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**ENTRY OF WOMEN IN TEMPLES AND MOSQUES – THE SOCIETAL
INJUSTICE, THE VIOLATIONS AND THE PATH AHEAD¹**

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ABSTRACT

This paper would highlight the issue of restriction of women in temples i.e. Padmanabhaswamy Temple and Ranakpur Jain Temple, which is a testimony of this subjugation, which still persists despite many constitutional safeguards. This Paper would also look into whether the restriction imposed is legally invalid under the Articles 14, 25 and 26 of the Indian Constitution and be proving that women are the new lower class of today seeing the oppression and suppression faced by them.

PART I: THE START – SHIFT IN SOCIETAL BALANCE

The society is not a static concept and is constantly evolving with the progressing times. This evolution of society saw the gradual shift in the position and autonomy of women in the society owing to the consequent wars for dominance and resource controls that resulted in a breakdown of matriarchal structure present where women actively participated in administrative and communal matters and resulted in a paradigm shift towards patriarchy – a male-dominated structure which ensued sustenance by exerting dominance. Ancient Vedic practices laid emphasis on the development of men and women alike on all fronts including intellectual fronts and had no restrictions on any practices. But the patriarchal society along with the element of greed for power and dominance of men over women in administration and other matters resulted in restrictions placed on women. The sustenance of this structure resulted in the subjugation of women in all walks of life. This process counted well into time and it is only in the past few decades, a reverse process to ensure greater participation of women was initiated. Despite this process, this historical subjugation still persists in many forms in a modern woman's life. The restriction of women into temples is a testimony of this subjugation, which still persists despite many constitutional safeguards and the rights available to them under Articles 14, 25 and 26 of the constitution as well as social movements and judicial support for this cause.

PART II: MODERN DAY MANIFESTATION

The ban placed on women restricting their participation in religious places is not an uncommon practice. The ban placed may be absolute or may be conditional. Sabarimala Pilgrimage is a prime example of this where one of the largest Hindu pilgrimages with the largest foot population of devotees places a conditional ban on the entry of women in

general and an absolute ban on entry of females between 10 and 50 years of age that is, in their menstrual age. Padmanabhaswamy Temple, considered to be the richest Hindu temple, allows women to enter the temple but places an absolute restriction on the entry of women into the vault of riches. Here, they have limited entry into the place of worship. Another example is that of the Ranakpur Jain Temple, which is a 15th-century shrine, is dedicated to Tirthankara Adinatha, which prohibits menstruating women in its premises. Patbausi Satra, which is of great importance in Ekasarana tradition, does not allow women inside the temple. The reason behind this ban, as per popular belief, is to preserve the PURITY of the place. Other places, which follow similar practices, include the Kartikeya Temple in Pushkar, Nizamuddin Dargah in New Delhi, and Bhavani Deeksha Mandapam in Vijayawada among many others. The men, however, face no such restrictions and are not barred from entry in either case. This very aspect invokes article 14 of the Constitution, which provides for equality, which is absent here.

PART III – CONSTITUTIONAL VIOLATIONS

ARTICLE 14

Article 14 of the Indian Constitution speaks about Equality before the law and states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India and prohibits discrimination on grounds of religion, race, caste, sex or place of birth.

Article 14 forbids class legislation but not the reasonable classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends. The classification must be based on intelligible differentia and there must be a nexus between the basis of classification and the object of the act, which makes the classification. The classification made by the legislation can be considered discriminatory on the absence of a reasonable basis for a classification. The classification, in this case, is two-fold - one between men and women and the other a sub classifications between women - women who menstruate and those who do not. The sole basis for the above classifications is menstruation, which is the monthly bleeding in women. One of the main prongs of a reasonable classification is that it must not be arbitrary, artificial or evasive/excessive. The

classification does not fulfill any of the three criteria and cannot be called intelligible. Here, Men and women are differentiated upon a biological phenomenon, which is exclusive to the female gender.

Even assuming this differentiation to be intelligible the nexus between the basis of classification and the object of the act which makes the classification stands on questionable grounds both in terms of the nexus as well as the object of the act. Linking menstruating woman to entry into temples raises a question as to what object the act attempts to achieve and how it links to the biological process of menstruation. The only plausible answer to this is that menstruation is linked to the notion of impurity - the object of the act being the maintenance of the purity and the sanctity of the temples and the nexus being that a menstruating woman would disrupt this.

This is a reflection of the "menstrual taboo". All religions with the exception of Sikhism regard menstruating women as unclean. According to the anthropologists, Buckley and Gottlieb cross-cultural study shows that, while taboos about menstruation are nearly universal, a wide range of distinct rules for conduct during menstruation "bespeak quite different, even opposite, purposes and meanings" with meanings that are "ambiguous and often multivalent".² This archaic concept of uncleanliness amongst Indians as well as the hesitation to speak and discuss this is the menstrual taboo in the Indian society.

This is the result of many practices introduced in Hinduism and propagated as stories with mythological characters to ensure continuity. This was followed by religious bigots preaching for generations to ensure public memory remains intact.

This concept of uncleanliness though archaic is supported by both the Hindu mythology and by Indian yoga philosophy. In the former, Woman got the ability to menstruate or 'Rajaswala Dosha' when Lord Indra slew a Brahmin, Vishwaroopacharya (the second teacher of the gods). The killing of a Brahmin resulted in 'Brahmahatya dosha', which Lord Indra escaped by distributing amongst land, water, tree, and woman - the resultant of which menstrual cycle when commenced. It is the result of a dosha and was hence

² BUCKLEY THOMAS & GOTTLIEB ALMA, BLOOD MAGIC: THE ANTHROPOLOGY OF MENSTRUATION (1st ed. 1988).

conceded impure. In the latter, any excretion from human body was considered to be “tamasic” i.e. classified as a tamas guna (black quality) and hence for a traditional Hindu the act of touching a menstruating woman was considered to be a ‘Tamasic’ or inappropriate act.³

This notion, however, does not fit in with the modern times and cannot be taken to be a reason for “intelligible classification”. Further as observed by the Supreme Court in *Transport & Dock Workers Union v. Mumbai Port Trust*⁴ where it was declared by the court that if the differentiation was “conducive for the functioning of modern society”, the classification was reasonable enough so as to sustain any challenge on grounds of discrimination. This is not the case in this situation as the differentiation does not aid in the functioning of the modern society and is against the fundamental concepts of equality among men and women - irrespective of whether the woman is menstruation or not- which forms one of the bedrocks of the society today.

ARTICLE 25 AND 26

Article 25 (1) of the Indian constitution gives the right to freely profess, practice and propagate religion. To profess a religion means the right to declare freely and openly one's faith⁵. Visiting a temple and praying to the deity is a gesture of religious devotion and the freedom of expression⁶ of this form of religious devotion is curbed for women. Being banned from entering temples also significantly curbs the social life of women especially in rural areas where temples and worship form the center of social interaction. But this right is not absolute and is subject to public order, morality, health and other provisions relating to Fundamental Rights.

³ Aru Bhartiya, *Menstruation, Religion and Society*, 6 INTERNATIONAL JOURNAL OF SOCIAL SCIENCE AND HUMANITIES, 524 (2013).

⁴ *Transport & Dock Workers Union v. Mumbai Port Trust*, [2010] 14 (ADDL.) S.C.R. 873 (India).

⁵ *Punjab Rao v. DP Meshram* A.I.R. 1965 S.C. 1179 (India).

⁶ Article 19(1) (a) of the Constitution of India guarantees to all its citizens the right to freedom of speech and expression. The law states that, “all citizens shall have the right to freedom of speech and expression”. The freedom of speech and expression gives greater scope and meaning to the citizenship of a person extending the concept from the level of basic existence to giving the person a social life. Freedom of Speech and expression has been held to mean the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. This includes the freedom to express devotion in front of a deity. This right to expression as guaranteed by Article 19(1) is also subject to morality amongst other parameters.

Article 26 (b) of the Indian Constitution gives the right to every religious denomination or any section to manage its own affairs in matters of religion. As per Article 26, all the temples have the right to manage their own affairs.

The state cannot interfere with the essential religious practice of the religious denomination but this autonomy is subject to public order, morality, and health.

Hence, to prevent the state from interfering in the religious practice, the denomination has to prove that the practice is an essential religious practice. The Court therefore while interpreting Article 25 and 26 strikes a careful balance between matters that are the essential and integral part and those which are not and the need for the State to regulate or control in the interests of the community.⁷ The drastic step of not allowing women as an entire community and especially not allowing menstruating entry into temples is related to the notion of purity and this step must be backed by strong arguments and reasoning and proof that this step was required and cannot be interfered with as it was an essential practice of the religion, the non-compliance of which would result in changes in the fundamental character of the religion.

Even if a religious denomination claims and successfully proves that a practice of such nature is an essential religious practice, one cannot forget that the rights granted under Articles 25 and 26 of the Constitution are subject to morality. If a religious denomination claims that a particular practice is an essential religious practice then that practice has to satisfy the threshold of morality. This is also the case of religious minorities whose practices have to cross the threshold of morality. If any practice is proved to be immoral (does not cross the threshold of morality), such practice will not be protected by article 26.

Further, a cursory reading of Articles 25 and 26 give an impression of harmony but on delving deeper a conflict between the two articles seems to arise. This conflict arises due to the people to whom the rights under these articles are assigned. Article 25 gives an

⁷ AS Narayana Deeshitalyu v. State of Andhra Pradesh (1996) 9 S.C.C. 548 (India).

individual the right to profess, practice and propagate religion and Article 26(b) gives the right to religious denominations to manage their own internal affairs. The right under Article 26 was given to primarily protect the collective right of the people from being engrossed by the state. However, this collective right of the people cannot override the right given to individuals under Article 25. Article 26 cannot abrogate the right of Individual under Article 25. An internal custom of disallowing women from entering temples cannot be the basis for eliminating the individual right of women to practice, profess and propagate religion. A similar stand was taken by the court in the Haji Ali Dargah case.

The Bombay High Court in the Haji Ali Dargah Case⁸, upheld women's right to access the

⁸ Ghulam Rasool Dehlvi, *The Haji Ali Dargah Ruling; Bombay High Court's Verdict is a win for Indian Women*, (Aug. 01, 2018, 10:00 PM), <http://www.firstpost.com/india/the-haji-ali-dargah-ruling-bombay-high-courts-verdict-is-a-win-for-the-indian-women-2978108.html>.

Satya Prakash, *Haji Ali Verdict: Victory of Constitutional principles over Religious Dogmas*, *The Hindustan Times*, (Aug. 01, 2018, 10:20 PM), <http://www.hindustantimes.com/india-news/hc-verdict-on-haji-ali-a-victory-of-constitutional-principles-over-religious-dogma/story-O7HeFUAqJdGmiMwSWgxtIM.html>.

Gautam Bhatia, *Haji Ali Dargah: Bombay High Court upholds women's right to access the inner sanctum*, (Aug. 01, 2018, 10:30 PM), <https://indconlawphil.wordpress.com/2016/08/26/haji-ali-dargah-bombay-high-court-upholds-womens-right-to-access-the-inner-sanctum/>.

In the Haji Ali Dargah Case, the Bombay High Court upheld the right of women to enter the inner sanctum of the Haji Ali Dargah and also concluded that the decision of the trust to exclude women was illegal and unconstitutional. The issues in the case were, *first*, that the women being in close proximity to the grave of a saint was a "sin" in Islam, *secondly*, that the Trust had the fundamental right to manage its own affairs in the matters of religion under Article 26 of the Constitution, *thirdly*, that it was in the interests of the safety and security of women and *fourthly*, at no point were women allowed to come within the proximity of the Dargah. Using Article 25, the court asked the trust to prove, how was putting a ban on the entry of women in the inner sanctum, an essential religious practice. The test for an essential practice, as stated by the court, was that it must constitute the very essence of that religion and should be *such, that if permitted, it will change its fundamental character*. Since, women were allowed to enter the inner sanctum till 2011- 2012, the trust failed to prove that putting a ban on the entry of women was an essential religious practice. The court looked into the history of the trust and the operations of the Trust. This enquiry had to be conducted because under Article 26(b) a distinction must be made between religious activities and secular activities bearing the trappings of religion. It was founded by the court that, *"the aims, objects and activities of the Haji Ali Dargah Trust are not governed by any custom, tradition/usage. The objects of the Haji Ali Dargah Trust are in respect of purely secular activities of a non- religious nature, such as giving loans, education, medical facilities, etc. Neither the objects nor the Scheme vest any power in the trustees to determine matters of religion, on the basis of which entry of woman is being restricted."* The court held that that the trust was never authorized to deal with matters of religion, and the public character of the Dargah took it out of the scope of Article 26(b). The court said that the Dargah and the state were responsible for maintaining the security of women and that banning women from entering the inner sanctum was no solution to this problem. Since women were allowed to enter the inner sanctum till 2011-2012, the last issue was disposed off. The court ordered, that *status quo* be restored, i.e. *"women be permitted to enter the sanctum sanctorum at par with men."*

inner sanctum. The court concluded that the decision of the trust to exclude women was illegal and unconstitutional. The court invoked Article 25 of the constitution and asked the trust to prove that how were not allowing women to be a part of the religious practice was an essential religious practice in Islam. According to the Court, the test for an “essential practice” was that it must “*constitute the very essence of that religion, and should be such, that if permitted, it will change its fundamental character*”.

The trust, in this case, could not prove that this practice was an essential practice. They could not successfully invoke Article 26 saying that they have the right to manage their own internal affairs because this right, if permitted to be practiced, would have violated the individual right of women under Article 25.

WHAT IS MORALITY?

The recurring question of what is immoral and what morality actually means becomes important to look into. The notion of right, which has become the guiding idea of democracy, acquires a precise and clearly justified content, conformable with the requirements of reason, only if it is reinstated in morality, whence indeed it originated.⁹

Morality, a term which is often overlooked, is an important piece of the puzzle here and has the power to justify a right as well as strip it down. Hence, the meaning and scope of “Morality” is an important question here as the *raison d’entre* of violating articles 25 and 26 stands on this and if the action of temples to ban women does not cross this threshold then Article 25 would be deemed to be violated with the temples not having any locus to enforce such immoral practice as their right under Article 26 is subject to morality. Morality is often interpreted as basic principles, which guide a man to choose between what is right and wrong. Morality is wondered to be those principles that people live by and hence the morality as a whole is often considered to be the collective principles, which guide individuals in the society. The same meaning is attached to a morality clause in the constitution. This notion is misguided and gives affect the collective will of the majority of

⁹ Boutroux Emile, *Morality and Democracy*, 214 The North American Review, 166-76 (1921).

the society, that is, the rule of the majority in practice. The concept of constitutional morality has come into prominence in the last few years. This is an evolving concept as per which the morality mentioned in the constitution is what the drafter envisioned it to be. This morality is not the subjective individual, public or social morality but rather the values and principles, which form the very essence of the constitution and the society, which it aimed to achieve. This concept was also discussed by the court in *Naz Foundation v. Government of NCT of Delhi and others*¹⁰ where the court opined that the fundamental rights could not be restricted on the basis of popular morality or public disapproval of certain acts. Popular morality is derived from constitutional values but is different from constitutional morality and is primarily based on shifting and subjecting notions of right and wrong. It was the constitutional morality that was given precedence over the popular or public morality. In the Constituent Assembly too, this aspect of constitutional morality was strongly demanded by Dr. Ambedkar according to whom, it was constitutional morality, not public morality that can form the basis for compelling state action.¹¹ It cannot be said that the constitution makers, who went to a great extent to create provisions and special privilege for women, envisioned a society where women are not allowed into the places of worship and this is justified on the “moral” grounds. This notion of inequality and of not allowing women into places of holy worship goes against what the constitution sought to promise all women and this band cannot be justified on the basis of morality. As rightly said by Granville Austin in his treatise "The Indian Constitution - Cornerstone of a Nation"

*“The Fundamental Rights are there to foster the social revolution by creating a society egalitarian to the extent that all citizens are to be equally free from coercion or restriction by the state, or by society privately; liberty was no longer to be the privilege of the few.”*¹²

PART IV: THE NEW BACKWARD CLASS - WOMEN

The society initially was formed out of occupation and over the years this occupation resulted in classes in society. Even though the Vedic practices proscribe the succession based on birth, the patriarchal society ensured birth-based succession for selfish ends. This

¹⁰ W.P. (C) No.7455/2001 (India).

¹¹ Constitutional Assembly Debates: Official Reports Vol.VII: November 4, 1948, page 38.

¹² AUSTIN GRANVILLE, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (CLASSIC REISSUE) (1st ed. 1999).

found flavor in the upper strata – namely Brahmins, Kshatriyas, and Vaishyas. But the other strata wanted their kin to evolve and grow. This was subdued over generations by force and various practices that were introduced in mythology to ensure continuity.

Initially, it was the kings who continued these practices under their tutelage. But after the colonial rule, in order to have a better control over society, the divide and rule policies continued and this ensured more discrimination of Indians under the aegis of puppet kings and religious oppression under the heads of religion by renewed patronage to Mutts to ensure practices prevail. More divisions were created among the lower sections to ensure oppression from religious mutts and kings for the supply of free labour to colonies on far-off lands. The Dalit oppression was maintained at a larger scale than it existed before to ensure that in case of any threat to the crown, they can be used as a force to quell revolts from their privy.

A common sign that could be observed outside white clubs was “Dogs and Indians” are not allowed’. After the British rule, this sign evolved into “Dogs and Dalits not allowed” outside temples and now finally after many years after the British rule the sign that remains is: “Women especially menstruating women not allowed”.

Dalits were not allowed to be inside temples and were not allowed in houses of other classes. They were not even allowed the basic dignity of a human being by the upper classes. The Dalits were not allowed to live with the other classes, use the common resources and were isolated from the rest of the society. They were exploited as bonded labour among landlords and their children too experienced similar treatment being banned from all walks of life, even temples.

This deplorable practice continued till the independence and the access to temples became a reality many years later after the constitution was written under the chairmanship of Dr. B.R. Ambedkar. Women, however still do not enjoy this privilege, proving that they are the new lower class of today.

PART V: THE REVOLUTION AHEAD

The society is not static and constantly evolves and paves way for a revolution and change. This controversial issue has not been unsupported by the society. On January 26, 2016, Shani Shingnapur, a village in Maharashtra which houses a popular temple of the Hindu God Shani, saw a group of 500 women storms inside temple under the group 'Bhumata Ranragani Brigade' to demand entry into the inner sanctum of the shrine where they were restricted from entering for over 400 years. Following these protests, the Bombay High Court on March 30, 2016, asked Maharashtra government to ensure that women are not being denied for entering any temple.¹³ On April 8, the Shani Shingnapur trust finally allowed the women devotees to enter the sanctum. In this tech-savvy generation, various social media have been launched challenging the stigma and taboos around menstruation. #Periodforchange campaign launched by the Kachra Project is a prime example of this. Another campaign which received enormous support is the #HappyToBleed campaign which was launched in response to a comment from the head of a Hindu temple, who said women would be permitted to enter the temple once there are machines to detect if they are "impure" or "pure" i.e. whether they were menstruating or not. This gross invasion of privacy of women as well the underlying implications of the subjugation of women and gender inequality caught the attention of the Supreme Court too which commented that this gender inequality was against the ethos of the constitution. The judicial support toward this change¹⁴ can also be observed in the verdict of the Haji Ali Dargah case¹⁵, which marked a

¹³A PIL was filed in the high court, stating that not allowing women to climb the platform of the Shani Temple was arbitrary and in violation of the fundamental rights granted by the constitution of India. The Maharashtra Hindu Places of Public worship (entry authorization) Act 1965 says that "no Hindu of whatsoever section or class shall in any manner be prevented, obstructed or discouraged from entering such place of public worship or from worshipping or offering prayers, or performing a religious service..." As per the Act, prohibiting any person from entering a temple would attract six months in jail. The Shani Shingnapur temple in Ahmednagar opened its inner sanctum to women following another ruling that it was the fundamental right of women to enter any place of worship that allows men access, and that the state should protect this right.

¹⁴ Another decision, which shows the judicial support, is the case of the Mahalaxmi temple where women were allowed to enter in the inner sanctum after the ruling of the Bombay High Court which broke the old age tradition of not allowing the women in the inner sanctum of the decision was taken after a meeting between the police and the temple management in the wake of the Shani Shingnapur ruling.

¹⁵ Another case, which hopes to follow with a verdict similar to Haji Ali Dargah, is Indian Young Lawyers Association vs. State of Kerala .The Indian Supreme Court in this case dealt with women demanding equal

shift in the views of the court from the regressive verdict in 1951 in the Narasu Appa Mali case given by the same bench. This is a testament of the shift in the views of the people as well as the courts from the traditional dogmatic view and shows an alignment of public morality with constitutional morality – a step towards the society our constitution makers envisaged. As said in the Manusmriti: *where women are honored, divinity blossoms there and where women are dishonored all action; no matter how noble remains unfruitful.*

CONCLUSION

The restriction of women into temples is a testimony of this subjugation, which still persists despite many constitutional safeguards and the rights available to them under Articles 14, 25 and 26 of the Indian Constitution as well as social movements and judicial support for this cause. Women, however still do not enjoy this privilege, proving that they are the new lower class of today.

access to temples, mosques and other holy sites. The contention of the Sabarimala Temple is that the menstruating women are impure and that is why it has banned the entry of women who are aged between 10 – 50 years (violation of women’s constitutional right – Article 14. The court said that said that the act of denying entry of women in the places of worship undermines the fight for gender equality and has no constitutional right. The judgment still awaits.