

## **RELIGIOUS TRADITIONS VS. GENDER EQUALITY: DOES GOD DISCRIMINATE?**

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**Abstract:** In the words of Joseph Conrad, “God is for men and religion is for women”, we find a deep connotation to a social evil of gender inequality in the eyes of religion and religious practices in the country. The incident of ban on entry of women in Sabrimala Temple, Kerala, initiated the debate as to whether gender biasness in matters of personal religion and religious beliefs infringes the rights guaranteed under the Indian Constitution? The debate took an ugly and violent turn when the nation was divided on this subject. This issue of traditional and religious sentiment was taken up by the Apex Court of India and the Court stated that discrimination on the basis of sex and gender stereotypes needs to be done away with. The right to worship must be provided to every gender, be it a man, a woman or anyone in between these lines. Religion must be separated from gender stereotypes and no custom or tradition should be practiced that leads to the infringement of the rights guaranteed by the fundamental law of the land. This article highlights the notion of equality of sexes in the right to worship in India.

Patriarchal dominance around the globe has constantly pushed women as background runners in the society. Women’s minimal representation in the matters of the society and inadequacy of resources has led their lives to misery. Entering the twenty first century and being a part of nearly two decades of the same, women still thrive to gain equality amongst the male dominated world. Indian society paints a gloomy picture where women face economic exploitation, educational depravity, poverty and constant violence at the hands of their male counterparts. The Indian Constitution provides equal rights to men and women. Article 15 of the Indian Constitution states that no one should create any sort of discrimination only on the grounds of religion, race, caste, sex or place of birth or any of them within the territory of India. Women in India are provided with the legal rights to secure their economic, social and cultural well being. The special laws which show the efforts made by Indian Government in interest of women are Dowry Prohibition Act 1961, Maternity Benefit Act 1861, Births, Deaths & Marriages Registration Act 1886, Medical Termination of Pregnancy Act 1971, National Commission for Women

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Act 1990, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1999, Protection of Women from Domestic Violence Act 2005 and Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act 2013 to name a few.

The reality is different- Declining sex ratio in the country is a silent devil waiting to create havoc in near future. As per Census of 2011, while the overall sex ratio had gone up to touch 940, against 933 in Census of 2001, the child sex ratio plummeted to 914 from 927.<sup>1</sup> A total of 338,000 incidents of crime against women were recorded in 2016 against the total of 329,000 crimes against women in 2015 in India.<sup>2</sup> India is a home to many religions and beliefs. When a religious practice or rite goes so far as to deny women equality in society and when notions of menstrual purity and pollution penetrate to create discrimination, the idles of the Constitution are severely let down. The right to worship at religious places has been a part of struggle in the social reform of India. Earlier, the struggle marked the efforts of *Dalits* to enter religious places and offer their prayers to the Almighty. The struggle has now embraced women who seek equality with men in access to places of worship. The ban on women to enter religious places in Hindu society marks the notion of visualising them as impure during their menstruation and a source of sexual deviation amongst the minds of the monks. The current incidents that led to the fuel in fire have initiated a movement in the country where women seek equality against discriminating religious beliefs and old age practices.

The issue of discrimination against women on basis of her sex in matters of religion began with the incidence in Sabarimala temple. Sabarimala is a Hindu temple in Kerala and is dedicated to Lord Ayyappa. The pilgrims are required to observe abstinence for 41 days to purify the mind and the soul before visiting the temple. The devotees are refrained from consuming meat, alcohol, engaging in sex, anger and improper language. Only girls below the age of 10 and ladies above the age of 50 are permitted to climb up the hills to Sabarimala. Ladies in the age group from 10 year to 50 years or in the 'menstruating age' are not allowed to visit the temple. The ban on women to enter the temple has been practiced since centuries. In 1991, the Kerala High Court restricted entry of women above the age of 10 and below the age of 50 from Sabarimala temple as they were of the menstruating age.

In 2006, six women, members of the Indian Young Lawyers' Association, approached the the Supreme Court of India via petition to lift the ban against women between the ages of 10 and 50 entering the Sabarimala temple. They argued that the practice was a violation of their constitutional rights and questioned the validity of provisions in the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules act of 1965 which supported the practice. The ban on women from entering the Sabarimala Temple was supported on the basis of ancient tradition and custom, which was backed by Rule 3(b), framed under the authority of the Kerala Hindu Places of Worship

(Authorisation of Entry Act), 1965. Section 3 of the Act of 1965 stated that places of public worship be open to all sections and classes of Hindus, subject to special rules for religious denominations. Rule 3(b), however, provided for the exclusion of “women at such time during which they are not by custom and usage allowed to enter a place of public worship.”<sup>3</sup> This part of legislation was held against constitutional provisions such as Article 25(1) (freedom of worship), Article 26 (freedom of religious denominations to regulate their own practices), and Articles 14 and 15(1) (equality and non-discrimination) of the Indian Constitution. Article 25 states that:

- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I. - The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II. - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26 reads:

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

- (a) To establish and maintain institutions for religious and charitable purposes;
- (b) To manage its own affairs in matters of religion;
- (c) To own and acquire movable and immovable property; and
- (d) To administer such property in accordance with law.

In September 2018, the Supreme Court of India by a majority of 4:1 ruled that women of all age groups could enter Sabarimala temple and pay their reverence to Lord Ayyappan. The legislation of 1965 was also struck down as unconstitutional. A 4:1 verdict was delivered by a five-judge constitution bench comprising the then Chief Justice of India Dipak Misra and Justices R.F. Nariman, A.M. Khanwilkar, D.Y. Chandrachud and Indu Malhotra. The bench quoted;

*“The dualism that persists in religion by glorifying and venerating women as goddesses on one hand and by imposing rigorous sanctions on the other hand in matters of devotion has to be abandoned. Such a dualistic approach and an entrenched mindset results in indignity to women and degradation of their status. The society has to undergo a perceptual shift from being the propagator of hegemonic patriarchal notions of demanding more exacting standards of purity and chastity solely from women to be the cultivator of equality where the woman is in no way considered frailer, lesser or inferior to man.”*<sup>4</sup>

Justice Misra further stated;

*“In the theatre of life, it seems, man has put the autograph and there is no space for a woman even to put her signature. There is inequality on the path of approach to understand the divinity. The attribute of devotion to divinity cannot be subjected to the rigidity and stereotypes of gender.”*<sup>5</sup>

Keeping in view the gravity of the situation, Justice Chandrachud quoted;  
*“to treat women as children of a lesser god is to blink at the Constitution itself.”*<sup>6</sup>

The irony of the situation lies in the fact that the only dissenting opinion in the bench was raised by a women judge. Justice Indu Malhotra stated,

*“Issues of deep religious sentiments should not be ordinarily be interfered by the court. The court should not interfere unless if there is any aggrieved person from that section or religion. What constitutes essential religious practice is for the religious community to decide, not for the court.”*<sup>7</sup>

The female judge further contended that rationality must not be mixed up with faith. What constitutes as essential practices in a religion must be decided by the devotees and the religion itself.

After the orders of the Supreme Court, two women in their forties entered the temple in presence of police security. Following the entry of two women at the temple, the chief priest closed the sanctum in order to perform the ‘purification’ ceremony. Mixed reactions were observed throughout the country. Feminist groups and women welcomed the move and applauded the apex court for its decision regarding the matter. Outrage broke in many parts of Kerala as well as the rest of the nation as traditionalists and fundamentalist political parties supporting the ban opposed the entry of women in the temple sanctum. The temple town witnessed mass protests and violence broke in many parts of the country. The women who entered the temple also faced backlash at the hands of the public, who stated that they were not believers of the faith and merely activists who belonged to a particular political thought. After the incident, many women tried to enter the sanctum, but mass protests and severe backlash was received by the same. The protestors blocked their path and the women faced the wrath of these traditionalists. The entire matter was also given a political hue by many critics. The struggle between customs and the fundamental law of the land was evident and real. Several organisations sought reconsideration of the verdict.

The review petition will be heard by the constitution bench of the Supreme Court.<sup>8</sup>

After the highlighted incident, many aspects of women and their religious rights sprung on the forefront. Apparently, Sabarimala Temple is not the only one place of worship that denies the entry of women. Lord Kartikeya Temple, Pushkar, bans the entry of women in its premises. The Nizamuddin Dargah in Delhi allows the entry of women at the mosque, but not the sanctum. They are allowed to offer prayers from a certain distance. The famous Kamakhya temple in Assam, where the Goddess Kamakhya is worshipped as a bleeding deity, denies entry of women while they are menstruating. When Goddess Kamakhya, in all her physical disposition is worshipped, by what logic or religious authority, can women in similar condition, be deprived of their right to worship before these shrines and temples? Similar incident was observed a few years back when women activists in Maharashtra opposed the ban of women in Shingnapur Temple dedicated to Lord Shani. If the notion against women devotees arises from thinking that the young women devotees will become objects of temptation for male worshippers, then male devotees nurturing such unholy thoughts are ineligible to visit celibate shrines as well. It is not the women, but the men who need to be restrained from such activities. Misplaced religious rites coloured by sexist, misogynist and orthodox religious groups, are in total violation of not only the Indian Constitution but also the spirit of the Bhagavad Gita, Quran, Bible and other holy scriptures.

All these taboos on women and the verdict of the Supreme Court opposing the same raises an important question- Has the situation changed for women devotees?

Sadly, the answer is negative. The duality of religion where women is glorified as '*shakti*' and '*devi*' on one hand and labelling her as impure and polluted at certain times of the month on the other paints a gloomy picture of the mindset adopted by the society. Relationship with God is male oriented, with women still fighting to worship under restricted conditions and traditionalist views. Physiological factors dominate relationship of women with the God. Religion does not make anyone lesser in the eyes of the omnipresent, but religious rites certainly do. Article 25 of the Indian Constitution declares that all persons are equally entitled to freely practise religion. The primary right under Article 25(1) is a non-discriminatory right and is, thus, available to men and women professing the same faith. In the case of *Noorjehan v. State of Maharashtra*<sup>9</sup>, the Bombay High Court, adjudicating a challenge to the ban on women's entry into the sanctum of the Haji Ali Dargah, held that women be allowed unhindered entry into the famous shrine. The Bombay High Court held that Articles 14, 15 and 25 of the Constitution would act once a public character is attached to a place of worship, on which account a religious trust cannot discriminate on the entry

of women under the garb of 'managing the affairs of religion' under Article 26 of the Indian Constitution. In *Nar Hari Shastri and others v. Shri Badrinath Temple Committee*<sup>10</sup> the Court opined;

"...the temple is a public place of worship of the Hindus, the right of entrance into the temple for purposes of 'darshan' or worship is a right which flows from the nature of the institution itself, and for the acquisition of such rights, no custom or immemorial usage need be asserted or proved.....".

The notions of public order, morality and health cannot be used as devices to restrict the freedom to freely practise religion and discriminate against women by denying them their legal right to enter and worship at the temples. Residing views that confer women the titles of being 'impure' and 'polluted' during menstruation creates irony that the process of giving birth to new life is in itself a sinful deed. There is no legal logic or religious restrictions behind this practice. The concern of traditional customs is the manipulation and maintenance of 'purity'. Though religious bodies and trusts are free to frame rules for smooth functioning of temples and religious places, but the rules should be within the Constitutional mandates. Barring women to enter places of worship strikes the constitutional guarantees of equality. It is the role of religious organisations to not confer to such norms of practice that create discrimination between genders. A custom that creates such discrimination must be discarded by these religious 'pundits'. In a country where religion plays a crucial role in shaping up society and its practice, the responsibility of equality and equal treatment of all genders rests on religious organisations and members of the same. It is also the responsibility of the State to ensure that women who are willing to defy old age customs and traditions that oppose the ideals of equality must be protected. Women need to break the barriers of fear in religious practices. Many protestors of lifting the ban included women. This clearly states that women fear their empowerment and growth due to dogmas and prejudices created centuries ago. Viewing women as evil sinister that can break celibacy of men by their sexual overtones is highly irrational. If God was a discriminator, he would have not made women and allowed men to reproduce and dwell on their own.

The issue of ban on women to enter temples has raised a concern for the State. This era of social transition is a stepping stone to reach gender equality and empowerment. Judicial process is a guiding light for such old age mal practices, but cannot become as sole agents of change. It is usual for Indian court rulings to go unenforced, particularly in remote and rural areas. Change in mindset must come from within the society. Women must break the prejudices been set against them. Hinduism considered 'sati' as a general practice Widow remarriage was prohibited. Hindus were not supposed to travel abroad. There was no provision of divorce. Untouchability was accepted in the religion. The *Dalits* didn't have the right to education or own any property. There was a different punishment provided to different castes for

committing the same crime. Women were not allowed to study and daughters had no right over the parental property. All this reformed over time. Some changes were brought because of the laws and the Constitution. Others happened due to change in mindset of society over time. Superstitions must not reside under the covers of religion anymore. Reformation in old age practices and customs will require time and a shift in mindset of the society. There can be no revolution but only evolution in religion and religious affairs. By giving access to women in practicing their religion freely as men, the State will make a strong statement and say 'No' to a pernicious mindset that believes women and men are not equal. It must be realised that today the fight involves women; tomorrow it can be other marginalised sects of the society. State must not act as a mute spectator being guided by principles of priests and other religious customs who defy the Constitutional mandates and fundamental law of the land. Quoting a Mexican proverb the plight of women and women's rights can be summed up; *"They tried to bury us, they did not know we were the seeds."*

#### Note

- 1 For details see Census of India, 2011.
- 2 For details see National Crime Records Bureau Data, 2016.
- 3 Samanwaya Rautray, "Women of all ages can enter Sabarimala Temple, rules Supreme Court" The Economic Times, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-allows-women-to-enter-sabarimala-temple/articleshow/65989807.cms> ( Visited on March 23, 2019).
- 4 See Para 2, Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors., (2018) SCC 1690.
- 5 Ibid.
- 6 See Para 17, Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors., (2018) SCC 1690.
- 7 Indian Young Lawyers Association & Ors. v. The State of Kerala & Ors., (2018) SCC 1690.
- 9 Dr. Noorjehan Safia Niaz v. State of Maharashtra, 2016 SCC Bom 5394.
- 10 Nar Hari Shastri and others v. Shri Badrinath Temple Committee, AIR 1952 SC 245.