

WOMEN'S RIGHT TO ACCESS: SEEKING GENDER EQUALITY IN PLACES OF WORSHIP

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Abstract: In the recent landmark judgment, the Maharashtra High Court allowed equal access to women in a Maharashtra temple following popular protests against the common practice of customary exclusion of women from the accessing the inner chambers of the shrine. It has become a symbol of hope to similar demands across other temples throughout the country. Keeping these regressive practices as the central issue, this paper seeks to do make a case against such prohibitions. It tries to emphasize the need for state intervention to remedy the injustice. It brings forth the ideals of gender justice and equality inherent in the constitution while comparing it with the existence of gender discrimination. The paper tries to counter the major pretexts given to impose such prohibitions on women inside temples. It further reemphasizing the need for state intervention to re-establish primary ideals of equality and gender justice for the creation of a just and equal society

Keywords: Constitutionality, Customary Exclusion, Equality, Gender Justice, State Intervention

Introduction: Women have long been discriminated against on various fronts and pretexts with a sanction assumed to be derived from religion. The fear of their sexuality is common to all religions across the world in some form or the other and exhibits itself in various religious practices. They were barred from holding key positions in churches, they were not allowed inside the inner chambers of shrines, purification rituals were performed to purge the deity of a woman's touch. The fear of women and their sexuality is still deeply set in the psyche but the more aware and assertive woman of today has taken it upon herself to challenge such notions and fight to get their due.

Society and Women's Purity: A woman, when menstruating is considered impure. This notion is believed to have been started in the later period of civilization where the patriarchal social structure was just taking shape. It was the beginning of male dominance and the consequent subjugation of women through conduct and practices.

The Recent Incident at Sabarimala Temple: In a plea before the Supreme Court, the Indian Young Lawyers Association has challenged the restriction on women and girls from entering the Sabarimala temple. The temple has a practice of barring women in the age group of 10 to 50 years from entering the premises. Kerala High Court, had previously, in 1991, upheld the restriction. The court said that the women in the specified age group constituted a distinct class and the principle of formal equality permitted likes to be treated alike and hence the ban was valid as it restricted only a particular class of women and not all women in general. The court accepted the head priest's reasoning that the customary practice dictated that the temple was only for those who had 'observed penance', i.e. a purity period of 41 days, and since women in their reproductive age of 10 to 50 years were incapable of observing this, the ban was

justified. Also, the central deity of the temple is a celibate and the presence of menstruating women would 'pollute' the holy shrine. The temple authorities claimed that it was an age old practice which had acquired the status of a legitimate custom and was hence protected under the constitution.

The primary contention in this case continues to be the most debatable question as to whether such prohibition is justified by custom. The temple authorities seek validity from the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 which allows such a prohibition if mandated by custom. Justice Dipak Misra, during the hearing, reportedly made a reference towards the applicability of the non discrimination clauses in the current case and also questioned the existence of such a custom by demanding the temple authorities to show that women did not enter the sanctorum in 1500 year. **The Scheme of Gender Justice Enshrined in the Constitution:** The concept of gender justice emanates from the belief that nobody should be disadvantaged because of their sex. It advocates a gender neutral approach to life. The principle of gender justice is the first step towards the creation of the egalitarian society envisaged in the constitution. It is rooted at the core of liberal values and manifests itself in equality of access and the right of individual choice.

Being conscious of the plight of women, the constitution makers had the foresight to incorporate comprehensive rights for women to safeguard their interests from the existing patriarchal set up.

The principle of gender justice and gender equality lies at the very heart of our constitution and is exemplified from the preamble's assurance of "Equality of status and opportunity" and "dignity of individuals". The Judiciary, as the custodian of the Constitution has displayed the willingness to play a

pro active role in realizing the aspiration of an egalitarian society through liberal interpretation of the constitutional provisions with respect to women's rights.

1. Fundamental Rights, other Constitutional Provisions and Legislations: The fundamental right to equality finds a strong voice in **Article 14** of the constitution. It seeks to ensure 'equality before law' which obligates state to treat every individual to be treated equally before law and. It has been invoked on numerous occasions to prohibit sexual harassment of working women, protection against exploitation, seeking equal pay for equal work and the right to a dignified life thus playing a significant role in women's quest for equal rights with men.

Article 15 contains an explicit prohibition of discrimination on grounds of sex among others including race, caste and religion. It is the embodiment of the principle of equality laid down in Article 14. Clause (2) of this Article confers right to access places of public resort or those dedicated to the use of general public maintained partially or wholly out of state funds, without any discrimination. Further clause (3) of the Article provides for 'protective discrimination' for women to mitigate the effect of years disadvantage and exploitation and to bring them at par with men. This provision has enabled the State to make special statutory provisions exclusively for the welfare of women. The scope of Article 15 (3) is wide enough to cover any special provision for women including reservation in jobs and educational institutions and this power is not curtailed in any way by the application of Article 16.

Article 21 provides for Right to life and personal liberty. It states that no person shall be deprived of their right to life and personal liberty except according to procedure established by law. Thus, unless and until there is a clear procedure enunciated in law for curtailing a particular freedom, such curtailment is not justified. Judiciary, over the years has liberally interpreted the meaning of 'life' under this Article. It has been interpreted as meaning a 'dignified life' conducive to growth and development and not mere 'animal existence'. Thus the state has acquired the onus to ensure the 'dignity of individual', including that of women.

Apart from these, **Article 23** seeks to protect women against exploitation and human trafficking; **The Directive Principles** under Article 39(a) states that, the State shall direct its policy towards securing that the citizens, men and women equally, have the right

to an adequate means of livelihood; Under Article 39 (d), the State shall direct its policy towards securing equal pay for equal work for both men and women and; Article 39 (e) is aimed at protecting the health and strength of workers, both men and women; Article 42 of the Constitution imposes an obligation upon the State to make provisions for securing just and humane conditions of work and for maternity relief.

Reservation of seats for women in Panchayats and Municipalities have been provided in Articles 243 D and 243 T of the Constitution and Part IX and IX A have been added to the Constitution by the 73rd and 74th Amendment Acts with Articles 243, 243 A to 243 D. Apart from these numerous State and Central Government legislations dealing with maternity benefits, leaves and holidays, medical benefits exist to strengthen women's social position.

If we were to analyze the prohibition imposed on women in the Sabarimala Temple case in the light of the principle of gender equality and justice enshrined in the constitution, it is not very difficult to see how the prohibition strikes at the very core of individual liberty and the right to equality of women. The prohibition being based on flawed and archaic conception of 'purity' and 'pollution' further substantiates the claims for state intervention to invalidate such regressive and discriminatory practices.

Conclusion: Restricting women's entry into religious spaces is not only against the principle of equality, as enshrined in the Indian Constitution, but also acts as a barrier to their socio-cultural development. With the Supreme Court's landmark judgment on the petition one can only hope that equality and equal access to places of worship prevails and women, from all walks and all religions are once again allowed to pay their respects to the saints, on their own will, like they had been for hundreds of years.

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