



PREJUDICIAL TREATMENT AGAINST WOMEN AT THE PLACES OF WORSHIP IN INDIA

AUTHORS: Ms Shrishti Dutta (duttashrishti@gmail.com)

Mani Shankar Choudhary (manichoudhary27@gmail.com)

ABSTRACT

Women's rights are intrinsic, fundamental, and indivisible parts of basic human rights. At the international, national and regional levels, full and equal involvement of women in political, civic, economic, social, and cultural life forms an integral part of the society which needs to be attained. With the introduction of the constitution, it is considered the duty of every citizen to protect the rights of other human beings. From the constitution itself, one can interpret the right of women in society. The banning of women at the menstruating age in the name of traditions and customs, this kind of discrimination against a particular gender is not something new in India. It has been always in a debate that whether these customs and religions have a right to decide the suitable behaviour of the women in India to enter the religious places and are these traditions above the constitutional rights given to each individual. The paper critically examines the correlations of man-made laws, gods place to live and the rights of worship for women.

Many laws have been put in place to protect women from injustice. However, a lot of discrimination towards women takes place in both a domestic and professional even when it comes to entering a temple. The paper has highlighted a few of the aspects of discrimination against women with major emphasis on instances where women of the menstruating age are not allowed to enter the temples. The paper has made an analysis of the on the issue whether law or customs, what should prevail? The decision is an important step that is taken by the judiciary to bring in a social change in the society. The paper also recommends the suitable changes and steps

that can be taken by the courts to respect the autonomy of the religions as well as strike down the unjust practices against women.

Keywords: Constitution, Equality, Gender justice, Menstruation, Religious intuitions, Women Rights

INTRODUCTION

Women have been mistreated in every civilization for thousands of years, and India is no different. The irony is that in our country, idols of women are worshipped as Shakti (strength), motherhood, protection and destruction of evil. However, atrocities against women are done in all walks of life. Females are treated as a property or a labour and she is not only deprived of her respect and honour outside her home but also subjected to ill-treatment within its four walls. They are viewed as a source of male sexual pleasure and child reproduction. They are considered to be the real downtrodden class of society. There is a lot of dependency of women on their male counterparts be it financially, physically or emotionally. From the birth of a girl child, they are dependent on their father or brother for various activities. Later on, they become to depend on their husbands. Women lack economic resources and are completely reliant on men for survival. Women's employment is frequently confined to the home realm as she is required to perform all housekeeping duties, which are both unpaid and unrecognised. There are numerous surveys and studies done regarding the time and efforts put by women in an unpaid job as compared to men. According to the NSSO report women executes 10 times more unpaid work than men in society. Moreover, the report estimated that women spend approximately 238 minutes (four hours) each day carrying out unpaid work as compared to men in India¹. Several women are returning to work in modern times, but they must bear a double burden: first, they must work where they are employed, and second, they must also perform all household chores. Furthermore, she is the last to be regarded and the first to be dismissed because she is deemed to be less efficient than her counterpart. Her overall social and familial status has been low and unrecognised. Starting from the womb of their mothers to the death bed a woman has to suffer several evil and unjust treatments such as inequality, discrimination, violence, oppression within the society as well as in the family.

All over the world, India is well known for its cultural diversity and most of the credit goes to the woman in India as they are the ones who are taking these cultural assets forward. However, India has certain traditions and Customs where women cannot enter the place of worship due to their biological phenomenons. Menstruation or periods is the most natural happening that occurs as a part of every healthy women's monthly cycle. Menstrual bleeding is a harmless and essential event for the wellness of a women's body. Menstruation

¹ Divya Dutta, Women and work How unpaid labour by women subsidises the Indian economy, The Indian Express
<https://indianexpress.com/article/opinion/columns/women-unpaid-labour-nssso-survey-economy-subsidy-6757904/>

is as normal as sneezing. However, people find it a shameful affair and usually don't prefer to talk about it. Banning the women from entering the temple just because of a natural event is a manifestation of unjust and discrimination against women at the places of worship. Historically many religious institutions have played a significant role in enriching the patriarchal society and oppressing the women in India. Women are trying to understand and break these stereotypical ideologies of society and have access to justice. On the one hand, we worship Goddesses like *Durga*, *Kali*, *Laxmi*, *Saraswati* and on the other hand we don't allow women to enter those religious places.

In *Goolrukh's case*², The supreme court overruled the Gujarat high court 2010 decision which was in favour of banning the Parsi women from entering the tower of silence(a sacred place to perform death rituals) after the death of her father just because she was married to a non-Zoroastrian. The Supreme Court stated that the fire temple should remove the ban as the DNA of a person does not evaporate after getting married. This leads a turmoil in the Zoroastrian religion. The petition was heard by the 3 judge bench in Supreme Court, later is has been referred to the constitutional bench where the matter is awaiting judgement.

The Supreme Court on the other hand is looking into the matter of the famous Ayyappa Swamy temple at Sabarimala that bans the entry of women from the age of 10 to 50 (Sabrimala Case)³ . The Supreme Court on September 18, 2018, delivered a landmark judgement withdrawing the ban of women from the Sabrimala Temple. The decision was taken in the favour of women. However, the judgement gave rise to a protest across the country. Hence, the petition is pending in the Supreme Court under a seven-judge bench. Banning women to enter the place of worship is not something new in India, this practice has been in place from time immemorial. Nonetheless, as the development in society is taking place the dignity of women is growing significantly. Hence, the question which arises is that firstly, are these are religion appropriate to decide the behaviour of women to enter the place of worship and secondly, are these customs, traditions and religion overshadowing the basic constitutional right of the citizens, which is provided by the state.

India is a secular country that promises to protect the right of the citizen and also provides them with the fundamental right to practice their own religion. India has various laws and regulations to uplift the condition of women. There have been many debates about women facing discrimination or gender biases in India. But in the upcoming years, the literacy level of women has been increased and they are given equal opportunity to participate in society. Even the hierarchical ideology of the male dominating society has reduced due to an increase in awareness in the society. Through various judicial pronouncements and policy initiative taken by the governments to eradicate the discrimination faced by the vulnerable section in the society. Hence, we can say that gradual steps taken by the three pillars (Judiciary, executive and legislature) of the Indian Constitution are resulting in reducing the unjust and ill-treatment against women in society.

² Goolrokh M. Gupta vs Mr. Burjor Pardiwala, 14 December, 2017 SLP(C) 18889/2012

³ Indian Young Lawyers Association vs The State Of Kerala on 28 September, 2018 WRIT PETITION (CIVIL) NO. 373 OF 2006

WOMEN NOT ALLOWED IN GODS HOME: Causes and Impacts

Prejudice means to form a negative judgment or attitude towards an individual or group. Prejudice further results in discrimination in society. The male dominating society has made the women of India live at the mercy of men, which provides freedom to the males to portray ultimate authority and power on the females. The unfair treatment due to the division of the society in the social system results in unequal treatment towards a particular group.

The main reasons for all the unjust and inhumane practices beard by women are⁴:

- 1) The high illiteracy level. Usually, women are not provided with proper education because they are obliged to do the household work and due to this improper education they are unable to stand for their rights.
- 2) Due to improper education the economic dependency of women is usually on men. Hence, men think they have a right to treat women according to their will and further this results in the oppression of men on women.
- 3) The traditions and caste restriction in Indian society also results in creates segregations in the community.
- 4) The religious prohibitions and taboos in the nation with regards to the participation of women.
- 5) The male dominating or the patriarchal nature of the Indian society also contributes to unjust and discrimination against women.

One of the most common manifestations of social inequality is gender inequality. To combat this, the Bombay High Court, while analyzing constitutional issues, found that no law prohibits women from entering any area and that state governments have the responsibility to safeguard women rights in India.⁵

Discernible reasons for gender equality

India is a male dominating society, where there are man-made laws. The main cause of the unjust faced by women at the religious places is the prevailing patriarchal nature of the Indian society, which is in existence from time immemorial. India has a wide cultural diversity which has its own rules and regulations. Every religion whether Hindu, Muslim, Christians or any other have the freedom to practice the religion according to their own will. However, this results in giving the ultimate power and authority to the males and giving the subordinate responsibilities to the female. This further leads to side-lining the women as they need to accept

⁴ Vijay Pal Singh, Gender justice in India, available at http://www.legalserviceindia.com/articles/gen_j.htm (last accessed on 26th May 2020, 11:03 AM)

⁵ Women are not allowed in these places of worship too, Times of India (Last accessed 28th May 2021, 11:11 AM)

<https://timesofindia.indiatimes.com/india/women-are-not-allowed-in-these-places-of-worship-too/articleshow/53871816.cms>

and follow all the customs, practices and traditions forced on them by society. In this, we can't only blame the male but the females are also to be blamed to contribute and agreeing with the social norms created by society.

When a girl reaches her adolescence there are many biological changes that take places in a women's body, out of them one is menstruation. Which is a normal biological process in a women's life till the age of 50. However, from the starting of the menstruation, a girl is told not to enter the temple placed inside the house because according to the Indian outlook, menstruation is known to be impure and a menstruating girl can diminish the purity of the temple. These backwards ideologies and social norms of Indian society are the root cause of gender inequality.

The implied rules, attitudes or beliefs which are unwritten and accepted by a defined group of people in the society is known as the social norms. The pre-developed norms in Indian society is one of the reasons for discrimination faced by women at places of worship. Women have usually remained passive receivers of lessons and fervent practitioners of religious rites, while men have dominated as listeners, interpreters, and broadcasters of divine messages. The social and cultural settings of Indian women have been defined and formed by patriarchal perceptions of religious belief, resulting in their marginalisation and lower status. Women suffer the burden of the repercussions of cultural attitudes and the effects of religion. In India, where politics utilises religion to control the public. Recognizing the impact of religion and culture on the lives of Indian women.

Moreover, the low literacy level of females in Indian society is also a problem. Which results in ignorance of their basic fundamental rights or human rights. Maintaining the human rights and social services of human beings, but these laws are not enough to meet the economic, social and cultural rights of the human beings in India. India has a large population but it hasn't achieved a sustainable growth rate and the promise to provide basic human rights to each and every citizen is not fulfilled. The religious practices which result in the oppression of gender are unconstitutional and a breach of basic human rights.

The Impact of the misogyny

In this male chauvinist society, preference for the birth of a male child is given and gender biases start from the birth itself. ⁶This leads to a hierarchical relationship between male and female, giving birth to gender norms. Arising in restricting the free movement and opportunities of the women in the society. Women are not allowed to work or live freely, resulting in harmful consequences. Women today are discriminated against in the education system, workplace or even in their own houses. Gender inequality does not only affect a particular section of the society but also leaves an impact on other factors such as the social, political or legal well-being

⁶ Rajni Bala, gender sensitization and condition of women Available at

<http://www.srijs.com/pages/pdfFiles/153605293248.%20Dr.%20RajniBala%202.pdf> (Last accessed on 24th May 2020, 9:07)

of the country as a whole⁷. The unjust in the nation with any particular group of society results in hampering the growth of the society.

- According to the Indian mind-set, men are considered to be more powerful. Even in a normal Indian family father or the eldest male person is considered as the head of the family, who has the authority to take the decisions related to the family. However, the mother is one who takes care of all the essentials and upbringing in a family. This kind of behaviour in Indian society leads to demotivation and discouragement to the women to be successful. This declines the morale of women and affects the women psychologically.
- People in India have used the word women Rights according to their political and ideological convenience but the basic women Rights should be protected to ensure the proper existence of the other rights. Gender discrimination is also used as an agenda for the vote banks by the Indian political parties.⁸ The indulgence of politics into religion and religious-based gender discrimination makes the issue controversial. Rather than finding out a solution to the problem, these parties start using the issue for their own advantage. The famous Sabarimala case which ongoing in the Supreme Court of India is an example of how the Case has become an agenda for the parties. On Sept 18th 2018 the Supreme Court passed its verdict stated that women of all age groups will be allowed in the Sabarimala temple but the implementation of the same was not being done because of the few political parties which were against this reformatory decision. This led to a lot of turmoil and protest in Kerala. misogyny in society is a serious issue and using someone's suffering for their own benefits adds up to deteriorating the well-being of women in India
- The unjust faced by women also have a technological impact. Nowadays, social media plays a vital role in highlighting the inequality and unjust faced by any vulnerable group in society. "Happy to bleed"⁹ is a kind of initiative taken by the women in India, that a movement taken against the menstrual taboos and ill-treatment against women. Indian people don't talk about menstruation as it is considered to be disgraceful. This campaign came into existence after the chief of a temple stated that there should be a machine to scan women who were menstruating and prohibit their entries into the temple as they will make the gods home impure and dirty. This had a large impact on social media and also led to the downfall of the reputation of the nation all over the world.

⁷ Glcmag, Gender Equality: Access to Places of Worship available at <http://glcmag.com/2016/08/02/gender-equality-access-to-worship-places/> (last accessed on 29th May 2021, 8:03PM)

⁸ Why Sabarimala is becoming a big issue for all political parties in Kerala, Indulekha Aravind, ET Bureau (last accessed 24th May 2021, 12:09PM) <https://economictimes.indiatimes.com/news/politics-and-nation/why-sabarimala-is-becoming-a-big-issue-for-all-political-parties-in-kerala/articleshow/66672118.cms?from=mdr>

⁹ Geeta Pandey, Why are Indian women 'Happy to Bleed'? (last accessed 12th May 2021, 1:12AM) <https://www.bbc.com/news/world-asia-india-34900825>

- The legal implications of the aforementioned decisions put pressure on parliament to pass a comprehensive law that applies to the entire nation, regardless of religion. The argument for comprehensive legislation is that it eliminates the need for the Judiciary to understand the meaning of laws for every religion, which causes confusion and wastes time. Bharatiya Muslim Mahila Andolan (BMMA) has challenged the ban imposed by the Haji Ali Dargah on the ban of women inside the inner sanctum. The Bombay High Court overruled the ban and allowed the women to enter the shrine. However, the women were not allowed to touch the tomb, where the saint is buried. The Supreme Court's decision on revoking the ban on women from entering places of worship caused a lot of havoc in society.¹⁰

THE LEGAL STANDPOINT IN RIGHT TO WORSHIP

All human beings are inherited to some basic human rights regardless of their race, nationality, language, religion or any other status. Everyone is entitled to basic rights such as the right to life and liberty, freedom from torture, freedom of speech and expression, right to education and many more, without any discrimination. The government has an obligation to act in a certain way that it promotes and protects the human rights of every individual, this is provided under the international human rights law. International human rights law is one of the greatest achievements of the United Nations that created a comprehensive body to keep a check and maintain a common code of conduct on human rights universally.

According to Article 5(a) of CEDAW¹¹ (Convention on Elimination of all Forms of Discrimination Against Women) “State Parties should adopt all relevant measures to reform men's and women's social and cultural patterns of action, with the goal of eliminating prejudices, stereotypes, and all other practices that are based on the predefined roles of men and women assumption of inequality or supremacy of either sex.”

Human rights are the fundamental rights of every citizen to which every human being is inherently and universally alienated. Human Rights can be separated into legal rights or natural rights. All human rights are interrelated. They cover all kinds of rights such as cultural, social, economic or political, which are guaranteed by conventions or treaties. Women rights are one of the highlighted and most talked about the topic under these conventions.

¹⁰ Women are not allowed in these places of worship too, Times of India (Last accessed 28th May 2021, 11:11 AM)

<https://timesofindia.indiatimes.com/india/women-are-not-allowed-in-these-places-of-worship-too/articleshow/53871816.cms>

¹¹ Convention on the Elimination of All Forms of Discrimination against Women New

York, <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

From the constitution itself, one can interpret the right of women in society. The fundamental rights have been jotted down in the Indian constitution and are followed by the people. They are considered to be the most influential law made by the legislature. It is the duty of every citizen to protect the rights of other human beings.

Constitutional Philosophy and provisions

After independence, in 1945 there were many legislations made to uplift the socio-economic status of women in India. They were given facilities to uplift their participation in society. In India, there are several laws, enactments and policies for the development of women. In the post-independent era, India had many laws which were against basic morality and gave rise to unjust and unequal treatment of women.

Equality is the building block of any democratic society, which aims to provide equal treatment and social justice to each and every citizen. The dictionary meaning of discrimination is unfair or unjust treatment by anybody on the grounds of sex, race, place of birth or any other reason. Discrimination is recognised all over the world. As we look around we see that the world is segmented and have their own differences on the basis of gender, wealth, status, race, religions and power. The inequality in society brings privilege to the people of higher power and status.

Dr Jennings quoted that, equality before the law which denotes that all the citizens should be provided with equal law and administration, should be done alike. Article 14 states two things, the first is equality before the law. That is the state will not deny any person equality before the law. Second, every citizen should be provided with equal protection of law. Article 14 prevents the citizens of the state from being discriminated against on the grounds of sex, religion, caste, place of birth or any other reasons by the state itself.

In *Subramanian Swamy vs Union of India Ministry of law and ors*¹² emphasises was put on the fact that constitutional balancing was necessary for respect to fundamental rights, it was the duty of the court to ensure harmony between fundamental rights of one another.

People have to acknowledge the fine line between law and faith. Every temple has an origin attached to it which is the ultimate reason for its existence that is followed by certain conditions not just to protect the same reason it but to respect its cultural heritage. Such conditions are put on pilgrims of the temple who are accepted to follow conditions such as not consuming alcohol or cutting nails and so on and these conditions are fulfilled by the devotees out of their faith and respect. But the question arises that is acceptable to the extent where the freedoms guaranteed under our constitution is being violated of a particular group in the society.

¹² WP(crl) 184 of 2014

In the famous case, Indian young lawyers association and others versus the state of Kerala and others¹³ a petition under Article 32 was filed against the Government of Kerala, to question the entry of female disciples between the age of 10 to 50 to the Lord Ayyappa temple at Sabarimala in Kerala. After the decision taken by the high court in the favour of the ban. Under the rule 3b of the Kerala Hindu place of public worship rules 1965, the entry of females of the age group 10 to 50 in the Lord Ayyappa temple was prohibited. The writ petition was filed because the act of prohibition was considered unconstitutional as it was violating Article 14, article 15, article 25 and article 51 A (e).

After the petition made to the Supreme Court. There were 5 questions that came into existence by the Supreme Court in the Sabrimala case¹⁴

1. Whether the exclusion of women from the entry in the temple due to biological reasons amount to discrimination and violets the fundamental rights of the women
2. Whether this action protects the morality as used in article 25 and 26 of the Constitution of India guaranteeing freedom of religion
3. Whether Sabrimala Temple is recognised as a separate religious group funded by the consolidated funds of Kerala and Tamil Nadu
4. Whether the exclusion of women from the temple is an important part of the religion
5. Whether the rule 3b of Kerala Hindu places of worship rules.

It was observed by the Supreme Court that, what applies to man and are same for women. The Court used the phrase “once open for public anyone can visit”. The bench said that all women have the right to pray. The Constitution of India is the *Magna Carta* is above all the other laws. Justice D Y Chandrachud¹⁵ stated that the right to pray of a woman is equal to that of a man. Further adding to his statement he said, Article 17 is applicable for the untouchability in relation to the lower class but the same law should not be applied to women and should not humiliate the status of women in society.

The applicability of Article 15 was also in question in denying the women from entering the places of worship. According to Article 15, it prohibits unequal or discriminatory treatment on the ground of sex. Also, the constitution of India provides special legislations for women Article 15 (3) gives the power to the state to make provisions for the benefit of women and children.

¹³ WP (civil) NO. 373 OF 2006

¹⁴ Shruti Choudhary, The Sabrimala verdict; in the conflict of customs and law, which one should prevail? Available at <https://www.ijlmh.com/wp-content/uploads/2019/03/The-Sabarimala-Verdict.pdf>(Last accessed FMay16 2021,3:43PM)

¹⁵ Suhrith Parthasarathy, An Equal Right to Freedom of Religion: A Reading of the Supreme Court’s Judgment in Sabarimala, Available at <https://ohrh.law.ox.ac.uk/wordpress/wp-content/uploads/2020/05/U-of-OxHRJ-J-An-Equal-Right-to-Freedom-of-Religion.pdf> (Last accessed 22th May 2021, 3:03 PM)

In the Sabrimala case, Justice Nariman also stated a very important thing that menstruation is not impure. He also added that the constitution should not become a part of the partial society by giving the right to worship only to the man and seizing the rights from the women. The menstruation cycle is not impure or polluted, it is a biological factor that is faced by every woman and should not be a reason to degrade the dignity of the women. Menstruation is a common phenomenon for a women as blood from the uterus passes into the vaginal canal. It is a normal phase that begins in women between the ages of 11 and 14 years old which is one of the initial signs of puberty amongst them. Despite the fact that it is a disorder that only affects females, it has always been shrouded in mystery and misconception in many cultures.

Article 25 to 28 of the Constitution of India gives the right to freedom of religion to every individual of your choice. India being a secular country treats every religion as the same and there is no official religion of the state. It also gives the right to each and every religion to be practised, preached and propagate in their own way. Article 25 of the constitution, lays down the freedom to carry on a religion freely without any restrictions but reasonable restrictions are also provided with the following freedom. That is, it should not violate the morality, integrity and dignity of the other individual. Religion is someone's own belief and value, which cannot be decided by any other person. Hence it is considered a fundamental right to practising the religion of one's own choice. Article 25 guarantees two important factors, which are always used as a common defence to justify the discrimination faced by women at religious places

- 1) The freedom of conscience
- 2) The freedom to freely, profess and propagate any religion

The Supreme Court stated in the *Tilakayat Shri Govindalji Maharaj v. the State of Rajasthan*¹⁶ that to understand whether conduct is an intrinsic component of the religion or not. The decision should be taken by the court after critically analysing the facts available based on the community's morality and religious prospects. Banning women to visit religious places, interferes with Article 25 i.e. right to religious freedom of the particular gender. The courts need to decide the essential element of religions or religious practise by analysing a specific religious doctrine, as well as the practises acknowledged by the community as a component of its religion.

The intimate relationship shared between law and religion have continued to be constituted and constantly changed throughout our history. However, this becomes burdensome for a country that is the birthplace of 4 major religions namely Hinduism, Buddhism, Sikhism, and Jainism. It is also a shelter for two more religions

¹⁶ 1963 AIR 1638, 1964 SCR (1) 561

namely Muslims and Christians. India is the only country of SAARC (South Asian Association for Regional Cooperation)¹⁷. The organization aims for the development and progress of all religions in a country. India is known to be a secular state and being home to abundant religions, involvement of the state in the religious matter is a common phenomenon. However, the Indian constitution has always chosen the road of harmonious construction, when one valid law overlaps the other nevertheless law has a far-reaching impact on religious conception. Indian courts have strictly refrained themselves from entering politics into secularism.

Civil Rights

In the case *Sardar Saifuddin vs. State of Bombay*¹⁸, Justice Das Gupta stated “a right to office or property or to worship in any religious place or a right to burial or cremation is included as a right legally enforceable by suit.” which meant if the right to worship does not fall under the constitutionality of Article 25, it can be also be binding in the court as a civil right of the citizens.

*SP Mittal vs Union of India and Boss*¹⁹ with reference to the judgement *Commissioner Hindu Religious Endowments, Madras v. Shri Lakshmindra Thritha Swaminar of Sri Shirur Mutt*²⁰ explain the term religious denomination under the following conditions

1. There must be a group of individuals having their own common beliefs and values
2. It should be a common organisation
3. Designated by a unique name

In the case of *Sri Venkata Ramana Dewaru v. state of Mysore and others*,²¹ it has been stated that the religious denominations cannot prohibit or restrict a class or section for all times. Article 26 provides freedom to every religious denomination to maintain, establish or manage their own matters but it is subject to public morality, order and health.

Submissions were submitted by the respondent in the Sabrimala case, that Temple can make their own rules and the restriction which is protected under Article 26. It was added that the faith is being practised since time immemorial Sabrimala Temple, works on their own common beliefs and values which should not be questioned by the court. However, the religious denomination has all the right to make their own restrictions according to their belief but it should not harm the morality, integrity and dignity of the other person. Article 26 also states that the construction of rule and regulation should be in conscience within other people’s morality and integrity.

¹⁷ India –SAARC https://mea.gov.in/Portal/ForeignRelation/India_SAARC_2020.pdf

¹⁸ 1962 AIR 853, 1962 SCR Supl. (2) 496

¹⁹ 1983 AIR, 1 1983 SCR (1) 729

²⁰ [1954] SCR 1005

²¹ (1958) SCR 895 : 1958 AIR 55

The norms should not hamper or violate others fundamental rights. Also in the Sabrimala case, it was said that mere site of women cannot affect once celibacy because no devotee used to visit the temple who take the oath of celibacy, it was a temple to seek blessings from Lord Ayyappa.

Essential Religious Practices

In the case of the Commissioner Hindu Religious Endowments, Madras v. Shri Lakshmindra Thritha Swaminar of Sri Shirur Mutt²² was observed that Article 26 clause A and B are giving freedom but it is only protecting the essential part of the religion. In other words, we can say the “essence of practice” executed by the religious status of the temple is being safeguarded.

The court applied a doctrine of essential practices for the protection of religious practices. It was formulated in commissioner Hindu religious endowment Madras case²³ that it was necessary to prove that the following restriction or act is essential for the religious practice. It could be proved by the historical background or spiritual text or if the practice followed since time immemorial. The essentiality of the practice in religion is decided on basis of evidence.

The case Dargah committee Ajmer vs. Syed Hussain Ali²⁴ also stated the same. That the discrimination made by particular religion for religious denomination cannot be secured under clause b of Article 26 if the particular restriction is violating the constitutional rights. In the Hindu religion, there is nowhere written that the restrictions of women should be applied to temples. Hence, banning women from entering places of worship is a totally anti-Hindu restriction. Moreover, the Maharashtra Hindu Place of Worship (Entry Authorisation) Act, 1956, stipulates a six-month prison sentence for anyone who prevents a person from accessing a temple, but the State Government has been unable to put the law into effect for the past 60 years.

There is a legal tussle going on the whether law or customs what should prevail? Sabrimala temple is not only the temple in India prohibiting the entering of women. Such as the Kamkhaya worship in Assam. The Sree Krishna temple situated in Thiruvanthapuram and there are a few more. The Supreme Court has also said that these restrictions are unconstitutional. However, the tussle between religious rights and women rights is ongoing and women are still fighting for equal participation in many spheres of society. To summarise, many measures are ostensibly created to eliminate gender disparity in all of its forms. However, practical application of such ideological grounds is the question. Conflicts with provisions for religious freedom and religious rituals is a tussle that is witnessed in India.

²² [1954] SCR 1005

²³ Commissioner Hindu Religious Endowments, Madras v. Shri Lakshmindra Thritha Swaminar of Sri Shirur Mutt [1954] SCR 1005

²⁴ (1962) 1 SCR 383

CURING THE EVILS: Suggesting reforms

We need to take out the inequality and discrimination from the roots. Legal security is provided to the women of India to assure their economic, social and cultural rights. To safeguard the interest of women the Indian government has also introduced a few acts and statutes. The judiciary today is making landmark changes and breaking the unjust norms of society. However, there are still a lot of unjust and ill-treatment that is present in the society as the application of these legislations and judiciary decisions is always in question when it comes to reality. As we are moving towards the upliftment of women, growth should be done in all the spheres of society.

Cohesive judicial decisions

The reforms with regards to the religious rights of women are taking place at a very slow pace as the court hasn't yet strongly taken a take on the religious rights of women.²⁵ There is always a conflict as to what should be given priority the women's rights or religious rights.

The honourable Supreme Court opened the doors of the prestigious Sabarimala temple for women of all ages, but the question that arises is whether only the judgement enough? Two women Bindu Ammini and Kanakadurga, who first visited Kerala's Sabarimala shrine on January 2, 2019, demanded police protection, fearing violence from opposing parties. They stayed in a remote location with governmental security for almost two weeks after their temple visit.²⁶ There was chaos and overlapping opinions of various people. The decision by the court wasn't implemented and the whole objective of undoing the ban was not reached. The law might have opened the door but it is going to take more than a judgement to enable the women to even reach the door let alone cross it. The case is now under the higher bench for review.

No political interference

In India the politicians think they run the country, the traditionalists think they have the right to choose how the country shall run, the people want the country to work as per their requirement so while there is so much complexity and contradictions in the country there is only one authority which can be trusted to take the road of harmony by not merely understanding the needs of all. Nowadays the political parties are trying to mould the situations into their own benefits, resulting in chaos in society. Separation of powers is a fundamental which the

²⁵ Jayashree Shukla Dasgupta and Manmayi Sharma, Religious Rights Versus Women's Rights In India Available at <https://www.mondag.com/india/human-rights/707084/religious-rights-versus-women39s-rights-in-india> (last accessed on 25th May 2021, 6:09PM)

²⁶ SC to hear pleas challenging women entry to Sabarimala temple, Hindustan Times Available at <https://www.hindustantimes.com/india-news/sc-to-hear-pleas-challenging-women-entry-to-sabarimala-temple-on-feb-6/story-fnD3VLWjEwG3HuHqpfu2J.html> (Last accessed 21th May 2021, 8:39 PM)

based on the Indian Constitution. Hence, it is essential to keep the three pillars i.e. the executive, judiciary and legislature separated. So, that each organ can perform its tasks effectively and efficiently

Changing the mindset and social norms

In my opinion, change can be brought into society by changing the mentality of people. The discrimination faced by women seems normal to the majority of society. The amount of awareness is still insufficient because every woman in this society has faces unjust or unequal treatment directly or indirectly. The stereotypical mindset of the people contributes to declining the participation of women in society. For instance, Menstruation taboos keep women and girls out of certain facets of culture and society. Menstruation is still regarded as filthy in several parts of Indian culture²⁷. The judiciary is doing its job but if the people themselves don't accept it or follow it in their day to day lives India will fail to progress.

Legal reforms and application of rule of law

Despite the fact that this horrible practise has existed since the dawn of time, we still lack a central act or set of rules to combat gender disparity. State Acts or recommendations exist in certain states, but they have yet to be applied. Under the Kerala Hindu Places of worship act 1965, section 3 it is stated that doors of Hindu worship places are open for all the sections of the society and no one should be prohibited entry. However, the requirements of this section should be subject to the religious denominations. These conflicts and loopholes in a statute or act is the reason for the legal tussle. The legislation made by the lawmakers is in practice for decades and not changes are made according to the developments occurring in the society. Laws are in practice from time immemorial, there is a lot of changes taking in the developing nation. Therefore, the laws should also reform according to the growth in the society.

The expression "Rule of law" means that law is superior to every individual, including governmental actions. The concept of the Rule of law is based on the supremacy of law where the government, as well as the individuals, are obligated to the law of the land. The concept focuses on how the law is superior to all men, and this concept plays a vital role in building a peaceful environment in society. There are discrepancies in the practicality of the Rule of law in a modern democratic society. The theory of the Rule of the law came into existence to protect society from the arbitrariness of the authorities. Moreover, it brings uniformity to society,

²⁷ Menstrual Taboo, Discriminatory Access to Places of Worship and the Policing Of Female Bodies in India : The case of Sabrimala Available at [file:///C:/Users/hp/Downloads/Menstrual Taboo Discriminatory Access to.pdf](file:///C:/Users/hp/Downloads/Menstrual%20Taboo%20Discriminatory%20Access%20to.pdf) (last accessed on 23rd May 2021, 9:05 PM)

as inlays down the standard on which the society can grow. Hence, the application of the rule of law into the depth of society can help in bringing a substantial change in society.²⁸

Judiciary plays an important role in bringing social change. However, mere legislation cannot bring in a change. Society has to accept the decision and contribute to helping women to exercise their right. Few judgements that remove the ban of women in the temple was not respected by the people themselves. The law might have opened the door but it is going to take more than a judgement to enable the women to even reach the door let alone cross it. I believe that the equality and respect of women should first start at home, and later it will automatically emerge in society. Also, the concept of supremacy of law should be accepted and implied by everyone at a personal level.

CONCLUSION

In the 20th century, women are working shoulder to shoulder with men but are still lacking equal access to religion. Women are the reason for the development in the family as well as for the nation. According to the Gender gap Index conducted in 2020, India is in 112th position out of 153 countries.²⁹ The above figures show that the social, economic, cultural or political participation of women is at a downfall in India.

In India the politicians think they run the country, the traditionalists think they have the right to choose how the country shall run, the people want the country to work as per their requirement so while there is so much complexity and contradictions in the country there is only one authority which can be trusted to take the road of harmony. The judiciary is an independent body that approves the right and eradicates the wrongs in the nation. The Indian Constitution has provided enough statutes and laws which can ensure equal rights, right to life and liberty but mere laws cannot govern the state. The citizens of India should use their rights to the fullest and fulfil their responsibility as honest citizens of this country. The concept of supremacy of law should be accepted and implied by everyone at a personal level.

As we say there is a 'man' in word 'woman', and 'hero' in every 'heroine' We have to move ahead of this gender biases, it is not only the duty of women who should stand for their rights but also it is the responsibility of the society to stand against the evils as a whole. Give women the equal respect and opportunity they deserve and see the nation prospering

²⁸ Tanja Herklotz, Law, religion and gender equality: literature on the Indian personal law system from a women's Available at <https://core.ac.uk/download/pdf/301532699.pdf> (Last accessed 24th May 2021, 6: 02 PM)

²⁹ WEF's gender gap index: India slips 28 places, ranks 140 among 156 nations available at https://www.business-standard.com/article/current-affairs/wef-s-gender-gap-index-india-slips-28-places-ranks-140-among-156-nations-121040100015_1.html#:~:text=India%20has%20slipped%2028%20places,worst%20performer%20in%20South%20Asia (last accessed on 29th May 2020, 5: 30 PM)