

Society And Justice

Ritu Pandey

City Academy Law College, Lucknow

Abhishek Mishra

Army Institute of Law, Mohali

Abstract:

In this paper the author would like to emphasis on the status of women in society and sacred place. There are many places where the condition of women is not good and they are being still discriminated and denied from using their right to worship at the sacred places. The Paper also lays due emphasis on the fundamental rights that is being violated by the concerned religious organization under the garb of customs and traditions, as the author believes that everyone irrespective of his gender, caste and creed are equal before constitution and therefore God. The Paper also touches upon this affirmation of values of equality, justice and human rights that has been reinforced by the Supreme Court by allowing the women to worship in religious places which were earlier prohibited. Every class of society is not equal. Biggest reason for inequality is the deep inequality in the society.

I. INTRODUCTION

The inequality in status of women at the religious places are burning issue that cuts across the party line, media houses and even public is coming out on the streets in large numbers demanding gender equality but in the same country where to practice one's faith is fundamental right then how can a part of the society be left at the mercy of religious Institutions who have just played with the faith of the devotees by monopolizing and making the religion as a business model where there is no place for spiritual awakening is left, Under the garb of traditions they are denying women their basic right as we know that customs are the sources of law but if a custom a religious custom is violating the constitutional right then why can't we just overrule those customs. But then we realize that there is lack of political willingness of our leaders to go against these institutions as they are afraid of losing their vote bank. That's why the status of women is still not risen even after 70 years of Independence and we are still on 130th rank in terms of Gender equality that implies we are denying 1/12th of the humanity of their due rights then how can we boast of our democratic ideals as they seem to be hollow by each passing time and each incident of discrimination the other half of the country is losing hope that whether they would be able to attain their lost status. But when everyone is losing hope the recent observation by Hon'ble Supreme Court would be a huge morale booster when the judges and the Counsel on the both sides are agreeing that there should be no discrimination against the women to worship in any temple is a fundamental right that supersedes any right provided to the religious institutions to manage their affairs.

Every class of society is not equal. Biggest reason for inequality in the society is caused by the uneven distribution of wealth as the women are not allowed to do jobs and earn wealth as some conservatives still

feel that when they will earn then the patriarchal system would collapse like pack of cards. Therefore, a woman without the support of male member is not able to survive and full fill their basic needs and wishes while male members are working according to their whims and fancies. Society is not just a group of people; it affects the one's initial chances in life. Because of these inequality the societies is divided between 'haves' and 'have-not' and in the present scenario the women are the have-not, they will not rise till their status is improved upon.

II. CONCEPT OF SOCIETY AND JUSTICE-

The concept of society and justice is to form catalyze the formation of society in which all person should be equal in eyes of law. Justice should be accessible by all. Justice is a concept only to give shape to human actions in such a way that a L act is duly appreciated and the wrong act is punished by applying due course of law .The question of justice and injustice only arises when there are multiple individuals and some practical consideration regarding their situation and/or interactions with one another. Plato's idea of just and fair society consists with public education, philosopher-king as rulers. He thought that men and women, though generally different, should be treated equally. After First World War on Indian scene two parallel revolutions were taking place which may be categorized into political and social movements were going on. The distinct feature of these movements were not only to drive the British out of the country but also to free mother India from the shackles of the unreasonable customs and traditions which have built up in the society which were counterproductive to the status of women in the Indian society and the objective was thought to be achieved by bringing a social revolution within the country.

III. PRESENT STATUS OF WOMEN IN SOCIETY

Gender inequality is one of the most typical embodiments of social inequality. It is even enforced by religious forces in the semblance of various customs, practices, traditions, or restrictions. To curb the same, the Bombay High Court, while considering the constitutional provisions held that no law prevents entry of women in any place and conferred the duty upon the State governments to protect the rights of women.

Political status of Women-

In the report of UNCSW India ranked 88th out of 186 countries in the list with 18.5 per cent of women appointed in ministerial position as January 1, 2017. Countries like Rwanda, Kenya, Mozambique and South Sudan Fared better than India in the ranking. If we talk about global average for women in parliament stands at 22.4%, India is at the 103rd place out of 140 countries with a mere 12% representation. India is at the 13th position out of 18 countries. Countries like South Sudan, Saudi Arabia have better Women representation in Parliament than India. If we look upon the elected bodies, Lok Sabha and state legislation so we get huge disappointment.

For betterment of status of women there has been introduced the Women Reservation Bill, 2008 which propose the 33% reservation shall be reserve in all seat of Lok Sabha and all State Legislation of India. The bill was passed in Rajya Sabha on 9 March 2010. But Look Sabah never voted on this bill and that bill lapsed after dissolution of Look Sabah. And again women did not get any justice in this area. Because number of male parliamentarians over the year had opposed the passing of the bill, leaving in its current states.

But they are still underrepresented in the Political arena as of now, the Speaker of the Lok Sabha, Defense Minister & Foreign Minister are women. In current situation the Defense Minister is also women. However, women in India continue to face numerous problems such as crime, gender inequality.

Present achievement of Women in Sports

If we move forward to the participation of women in sports so we find that the role of women in sports has reflected the changing status of women in society. In ancient time women were not allowed to participate in sport even if they caught watching the games, they could be tortured and punished with cruelty. But recently our women of India felt us proud by her dedication and hard work in sports. Sania Mirza, Sania Nehwal , Methali Raj, PV Sindhu, Marry Com and Arunima Sinha is the pride of our country. And they made a way for other girls who are exploited and tolerate the cruelty by mens.

Participation of women in business

From independence and still women are fighting for their rights. They are the shining beacons of hope and have displayed exemplary dedication in their respective fields. Here are some of women who clearly deserve appreciation. **Chanda Kochar** who is CEO of ICICI Bank and made it to the fortune list of 25 most powerful women in the Asia-Pacific region, and stands among other Indian.

Is There Any Justice in Present Era Related Women Right

Taking swipe at religious customs and temple entry restriction is violating women's constitutional rights. Pandit Nehru who was the first Prime minister of India has said that "You can get the condition of a nation by measuring the status of its women" The struggle for women's equality began in India in the 20th century, as an offshoot of against British colonialism.

"There is no chance of the welfare of the world unless the condition of women is improved. It is not possible for a bird to fly on one wing" were the thought of one of the greatest sons of India, **Swami Vivekananda**. The application of this phrase even today is indeed unfortunate. Gender inequality still survives in its grandeur through various sources, one of them being religion.

Constitutionality of Restriction of Women in Sacred Places

The Indian Constitution is one of the largest written Constitutions in the world because our forefathers framed it after a detailed study of the constitutions of several countries. India being such a diverse country was influenced tremendously by the various religious practices of different religions. Some of them placed restrictions on women, some forbade certain social classes or castes from practicing particular professions, etc. Religious practices and customs significantly mold the social life of any nation. In order to protect the very basic human rights of the people in the background of such existing practices and customs, certain provisions were made in Part III of the Constitution, dealing with the fundamental rights of citizens and even non-citizens.

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IV. GENDER EQUALITY: LEGAL PROVISIONS

The essential right to equality has been guaranteed as a fundamental right under Article 14 of the Indian Constitution which states as follows:

“The State shall not deny to any person equality before the law and equal protection of the laws within the territory of India.”¹

The Indian Constitution embraces both the British doctrine of “equality before the law” and the American doctrine of “equal protection of the law”. Equal protection of law refers to the right to equal treatment in similar circumstances, both in the privileges conferred as well as in the liabilities imposed by law. However, Article 14 does permit reasonable classification for the purposes of legislations purported to bring about social equality in its true sense.

The most common defense taken by the religious institutions to justify the prevailing gender discrimination as regards the entry at religious places is in **Articles 25 and 26 of our Constitution**. The extent to which these Articles provide freedom to the authorities of such institutions is a matter adjudicated by the Courts, considering numerous nuances of the same. India being a secular nation, as was also proclaimed in the Preamble by the **42nd Amendment** to the Constitution in the **year 1976**, already had safeguards in the garb of **Articles 25-28**. These provisions undoubtedly play a fundamental role in determining the validity of various practices undertaken in the name of religion.

Article 25 guarantees to all persons equally the right to freely profess, practice and propagate religion, subject to, public order, morality and health. **Thus Article 25 guarantees both:**²

¹P.M. Bakshi, The Constitution of India, Universal Law Publication, [13th edi.Pg.19]

1. Freedom of conscience; and
2. Freedom to practice, profess and propagate the religion.

Further, what exactly constitutes religion and what all is included within the ambit of this Article was considered by the Supreme Court in **Ratilal v. State of Bombay**³, wherein it was laid down that the word 'religion' is not only restricted to an opinion, doctrine or belief but also extends to the outward expressions/acts of the same i.e. any religious practices or performance of acts in pursuance of any religious belief. Therefore, Article 25 protects acts done in pursuance of religion including rituals and observances, ceremonies and modes of worship which are integral parts of religion. In **Tilakayat Shri Govind Lal ji Maharaj v. State of Rajasthan**⁴, the Supreme Court held that whether a practice is an integral part of the religion or not should be deduced by the Courts on the basis of the evidence available as to the conscience of the community and the tenets of its religion. However, not allowing women to enter any religious place infringes her right to freedom of religion under **Article 25**.

The essential part of religions or religious practice was held to be decided by the courts by considering a particular religious doctrine and also include the practices regarded by the community as a part of its religion. Moreover, it has also been held that the right to worship doesn't extend to any and every place.

However, in **Ismail Faruqui vs Union of India**⁵, the Court held that if a particular place had a "particular significance for that religion", access to that place for the purposes of worship would be protected under **Article 25**. In another way, if any inner sanctum/tomb of a dargah does not bear special significance, every person, both women and men, would have the right to offer prayers at that place.

V. CIVIL RIGHTS

It was held by **Justice Das Gupta** in **Sardar Saifuddin vs. State of Bombay**⁶, that the right to offer worship at a particular place can be enforceable in the court as a civil right, even if it does not have the status of a constitutional right under Article 25 of the Constitution. According to the learned judge,

"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."

Further, **Article 26**⁷ proceeds to guarantee freedom to manage religious affairs by providing that every religious denomination or any section thereof has the right-

- To manage its own affairs in matters of religion;

²P.M. Bakshi, The Constitution of India, Universal Law Publication [13thedi Pg.83]

³Ratilal v. State of Bombay [1954 AIR 358]

⁴Tilakayat Shri Govind Lalji Maharaj v. State of Rajasthan[AIR 1963]

⁵Ismail Faruqui vs Union of India[AIR 1995 SC]

⁶Justice Das Gupta in Sardar Saifuddin vs. State of Bombay[AIR 1962 SC 853]

⁷P.M. Bakshi, The Constitution of India, Universal Law Publication,[13th edi.Pg.83]

- To own and acquire movable and immovable property; and
- To administer such property in accordance with law.

In **S.P. Mittal v. Union of India**⁸ the Supreme Court explained that the Indian Constitution protects the rights of minorities to practice, profess and propagate their religion, but whilst interpreting the scope and content of the guarantee contained in the Articles, the Court will always have to consider the real purpose for incorporating these provisions in Part III of the Constitution. The Supreme Court had denied any jurisdiction to any outside authority to interfere with the decisions of any religious denomination or organization as regards its autonomy to administer the religious matters. It was also held that any law which empowers any outside authority with such rights of administration will be violative of the fundamental right guaranteed by **Article 26**.

VI. TRUST'S RIGHTS

The rights guaranteed under Section 26, as observed by the Supreme Court, are restricted to rituals, observances, ceremonies and modes of worship. Therefore, if any particular rituals (such as denying women entry to any religious place), is protected under Article 25 and Article 26, then no suit shall lie. In other words, the right to exclude women from any particular place/ sanctum depends on whether excluding women from that place amounts to an essential religious practice.

VII. ESSENTIAL RELIGIOUS PRACTICE

Haji Ali Dargah Case

The right of any shrine/ dargah to discriminate on the basis of gender depends on whether the practice is an essential religious practice or not. Consequently, like in the **Haji Ali Dargah case**, denial of women's right to enter the inner sanctum does not constitute essential religious practice, because it was not the customary practice. In fact, **this practice started in the year 2012**. Moreover, In **Lakshmindra Swamiar**, the Supreme Court noted that "what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion" and it is to be determined by the Courts.

Sabarimala Temple Case

In 1993, the **Kerala High Court** had considered public interest litigation against the restrictions imposed by the Sabarimala temple on the entry of women aged between 10-50. All the religious implications and grounds of these restrictions were verified by the Court to determine as to whether such a restriction was **violative of Arts. 15, 25 & 26**, and whether such restrictions were based on relevant grounds. The religious values and tenets were also considered equally. It was concluded that such restrictions were a part of a customary usage and based on some relevant religious principles, they were not in violation of **Articles 15,**

⁸S.P. Mittal v. Union of India[AIR 1983]

25 & 26 of the Constitution. Hence, the imposition of restrictions was upheld by the Court. However, In the subsequent appeal by **The Young Lawyers Association and others vs. State of Kerala** the matter was heard by 3 Judge Bench referred the matter to the Constitutional Bench asking Whether the said exclusionary practice which is based upon a biological factor, amounts to violation of Article 14, 15, 17 and not protected by Article 25 and 26 of the constitution. And whether Rule 3 of Kerala Hindu Places of Public Worship (Authorization of Entry) permitting 'religious institutions' to ban the entry of the Women who are aged between 10 to 50 years of age? And if it is so then would these amounts to foul play of by restricting the entry of women on the ground of sex thus violating Article 14 and 15(3) of the Constitution. On 18th July 2018, The Constitutional bench of the Supreme Court lead by CJI Deepak Mishra in his observation held that everyone irrespective of his gender, caste or creed should be allowed inside the Sabarimala temple in Kerala. Senior Advocate representing one of the petitioners condemned the practice and told the court that the banning of women belonging to certain age groups was violative of various fundamental rights which also includes Article 17 which primarily prohibits Untouchability as they are not only being discriminated because of their sex but because of menstruation. The bench also comprising of Justice RF Nariman, AM Khanwilkar, DY Chandrachud and Indu Malhotra Observed that If a man is allowed to enter then why can't women be allowed to enter , If some rules apply to women then why not men are barred this is against basic tenants of equality. They also observed that that Right to worship in a Temple is a constitutional right enshrined in Article 25 and 26 of the constitution and it is dependent on any legislation. Despite the existence of this evil practice since time immemorial, we still don't have any Central Act or Rules which act as an antidote to this gender inequality. Though some of the states have State Acts or guidelines, these are yet to be implemented. **The Maharashtra Hindu Place of Worship (Entry Authorization) Act, 1956** stipulated six months jail for any person who prohibits a person from entering a temple, but the State Government is unable to implement the same in 60 years. Similarly, **Section 3⁹** provides that every Hindu place of worship shall be open to all sections and classes of Hindus, and they should not be prevented from entry or performing any religious services. But the section contains a proviso that in the case of a temple founded for the benefit of any religious denomination or section thereof, the provisions of this section shall be subject to the rights of that religious denomination or section to manage its own affairs in the matters of religion.

In the date of 19 July, 2018 the Supreme Court's constitutional Bench which is led by Chief Justice of India Dipak Mishra observed that there is no private concept of mandir. Once a temple is open everybody can go and offer prayer. Nobody can be excluded. The chief justice noted that Sabarimala temple drew funds from

⁹Kerala Hindu Places of Public Worship (Authorization of Entry) Act 1965

the consolidated fund, had people coming from all over the world and thus, qualified to be called a “public place of worship”¹⁰

Shane shiganpur Temple-

In this case the dalits has been barred from entering in the temple of shani shiganpur mandir but after the long journey of protest and efforts by women led by **Trupti Desai** who is activist, the trust of ShaniShiganpur has now permitted Dalit and women to enter in that temple and pray in the sanctum and sanctorum putting an end to 400 years of old custom. This comes after the Bombay High Court made it clear that it was incumbent upon the state government to ensure that the Maharashtra Hindu Places of Worship (Entry Authorization) Act, 1956 was properly being enforced.

VIII. CONCLUSION-

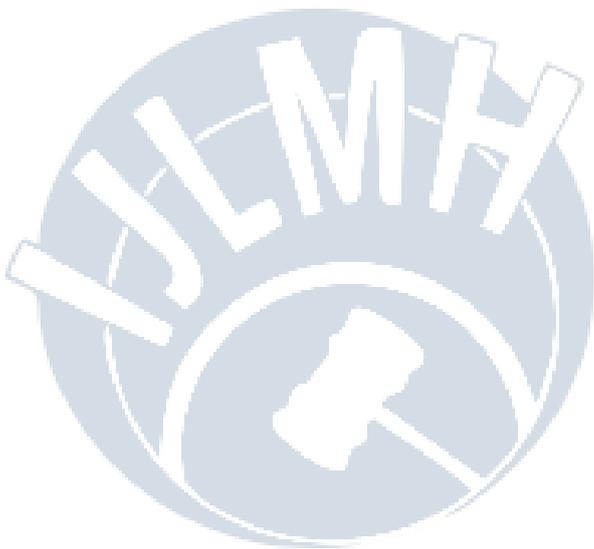
It is indeed ironical that a country being one of the oldest civilizations and the largest democracy in the world, is still ranked 130th in the Gender Inequality Index among 188 countries across the globe. Women in India are still struggling to get equal access to religious places, despite the fact that they have played a major role in the development of the country. Gender discrimination leads to cultural, social, economic and educational differences which impede the growth of the country. To overcome these evils, women should be empowered by ensuring their right to equality.

The reform is paralyzed by the lack of political will to review customs or personal laws. This imposes a greater responsibility on the courts to apply rigorous standards of judicial scrutiny for removal of injustice against women. The duty lies with the Supreme Court to determine that the infringement of women’s right to freedom of religion under Art. 25 cannot be allowed by protecting the similar freedom of the religious organizations. Freedom of religion and freedom to manage religious affairs needs to be harmonized with the right to equality. This might make India one of the few nations to enforce gender equality in all its forms, without giving in to the forces of religion. Although some of the recent judgments from the Courts are in favor of equal status of women in religious places, the problem lies in its implementation. So now all eyes were on the Supreme Court judgment in the Sabarimala case, The CJI in his observation held that everyone must be allowed as there is no concept of a private temple, and the Supreme Court will not allow third-party interference over the entry of women inside the temple sanctum which may prove to be big boost to women’s movement indeed change the face of gender equality in worshipping places in India.

The list of legislations and judicial decisions may go on; however, the real change will come only when the attitude of people changes and the management at religious places will treat men and women equally. In fact, in some cases, not only men but women are responsible for gender discrimination. They need to change the mindset developed due to this exploitative system. What is necessary is not just freedom of action, but

¹⁰ The Hindu [19th July, 2018]

also freedom of thought in women's ability and willingness to question the unjust rituals or practices. The commitment to gender equality and non-discrimination can be fulfilled not only through the legislature but also by an active participation of the people by forming pressure groups to uplift the status of women who are being cowed down by social stigma and stereotypes and continue the struggle till the time each and every women feels empowered.



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