruation in India. Chawla found that ritual pollution was one of the most common conceptions of menstruation, in which women were told they were impure while menstruating. They were often told not to attend prayers or visit the temple and were also required to bathe properly after their period to return to their original state of cleanliness (Chawla 2818).

Despite its association with pollution, the negative connotation of menstruation often supersedes religion in India and applies to women of all social positions and religions. This begs the question, why this practice stains the lives of both Hindu and non-Hindu women, and how these negative associations of menstruation have sustained beyond religion and time. The issue of bodily impurity affects not only women, but also many people from a caste-point intersection. Lower caste members of Indian society, according to J.L. Brockington, were kept separate from “Brahmins, the upper caste and the group from which ritual specialists are chosen,” to “protect” the religious elite from this “pollution” (Nath 2241). In the name of religious preservation, these caste and gender-based restrictions continue to be practiced and enforced. Here we see that above gender, a prevailing issue is class, and in a caste-based country, the “Untouchables” or people “who handle dead animals, clean latrines, and washermen, along with others,” are said to pose a danger to religious purity (Nath 2241). Therefore, though these religious purification measures may not intend to attack a certain class or gender, they are used to justify the

subordination of women and lower caste peoples, upholding a patriarchal and elite-based hierarchy.

Control of access is justified by appealing to notions of contamination and pollution. To illustrate the political and legal implications of such semiotic meanings, consider the case of Sabarimala, a well-known Hindu temple in Kerala. This temple is devoted to the Hindu deity, Lord Ayyappan who is known as Lord Ayyappa or Ayyappan. This God is "associated with celibacy and austerity" and praised as the god of self-control and righteousness (Mohini 289). According to Hindu theology, Lord Ayyappan is a "Naishtika Brahmacharya" or an eternal celibate. Prior to visiting Sabarimala, devotees must take part in a 41-day long cleanse to ensure purity when attending the temple and the pilgrimage to get there. This cleanse, which lasts just over a month, includes fasting and observing complete celibacy. Though the exact details of this purity period vary from source to source, most Sabarimala associated guides generally assert that bathing twice a day is recommended, to ensure cleanliness of the body, and any smoking and drinking is also prohibited completely. Cleanliness of mind is furthermore achieved by abstaining from sex, anger, lust, etc. However, because the cleanse is 41 days long and menstruation is considered a ritual impurity, women ages 10-50 have been classified as unable to comply with the demands of the cleansing period.

Therefore, Sabarimala prohibits women in the age group of 10–50 from entering the place of worship. Since Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 allows temple authorities to "exclude women 'at such time during which they are not by custom and usage allowed to enter a place of public worship'," this restriction has been validly imposed for decades, and as Rajarshree Nath highlights, this enforces a gender-based prohibition in the name of religious preservation (Mohini 290).

However, in 1991, *S. Mahendran v Travancore Devaswom Board* (TDB) was brought to the Indian Supreme Court, where the first major argument against the religious elite of Sabarimala was brought to light. The case questioned whether the traditional and long-standing practice of prohibiting women aged 10–50 from entering the Hindu temple of Sabarimala was constitutional. The petitioners, Sri Mahendran, and Kerala Kshetra Samrakshana Samithi, argued that the TDB could not allow women into the temple, since it was violating the "temple's customary practices" and was exclusively allowing certain women with social influence to enter the temple, engaging in clear discrimination (Mohini 290). The TDB, Indian Federation of Women Lawyers (IFWL) and the government of Kerala stood on the respondents' side alongside S.Chandrika who was the main character of the case. The petitioner's argument rested on the attendance of S. Chandrika to the temple, who was a former Commissioner in the State of Kerala's temple administration bureaucracy. She, along with her daughter and infant grandchild visited Sabarimala "to conduct the child's first ricefeeding ceremony," and was granted entry, even though at the time, she was within the prohibited age and sex group. She therefore did not meet the eligibility requirements to visit the temple, and given her status was able to pull some strings (Mohini 290). Mahendran also argued that because Lord Ayyappan is considered "an eternal celibate, the presence of women within the reproductive age group would distract him from the cause of celibacy," (Mohini 290).

The respondents in defense of Chandrika argued that the restriction against women was not constitutionally valid for two different legal reasons. First, the Secretary of Kerala and the IFWL stated that according to Section 3 of the Authorization of Entry Act (1965), every Hindu must be given equal access and opportunity to enter religious temples. Excluding an entire class of people from entry they said, "violated this protection for women of all ages," (290). Second,

the defense brought to the Court, was that restricting women from entrance to the temple was not an "essential aspect of Ayyappan worship at Sabarimala" since women ages 10-50 had been allowed to visit the temple in the past (spare certain holiday seasons), and this prohibition was a more recent implementation (Mohini 291). The change in custom they stated originated from "either religious or logistical reasons," and it was also never meant to be enforced all year (291). Additionally, the temple has historically been a symbol for interreligious relationships, as the pilgrimage to the deity actually begins at a Muslim shrine where a Muslim priest conducts rituals, before going to the temple (Roopesh 12).

What is particularly relevant for my discussion here is that The Court was forced to address the second part of the petitioners' argument, as to whether women of menstruating age would be a valid "distraction" for the deity and devotees at Sabarimala. Constitutionally, any defense would discriminate against an entire group of people, violating the individual's right to equality and freedom of religion. Violation of articles 15, 25 and 26 of the Constitution of India were in question here.

Article 15 states that the "State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them" (Marar). Article 25 allows for the freedom of conscience and freedom to profess, practice and propagate religion subject to public order, morality and health. Article 26 holds that every religious denomination or section has the right to "manage their religious affairs subject to public order, morality and health" (Marar). These three articles emphasize different and seemingly stakes that are opposed to each other.

The petitioners brought forth their case based on the right as a religious denomination of Ayyappa worshippers, to be able to create and manage their own rules of entry to the temple. To

determine if they had legal standing, the Court first needed to determine if the petitions should properly be considered a religious denomination. The Court used a number of legal precedents in assessing whether devotees of Sabarimala can be considered "a religious denomination which enjoys complete autonomy in the matter of deciding which rites and ceremonies are essential according to the tenets of the religion," and that no one else has the power to overrule their decisions (Mohini 293). First, the Court cited *Raja Bira Kishore' Deb v. State of Orissa* (AIR 1964 SC 150), in the holding of which stated that a religious denomination is made up of its "doctrines, creeds and tenets and these are intended to ensure the unity of the faith" amongst followers, this brings the devotees together as a community (293). In using these criteria to define a denomination, the Court stressed unity, one way to be biased towards the traditional. Requiring unity within a belief system to be considered for legal recourse automatically alienates minority religions or religious groups, and depicts how the Court, intentionally or unintentionally, advances the majority group's interests over the minority's interests. The petitioners in Sabarimala brought forth a highly contested belief that polarizes followers of Hinduism, with half believing in women's entry into the temple, and half believing in their prohibition. Because of the petitioners' dissent of such "unity," the Court disregards the respectability of the petitioners' as a denomination, advancing the traditional Hindu belief to prohibit women from entering the temple. In another case, D. R. R. Varu v. State of Andhra Pradesh, the Court confirmed that a religious denomination has authority and thereby control over deciding what rites and ceremonies are essential to their practice. Due to this rule, the Court also had to recognize whether the devotees of Lord Ayyapan constituted a religious "denomination."

In 1954 case *Shirur v. Mutt*, the Court defined a religious denomination as "a collection of individuals, classed together under the same name; now almost always specifically, especially a religious sect or body having a common faith and organisation and designated by a distinctive name" (Mohini 293). Following this, in 1982, the Court stated in case, *S P Mittal v. Union of India*, that to be labeled a "denomination" and reap the benefits of this title, a group has to satisfy three conditions: having a common faith, a common organization, and a designation by a distinctive name (293). Here, in the case of Sabarimala, the defense claimed that it is in fact not obvious or apparent that Ayyappan devotees have a common faith because of the variance in the belief that the deity is a celibate who should be kept apart from menstruating aged women. The defense also argued that these devotees do not carry a clear, cohesive name since devotees visiting the temple are called "Ayyappas (for men) and Malikapurams (for women outside the prohibited age range)." Therefore, TDB, Indian Federation of Women Lawyers (IFWL), the government of Kerala, and S. Chandrika asserted that Article 26 is not applicable to the Sabarimala temple.

In response, the petitioners discussed the regularity of temple rules throughout not only Kerala, but India as a whole. By appealing to common Hindu practices, they could show how the current way of interpreting menstruation as pollution violates the practices of religious denomination. To be sure, temple authorities often require certain ritualistic conditions for temple entry or prayer, such as enforcing bathing, removing footwear, and practicing vegetarianism. In my own personal experience, I have even been turned away from entrance at a small temple in Kerala due to improper clothing. Wearing a churidar, or a long loose-fitting dress worn with trousers, was not acceptable and instead women were required to be wearing a skirt and blouse if a child, or a saree (an unstitched garment draped around the body in a robe-like

manner) if an adult. However, the key distinction here between these regulations and the ones in Sabarimala is that a woman between the ages of 10 and 50 cannot physically do anything to "render herself acceptable: her exclusion is complete, and her right to freely practice her faith as a devotee of Ayyappan is wholly erased until she exceeds the age of prohibition" (Mohini 297). Additionally, the petitioners highlighted, not all women ages 10 through 50 menstruate, and people outside of that age range can and do menstruate.

Following these arguments, the Kerala High Court decided that "the restriction imposed on women aged above 10 and below 50 from trekking the holy hills of Sabarimala and offering worship at Sabarimala Shrine is in accordance with the usage prevalent from time immemorial," (*S. Mahendran v Travancore Devaswom Board*). Upholding the restriction, the Court claimed that the restriction imposed by the Devaswom Board was neither "violative of Articles 15, 25 and 26 of the Constitution of India" nor the "provisions of Hindu Place of Public Worship (Authorisation of Entry) Act, 1965" because there was no specific prohibition between one Hindu class and another, since it is only respective of "women of a particular age group and not women as a class" (*S. Mahendran v Travancore Devaswom Board*). The Court agreed with previous precedent that stated, an organization, if within the bounds of the definition of a denomination, has total autonomy in deciding what rites are essential according to the tenets of the religion. Therefore, they concluded that restricting women 10-50 was "such an essential practice at Sabarimala," so cannot be uplifted by law (Mohini 289). Consequently, the TDB, with support from the state government, was required to enforce the Court's holding and ensure such religious observation. This restriction, implemented by temple elite continued to subordinate Hindu women in their religious and personal freedom. Upholding the idea that these female devotees would be a "distraction" placed the responsibility of Ayyapan's sexual impulses on the

women themselves. This reinforces the idea that women are responsible for men's behavior and that men cannot be held accountable for their own actions, perpetuating the idea that women are objects to be controlled and men are free from blame. Though the Court's holding may be shocking, such biases are not exclusive to the caste-based system, Hinduism, or the Indian subcontinent. Like Susan Moller Okin claims, "while the powerful drive to control women—and to blame and punish them for men's difficulty controlling their own sexual impulses—has been softened considerably in the more progressive, reformed versions of Judaism, Christianity, and Islam, it remains strong in their more orthodox or fundamentalist versions" as well as amongst other cultural non-religious lifestyles (Okin 1997).

The specific issue of Sabarimala was reintroduced to the Court in 2018, when another case was filed by the National Indian Young Lawyers Association against the temple, arguing that the ban against women ages 10 through 50 was violation of Article 32 of the Indian Constitution. When the case reached the Kerala Supreme Court in 2016, the Kerala justices held that the ban was unjust since it did not uphold the "fundamental right to practice and propagate religion" (*Indian Young Lawyers Association & Ors vs. The State of Kerala & Ors*.). Therefore, the Supreme Court of India was faced with four major legal questions, to reassess the previous holding on the Kerala High Court: 1) Is the prohibition against women a violation of Articles 14, 15, and 17 of the Indian Constitution? 2) Is this restriction a fundamental religious practice according to Article 25 of the Constitution? 3) Is Sabarimala a religious group/denomination according to Article 26 of the Indian Constitution, and if so, are they legally allowed to practice a religious ritual that violates aforementioned Articles? 4) Does Rule 3 of 1965 Rules allow a religious denomination to restrict women of an entire age group from entry into their temple? and 5) Does this Rule collide with the Act of 1965?

The appellant, the Indian Young Lawyers Association argued that the restriction discriminated against women as a class of people because the rule originated in a person's menstrual cycle, which is historically considered an attribute of a specific sex. They highlighted that a menstruation period is not permanent, so it does not make sense to ban all women of this class permanently. Hence the absolute prohibition of women is a Constitutional violation. Additionally, they retouched that the followers of Sabarimala are not a uniform denomination, and to follow this, even if they were, "the ban on females is certifiably not a fundamental religious practice and it's not necessary and it also violates Article 21 and Article 17," reconfiguring the criteria for a fundamental religious practice (*Indian Young Lawyers Association & Ors vs. The State of Kerala & Ors*.).

The respondents, Travancore Devaswom Board State of Kerala Pandalam Royal Family Chief Thanthri argued that women between the ages of 10-50 "can freely go into any temple, including those of Lord Ayyapan, and exercise their entitlement to worship" so this rule is not discriminatory because it is specific to this particular temple. The respondents also stated, "the customs were practiced since immemorial without any meddling and hence it is valid as per Art 13(3) (b)" (*Indian Young Lawyers Association & Ors vs. The State of Kerala & Ors*.). The respondents went on to claim that the restriction is valid as it "might cause distraction in the men due to the presence of women" (*Indian Young Lawyers Association*). To address the question of the group being a religious denomination, the respondents used precedent from *Mahendran,* and claimed all the devotees followed the cause of Dharma, and all devotees are called Ayyappans and "all-females who are more than the age of 50 and who are allowed in the temple are called Malikapurams" basically claiming that they did have an official name. The respondents claimed there was no caste-based discrimination feminist researchers argued that menstruation-based

restrictions inadvertently reinforce traditional prejudices that uphold a caste-based hierarchy based on perceptions of impurity. In fact, caste researcher O B Roopesh argues that the Sabarimala pilgrimage tends to attract "Dalits and Other Backward Classes (OBCs) across Kerala, but rarely Brahmins," (Roopesh 12). Dalits, or the "Untouchables" are generally considered a lower class, characterized by stereotypes of dirtiness and vulgarity due to their labor in places such as bathrooms, sewers, and other waste management locations. In comparison, Brahmins, who are associated with purity and abstinence, hold the positions of power in temple leadership. Consequently, Sabarimala's "women's issue" is intersectionality a caste-based issue as well. This is crucial to keep in mind when analyzing how the Court tends to side with the Brahmins, in upholding traditional Hindu beliefs, such as prohibiting women from entering temples during menstruation. This lends to why priests, who hold elite roles at Hindu temples, are never women, since even if born into a Brahmin family, does not mean the true Brahmin requirements for temple worship (i.e., their alleged impurity). Within Sabarimala, and the Hindu temple system in India as a whole, it is important to address how gender intersects with caste in maintaining elites' patriarchal power and producing a distinct form of oppression.

When I first came across the legal logistics of this *Indian Young Lawyers Association & Ors vs. The State of Kerala & Ors*., I asked myself, "Could the Court hear a case like this?" and "if so, what are the rules associated with representing religious ideals, people, and entities in the courtroom?" Afterall, Sabarimala is a public Hindu temple. Consequently, it is governed under the Minister of Devaswom Affairs in the Government of Kerala, who are the first level of governance for public temples in Kerala and is held by a person who makes decisions for around 1700 public temples across the state (Acevedo 558). Above the minister is a statutory body called the Travancore Devaswom Board (TDB), one of the main players in both *Mahendran* and Indian

Young Lawyers Association. The TDB is "one of five geographically defined temple boards in Kerala and is by far the most powerful among them: it oversees approximately 1000 temples by itself, including two of the wealthiest religious institutions in India" (558). Sitting above the TDB is the Kerala High Court, who oversees issues that are not resolved by the lower two parties. The High Court is comprised of a "temple bench" that regulates/checks the decisions made by the TDB and the power they impose.

Interestingly, in *Mahendran*, none of the relevant parties — Sri Mahendran and Kerala Kshetra Samrakshana Samithi, TDB, Indian Federation of Women Lawyers (IFWL) or the government of Kerala— used Hindu religious texts to base their arguments. As Acevedo states, this is "somewhat unusual for a religious freedom case," instead, the groups cited "secular artifacts like bureaucratic reports, newspaper articles, and personal correspondence" (564). Though this seems really unrealistic and unreliable at first glance, Acevedo contends that they actually did this *because Sanskrit texts respecting Lord Ayyapan and his worship do not actually exist*. Not uncommon to many Hindu arguments, the prohibition of women's entry was also supported by "devaprasnam" or astrology in the high court's intervention in 1991 (Roopesh 13).

Therefore, these two major Indian high court cases beg the questions of "who represents religious ideals?", and "how should the Court determine who represents religious beliefs?". As discussed earlier, religious "denominations" receive certain rights, given they meet the criteria for the "denomination" label. But what happens to an organization that does not meet these standards, but still acts and functions as a religious group? How much discretion does a particular religious leader (whose interests may or may not conflict with the petitioners') have, and/or how much does a specific religious text matter in any court case? As Roopesh discusses, privileging certain forms of religious voice over others can lead to the privileging of the current elite's beliefs. For example,

religious beliefs passed down through spoken word may be perceived as unreliable, reflecting the prejudices of the time as opposed to the words of gods, but beliefs that are written down may have been done so by well-educated, upper-caste individuals, who had more incentive to keep the lower caste people in their subordinated place in society via religious doctrine. In the case of Sabarimala specifically, OB Roopesh suggests that Brahminical ritual practices become more acceptable and the institutions that enforce these practices, like the Devaswom Board, legitimize upper caste tantric practices rather than lower caste ones (Roopesh 15). Legal precedence in colonial and postcolonial courts has played a significant role in the creation of this situation (Roopesh 15).

Although these cases regarding Sabarimala are just a core example within the Indian legal system, tensions between religious rights and women have always been perceived in conflict. This especially contributes to large scale social unrest when religious rights stem from a minority religion. A question Susan Moller Okin asks in "Is Multiculturalism Bad for Women?" touches on this idea. Okin questions, "What should be done when the claims of minority cultures or religions clash with the norm of gender equality that is at least formally endorsed by liberal states (however much they continue to violate it in their practice)?" highlighting the legal dilemma cultural diversity often poses to the feminists within the majority. Okin's question parallels the intergroup division in the case of Sabarimala, where the small group of Hindu women that do not want the ban lifted clash directly with women who believe that their religious right to pray wherever and whenever they want should allow them access into Sabarimala.

This intersectional problem appears across the world in many different instances, and with differing consequences. Okin mentions contrasting responses to two separate instances of a clash between religion and gender equality. A major controversy arose in France when the question of whether Muslim girls could wear headscarves to school to observe the rules of their beliefs.

However, when polygamy became a popular practice of many French Arab and African women, "the public was virtually silent" (Okin 1997). Though at first glance this insinuates a feminist defense of prohibiting headscarves, Okin suggests that polygamy was found to be the more traumatizing and harmful practice to the women involved. When the wives within the polygamous marriages were asked about their lifestyle, they described it as "inescapable and barely tolerable." If the defense of polygamy stemmed from a similar feminist approach, the uproar would have been much louder, meaning the cultural-religious importance of polygamy played a greater role here. The lack of protest against polygamy here illustrates that feminism and multiculturalism can in fact work against each other, and both are not necessarily always "good" in their respective demands. People who are "politically progressive and opposed to all forms of oppression" often group feminism and multiculturalism as concurring in conflict, yet as depicted in the case of Sabarimala, cultural groups like Hindu women are not "monoliths."

UNITED STATES OF AMERICA

The U.S. Supreme Court has received and debated many religious freedom cases that have similar structures, where a religious belief is contested as a violation of a human or governmental right. In order to better assess how India's Supreme Court ruled in Sabarimala, it will help to contrast this case to how the US Supreme Court ruled on religious freedom. Before comparing the different rulings on issues surrounding polygamy, abortion, and education, I would like to briefly discuss the US constitutional provisions on which religious freedom is grounded.

To begin, I would like to consider how the US Supreme Court ruled on the practice of polygamy as practiced by the Church of Jesus Christ Latter-Day Saints, specifically, the case of, *Reynolds v. United States*. This case was brought in 1879 to the Supreme Court concerning a case in which member of the Church of Jesus Christ Latter-Day Saints, George Reynolds, was convicted of bigamy, now commonly referred to as polygamy. Reynolds argued that punishing him for having multiple wives was a violation of the Free Exercise Clause as his multiple marriages to (names of wives) was an act of his religion. However, the U.S. Court recognized that the Free Exercise Clause establishes that they cannot "regulate belief," they held that the Supreme Court was permitted to punish criminal activity regardless of how that activity performs in a religion. The Court furthermore argued that when a "religious practice violates certain notions of health, safety, and morality," the state can interfere, using "police powers" (Hermann). This is a clear similarity in the American and Indian Supreme Courts, where certain safety and morality limitations are placed on religious practices.

Although the U.S. Court's holding established some parameters for negotiating religious-morality conflicts, and thereby how to address the rule on religious arguments in the Court. It is important to understand the historical relationship between polygamy and Mormonism as well as,

and how this history was used in *Reynolds'* ruling. Polygamy's origins in Mormonism began sometime between 1852 to 1890, when "ten to twenty percent of the Saints lived in polygamous families" (Bitton 111). There is controversy about exactly when polygamy became a part of the religious teachings, as some scholars believe polygamy was introduced by Joseph Smith, who provided many revelations for Mormons in the 1800s and translated the Book of Mormon for the religion's followers. Others contest that plural marriage was introduced by earlier Mormon prophets, perhaps even many decades prior to the 1850s. Abraham "Owen" Woodruff who was also considered a Mormon apostle, and participated in polygamy himself had a "divinely inspired call for the termination of plural marriage" (Snyder 2009). Similar anti-polygamy sentiments eventually lead to the 1904 Manifesto produced by Joseph Smith, emphasizing a distaste for plural marriage. Though many Mormons "agreed to observe 'the law of the land,' not all of them renounced their belief in the principle," since it was not actually illegal (Bitton 111).

Though polygamy is now banned by the Mormon Church as well as by the U.S. government, it is important to recognize how both the plaintiff and the Court went about addressing this issue with its place in religion. Like the case in India, *Reynolds* did not explicitly bring the word of God to the courtroom or cite any divine calls from prophets as a basis for his behavior. Instead, he used Mormonism as an umbrella justification for his plural marriage, and the Court addressed that entity as a whole, rather than picking apart which part of the religion provided such a defense. This approach allows for the Court to interpret how [and whether] his religion interfered with the law, rather than deciding the intricacies of the religion itself. With respect to Sabarimala, it is evident that the Court also addressed Hinduism as an "umbrella" entity, but with the consideration of a religious being as the defendant, complicating the case with the representation of a deity rather than a religion as a whole. This is something unlikely to happen in America, as

we see with this case and many others that simply use a religious justification in their defense instead of using an entire body of religion as a petitioner or defense. *Reynolds* illustrates the more implicit manner in which religious beliefs infiltrate the Court's opinions, rather than the more obvious lack of separation of church and state in the Sabarimala case.

Another US Supreme American court case that provides a different perspective on the Sabarimala case is in the 1972 case of *Wisconsin v. Yoder*. Jonas Yoder, Adin Yutzy, and Wallace Miller were three of many parents who refused to send their children to public high school, arguing that this education was "contrary to their religious beliefs." Wisconsin Law mandated compulsory school attendance until the age of sixteen. So, when the aforementioned parents denied placing their children in any sort of education system after the eighth grade (children ages 14 and 15), the State took action. Given that the parents would provide "informal, vocational training" to their children at home, the Wisconsin State Court held that the respondents' rights were violated under the First Amendment's Free Exercise Clause and 14th Amendment.

The State Court advanced four major justifications for their holding. They stated that Wisconsin's interest in compulsory education is subject to the balancing process when "impinging on other fundamental rights," e.g., with respect to the religious upbringing of a person's child. Next, the respondents argued that high school attendance was genuinely believed to be against Amish religion, and participating in this system would "endanger their own salvation and that of their children by complying with the law," which essentially destroys their free exercise of religion (*Wisconsin*). Third, the Court stated that the Amish have consistently "demonstrated the sincerity of their religious beliefs," and how their beliefs are essential to the survival of their community. This, they stated, was "aided by a history of three centuries as an identifiable religious sect and a long history as a successful and self-sufficient segment of American society" (*Wisconsin*). Though

this can seem like a strange justification, social cultures redefine how individuals within said cultures live, and "even cultures that flout the rights of their individual members in a liberal society" should be accorded group rights or privileges if their minority status endangers the culture's continued existence (Okin 1997). It is important that our perception of culture is similar to our "perception of gender, class or religion," to rid us of a dominating 'straitjacket view' and provide for more amicable solutions to multicultural practices that clash with gender equality (Phillips 2007).

This last argument highlights a key similarity between *Yoder* and that of *Sabarimala*. When religious beliefs are presented to the Court, the religion must be *an identifiable and coherent group*, rather than what some may call a "cult." Both in India and the United States, the religion bringing its concern in front of the Court must seem to have a presentable history with the country and its people. In this way, established religions who have existed over time are favored. Finally, in *Yoder*, the state court affirmed that the respondents effectively showcased that their informal vocational education was adequate in comparison to the education the children would be missing. Therefore, because the bypass of Wisconsin's education would not be sufficiently detrimental to the children, the State does not have reason enough to prevent the parents from the free exercise of their religion.

The Supreme Court upheld this opinion, supporting these justifications with additional contributions. Testimonials presented by Amish expert scholars struck a strong claim that putting Amish students in schools at the age which it is against their beliefs would chip away at the foundation of their community and weaken the survivability of the religion. The Court also reasserted that because Old Order Amish communities have a fundamental belief that "salvation

requires life in a church community separate and apart from the world and worldly influence," school attendance could be a direct obstacle in such salvation.

Although Yoder does not bring the gender-based conflict that *Sabarimala*, *Reynolds*, and *Roe* all do, it rather highlights an important criterion for religious claims that are brought to Court. The Indian Supreme Court's definition of a "denomination" in *S. Mahendran* mirrors the United States Supreme Court's basis for why the Amish is considered an identifiable religious group. The Indian Supreme Court used precedent to assert that a religious denomination is made up of its "doctrines, creeds and tenets and these are intended to ensure the unity of the faith" (Mohini 293). Similarly, in Yoder, the United States Supreme Court maintained that a religion must be *an identifiable and coherent group*, emphasizing the survival thereof in justifying the abstinence practices. Both Courts prioritize unity, and therefore the traditional or majority doctrine, in this way. Necessitating that cultural groups illustrate their conformity decreases intersectional conflict between gender equality and religious equality, and helping the Courts come to a less "divisive" holding (Okin 1997).

Wisconsin v. Yoder emulates many other American court cases that seem to prioritize religious beliefs over fundamental rights. The Court's balance here seemed to make education seem more unessential than we may believe it to be today. Education in *Wisconsin*, unlike polygamy in *Reynolds* and the women's rights in *Sabarimala*, was seemingly unimportant in its intersection with religion. This demonstrates where priority may lie for governments, both Indian an American, in which rights and behaviors we prioritize.

Finally, *Roe v. Wade (1973)*, arguably one of the most impactful cases in recent women's rights history, also toys with the line between *religion and individual rights*. Argued on December 13, 1971, the case shed light on Jane Roe, a pregnant, unmarried woman who wanted to terminate

her pregnancy. However, living in the state of Texas, she was unable to do so under a "competent, licensed physician under safe, clinical conditions" because Texas law required an abortion to be procured only if a woman's life appeared to be threatened by said pregnancy (*Roe v. Wade*). Along her side was a licensed physician, James Hallford, who had been prosecuted multiple times for violating the Texas statute in cases where he argued it was indiscernible if the patients' lives were in danger. A couple under the pseudonyms of John and Mary Doe also filed a companion suit alongside Roe, as Mary Doe suffered from a neuro-chemical condition that provided she should avoid pregnancy. However, being told to go off of birth control, she wanted to be assured the right to terminate this pregnancy, and so brought suit to the Court alongside Roe and Hallford. Roe asserted that the Texas statute was "unconstitutionally vague and abridged her right of personal privacy, protected by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments" (*Roe*).

Therefore, the U.S. Court was presented with two questions: 1) Whether a person's right to choose to have an abortion is protected under the Constitution's fundamental "right to privacy," and 2) Whether the right to abortion is or is not absolute when balanced against government interests. On the opposing side, the state of Texas argued that they have a compelling state interest in "safeguarding health, maintaining medical standards, and protecting prenatal life." Additionally, they also asserted that a fetus is considered a "person" who is protected by the 14th Amendment, which is where this case intersects with Sabarimala (*Roe*).

The state's arguments rests completely on the belief that a fetus is a "person" protected under the Constitution since a "life" begins at the time of conception. However, this view of a fetus is an extremely Christian-centric belief. Many devout Catholics cite the Bible as evidence of God's intention that life begins at conception. One frequently quoted verse, from Psalm 139:13-16 states, "*For you created my inmost being; you knit me together in my mother's womb. I praise you*

because I am fearfully and wonderfully made; your works are wonderful, I know that full well. My frame was not hidden from you when I was made in the secret place, when I was woven together in the depths of the earth. Your eyes saw my unformed body; all the days ordained for me were written in your book before one of them came to be."

In contrast, many minority religions have opposing beliefs on when life begins, and how this applies to abortions. Several members of the Judaic faith, for example, follow the word of the *halacha*, or Jewish sacred law, in seeing "every human life as having infinite worth. However, the fetus is seen as a "prehuman" life rather than a full life," and consequently, "full rights given to the fetus only at birth (Khorfan). the belief that "life begins when you take your first breath." For these Jewish individuals, life and breath are often synonymous. Similarly, many Buddhist, Unitarian, Shinto, and non-religious Americans provide the greatest support for legalized abortion, as their religious beliefs either do not coincide or do not even engage with the idea of life beginning at conception. Many members of the Islamic faith believe abortion as a method of preservation of life, in respect to the mother's life, as it is "the life that exists" (NPR 2022). Jewish sacred law emphasizes a similar prioritization, as abortion is often permitted when the mother's life is in peril (Khorfan). In Hinduism, life itself does begin at conception, but because of the belief of reincarnation and inner consciousness, the body has little meaning, and the soul is more central to growth and "moksha" or ultimate enlightenment from the cycle of rebirth. Therefore, due to this belief and Hinduism's emphasis on causing the least amount of harm, many Hindus strongly support legalized abortion to prevent any danger to mothers.

The Supreme Court of the United States, dominated completely by members of the Christian faith, especially Catholicism, do not even question this belief that life begins at conception as a religiously biased argument. Instead, they shut it down by saying that "The

Constitution does not provide a definition of a 'person' and rather protects people who are 'born or naturalized' in the United States" which they conclude does not relate to unborn children. This illustrates how the U.S. Supreme Court avoids religious discussion and instead turns the argument into a Constitutional one regardless of where it stems from, again highlighting their attempt to stay secular for the sake of decision-making.

It is also important to look at what the US Supreme Court considers "criminal activity" and where this reasoning is rooted. Looking at the cases presented above, the Court seems to headbutt with religious practices that violate normative behavior stemming from Christianity. For example, in the case of polygamy, having multiple wives is considered a crime, which is why the case is presented to the Court in the first place. However, in some more conservative cultures, having multiple wives, where everyone seems to consent to this behavior, does not seem like an inhumane, evil way of life. Religion and morality are so intertwined, they often become synonymous. We build our criminal laws at least partially off the laws of religion, and in a country like ours that is so heavily tied to Christianity, our rules echo old and new Christian beliefs. Several Bible verses implicate monogamy, stating sentiments similar to "each man should have his own wife and each woman her own husband" illustrating the sway Christianity had in making polygamy seem like "criminal activity" in not only *Reynolds v. United States* but also in the mind of the masses. Yet, Okin reveals an important factor in deciding what multicultural practices are criminalized. She argues that though polygamy may hold multicultural value, many women in polygamous relationships are extremely miserable both physically and mentally, and a multicultural justification for the practice severely detriments these women. Therefore, it is crucial to balance the cultural normativity of the practice with the detriment it causes when criminalizing a multicultural, or minority custom.

The need for balance, but inherent lack thereof, highlights an important characteristic, or flaw some may say, in the structure of our judicial system. Blake Williams suggests that Court decisions are often tied to "the policy preferences of the justices" and religion plays a major role in such opinions, and consequently their votes despite how secular we believe our government to be (Williams 814). For example, on the issue of abortion, "Justice Antonin Scalia said 'I have religious views on the subject. But they have nothing whatsoever to do with my job';" yet like Williams states, it is near impossible to suppress your own values wholeheartedly (Williams 814). It is likely that members of the United States Supreme Court and judicial system as a whole use religion to craft their definition of "criminal" and make moral and value judgements, yet they try to promote an image of secularity and neutrality. The Indian Supreme Court approaches secularism in a similar manner but seems less afraid to bring the name of God into the argument. Religion is used more explicitly and almost more controversially, with much more honesty in how religious beliefs may influence certain judgements. These cases also highlight how majority religions may be brought to Court to be affirmed and strengthened, but minorities in contrast can be crucified for "out-of-the-ordinary" practices, especially by how the Court (both Indian and American) are structured, religious beliefs arrives to the Court in the form and favor of organized religion. This enforces an avenue of elitism, where majority religions may be upheld in Court as they are more likely to receive approval from the Justices and the public; whereas minority religions received in Court may be frowned upon for uncommon beliefs such as polygamy.

Ideology, shaped by religion, has and will always have a huge impact on a judge's decisions. Again, it is virtually impossible to avoid analysis of personal bias, and therefore attitudes about religion are likely to creep into judge's decisions. Morality within the law inevitably comes

from centuries and eras of religious beliefs, which is why we must go about assessing issues concerning these beliefs very carefully.

These American court cases illustrate one major cultural difference between India and the United States court system. From case to case in the United States, many religious ideals and beliefs are brought forth, but very discreetly. In other words, they do not bring the deity to the stand; rather, they take for granted that who speaks for a religion is the authority whose voice the courts should be listening to. Cases regarding abortion frame the right to life from a Constitutional perspective, rather than explicitly clarifying that the idea that life begins at conception is a traditionally Christian belief. The United States justice system forgoes explicitly citing religion in the Courtroom, with few to no cases in the Supreme Court with the word of God as a base, unlike how the case was presented in *Sabarimala*. As a result, they do not adequately recognize how members of a particular religious community can justifiably disagree about particular religious beliefs and doctrines. They assume the relevant religion has a certain degree of "unity" regarding beliefs in order to assert its authority to decide religious freedom issues. Such a perspective can inadvertently further marginalize those who already occupy marginalized social locations in the religion. The Indian Supreme Court, on the other hand, explicitly brings the name, and word, of God to the bench. This quickly complicates the Court's neutrality and inherent separation of Church and State, as they are approaching the issue as a religious and Constitutional one rather than just a Constitutional conflict.

Cultural practices that violate gender equality must be assessed from an angle of both multiculturalism and women's rights, without clumping each respective group into monolithic organizations with homogenous beliefs. Unlike many researchers, I do not believe that women's human rights should automatically take precedence over a cultural right or belief (Okin 1997).

This can create intersectional harm to minority women, like those in Sabarimala who stood strongly against their own entry into the temple. However, it is crucial to recognize the harm that many multicultural practices can have on individual women and prioritize women's safety in their participation in said practices. It is important to remember that women do not lack critical thinking. Their decisions stem from their own belief and right and forcing them out of positions they want to be in also undermines their freedom, regardless of how abnormal these positions may seem (i.e., not wanting entry into Sabarimala, being in a polygamous relationship, etc.). Like Okin states, "women's rights and freedoms should not be sacrificed for the sake of cultural diversity" but if certain cultural diversity is essential to the success and happiness of women within that culture, a necessary balance must be struck to minimize the harm done to all parties involved. Our justice system must find a way to balance multiculturalism and feminism "by promoting cultural exchange and dialogue, while also enforcing laws and policies that protect women's rights and freedoms" (Okin 1997). Usually, responses to problematic multicultural practices appear in the form of complete bans or umbrella solutions, which are "blind to individual desires" and therefore "may in some cases harm those they pretend to protect, namely oppressed individuals and especially women" (Phillips 2007).

Sabarimala, Reynolds v. United States, Wisconsin v. Yoder, and Roe v. Wade, illustrate the different methods of action the United States judicial system and the Indian judicial system take when dealing with the intersection of religion and morality within their discretion. Both Courts attempt to remain secular, even though they present arguably prejudiced decisions, but the structural construction of these democracies makes the redress thereof very difficult. Therefore, our next steps as a liberal democracy should be to better address intersectional conflict both inside and outside of the courtroom, prioritizing groups that do not profit off the detriment of women and

cultural minorities. Religious representation in the legal realm is incredibly complex. The intersectionality that multiculturalism and gender equality bring to the Court cannot be resolved with a quick snap of a finger. Rather than present overarching, simple solutions to these issues, it is crucial that the Court pluralizes solutions, and act in ways that recognize and alleviate the vulnerability of groups marginalized by the dominant groups and status quo.

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