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FREEDOM OF WORSHIP TO WOMEN: WHITHER COMMITMENT

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Abstract: Indian Constitution has provided the Right to Equality, Right against Discrimination, Right to Worship and many other fundamental and constitutional rights to the women at par with men. On papers, women enjoy equal status with men. But the reality is somewhat different. Sadly, they are not enjoying their rights fully. Reasons are many and one among those is the biological feature of their body i.e. menstruation. This feature of their body has been made a reason for discrimination by religious beliefs and myths. Because of this they are deprived of their rights and this happened in Sabarimala, where women of fertile age group were not allowed to enter the temple and perform prayers there. When this issue was first raised in Kerala High Court it upheld the restriction. But in 2018 Supreme Court of India lifted up the ban and allowed the women of every age group to enter the temple. It was not only a fight to women's rights in the Court but also a conflict between religion and Constitution arose in which Constitution won. But it has failed somewhere to change the mental set up of people as there were protests by the people including women against the judgment. Education and awareness are the weapons which can change the society and importance to women in religious works such as their appointments as priests should be promoted.

KEY WORDS: Fundamental Rights, Worship, Menstruation, sabrimala temple

Introduction

“If by strength is meant moral power, then woman is immeasurably man's superior.”¹ She is great Goddess - a boon giver, she is Nature (prakriti) which makes this world worth living, and she is Shakti who kills demons. India is a country where woman is worshiped in the temples as Goddess and this is not enough to understand what a woman is. A woman is an essential and integral part of society without whom life is not possible. From household to education, sports, politics, science and technology they have done their best and contributed in the development of nation. No doubt many rights are given to them by Constitution of India and other laws of the country, and government has initiated many schemes for the upliftment and security of woman. On one hand there are many rights and opportunities given to women and on the other hand they are deprived of their rights sometimes on the name of society, sometimes in the name of religious practices and many other reasons. Why so? When man and woman both are equal then why woman's rights are sacrificed? Constitution of India, the supreme law of the land has given many rights to people of India and other individuals as well such as equality. Equality means everyone is equal in the eyes of law² and there should be no discrimination on the grounds of religion, race, caste, sex and place of birth³ But sadly there are many religious practices or strong beliefs because of which they are deprived of their rights or we can say that they can't use them. The menstruating nature of a female body is one of the reasons of discrimination as during these days they are not allowed to worship, to enter temples, touch the holy books, do prayers and such type of activities which is an infringement of their right to equality, right to worship and right against discrimination, hence this practice is totally anti constitutional. Sadly this practice is prevailing in our society on large scale whether at homes or at temples. The women are taught from childhood not to practice any kind of activity related to worship during these

days. In Public places, there are wide spread customs prohibiting the women to enter the religious establishments. This issue of discrimination came into light in Subrimala Temple, where as per the custom it takes forty days of purification (vratham) to enter this temple, women of certain age group, which is the fertile age of a woman, were not allowed to enter the holy shrine. The reason was during forty days a woman of fertile age is supposed to bleed and hence she does not remain pure. This practice was utter discrimination of their right to pray because of the menstruation they undergo every month. This practice is not restricted to a particular region or religion but is widely spread across the countries. In musjids, women of all age are not allowed to participate in *namaaz*. Amongst Hindus, Women are not allowed to enter the religious places during their menstruation period. They are even compelled to live in separate accommodations and even compelled to live in the cattle sheds where separate place is not available. Women menstruation cycle which is a physiological process and totally natural has become an instrument of discrimination, which has not only affected the rights of the women but has also, affected their psychological, social and mental health. Judiciary has given many verdicts and states that woman and man both are equal and the Constitution of India has also given Right to Equality to all persons.⁴ But sadly the practice differs from the Constitutional provisions.

Menstruation Taboo:

Menstruation taboo is a kind of social taboo, which is linked with menstruation. Menstruation is the normal bleeding that occurs to women as monthly cycles. It is totally a biological and natural process. But in some societies it is considered as unclean and impure. There are many myths related to menstruation cycle and these myths are the mothers of religious beliefs which are discriminatory to women. These religious and social practices have such an impact on the mental setup of the society to such an extent that it is considered to be a forbidden subject to be discussed in public. As a result there is lack of awareness in the society regarding psychological, mental and physical health of women during Menstruation. On the contrary, women are prohibited from entering the religious places, kitchen. In the conservative Indian Society, women are considered as untouchable and impure during this period. They are not allowed to enter the public religious places among Hindus, Muslims and Parsis. Outside public places of worship, there are deep rooted notions of women's impurity during menstruation. They are restricted from touching the religious books and objects, doing prayers, cooking and entering the kitchen. There is no need of any signboard to keep bleeding women out of these places. Girls are socialized into period norms from a very young age. Not only this, the menstruating nature of their bodies is the reason to deny their role as priests, pandits, qazis, imaams. Menstrual period is considered as a sin of the women for which atonement is required. Among Hindus, a specific fast (Chandan shashti vrat), which women takes once in a year as atonement for touching kitchen or entering worship places by mistake during menstrual cycle. In many parts of India, women are not allowed to sleep in the bed, enter the main house, touch the other family members of the family or eat spicy food⁵. They are forced to live in the cowsheds or huts made specifically for the purpose. The impact of such practices on the psychology of girls on the initial years of mensuration is unimaginable. We can observe the heights of hypocrisy in our society on this issue. Where on one side a Goddess Kamakhya is worshiped by us and the Earth's menstruation is celebrated during the Ambabuchi Mela, an annual fertility festival held in June in Assam, on the other side menstruating woman is restricted from religious activities.

Constitutional and Legal Rights of Women

"I measure the progress of a community by the degree of progress which women have achieved." These great lines are given by Dr. B.R Ambedkar and by these lines we can understand that by the progress of women the whole community progresses. The rights given to women can be classified into two categories such as Constitutional rights and Legal rights. Constitutional rights are the rights which are enshrined in the Constitution of India and legal rights are those rights which are provided in various Acts of Parliament and State Legislature. Equality before law is well defined under the Article 14 of the Constitution which ensures that every citizen shall be protected by the laws of the country and State will not discriminate any of the Indian citizens on the basis of their gender, caste, creed, religion or even the place of birth. Recently in a judgment, Supreme Court of India held that the absolute exclusion of women from command assignments is against Article 14 of the Constitution and unjustified. Hence, the policy the women will be given only staff appointment was held to be unenforceable by the court." According to Constitution of India, the State shall not discriminate any citizen of India on the ground of religion, race, caste, sex and place of birth⁶. Article 15 secures the citizens of India from every sort of discrimination by State, on the grounds of religion, race, caste, sex

and place of birth. According to this Article not only State but private person also cannot discriminate anyone on the ground of religion, race, caste, sex and place of birth. Hence, this is a right provided to women against discrimination by Constitution of India. There shall not be any discrimination to women on the ground of being a woman. This right also guarantees the equal treatment of the women even in the religious activities. According to Article 15 (3) State is empowered to make any special provision for the development of women and children. The great example of this provision is reservation of seats for women in the local bodies and provision of free education to children. In *Government of A.P v. P.B Vijaya kumar* ⁷The Supreme Court explaining the object of Article 15(3) observed that : “The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socially and economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that clause (3) is placed in Article 15. Its object is to strengthen and improve the status of women.”⁸ The other Important right provided to all the human beings is Right to life, which also includes right to live with dignity⁸. Women also have right to live with dignity .If a women is prohibited from entering a religious place; it is not only the violation of their right of dignity but also affects their Psychology. Article 25 of the Indian Constitution guarantees the freedom of religion to all the citizens without any discrimination on the basis of cast, sex, religion etc. This Article provides the right to women to practice profess, propagate their religion without any discrimination. To enter in the religious premises can be considered as the part of this right. Apart from these rights, there are some fundamental duties, which are imposed the protection of dignity of women. However, the practices throughout India shows that this right is denied to women of different religions in the name of customs, religious practices etc .

Sabarimala Issue

Sabarimala temple is the temple of Lord Ayappa situated in the Sabri hills of Kerala in Sabarimala temple, there was a ban on the entry of women of menstruating age group (10 to 50 years) in the holy shrine. A verdict was given by Supreme Court in 2018 which lifted up the ban and allowed the women of every age group to enter the holy shrine. Huge protest was done against and for the verdict by the people. Sabarimala temple is one of the largest pilgrimages of the world and according to an estimate about 3.5 crore Hindu pilgrims visited the temple in 2017. Lord Ayyappan is the son of Shiva and Mohini ⁹ and is of celibate nature. His celibacy is the one reason on the ban of entry of women of 10 to 50 years of age group. The reason why this temple became so famous is that there was ban on the entry of women of menstruating nature. They were banned even from making the trek to the shrine .The justification which was given for this prohibition was that, the devotees who come to Sabarimala temple has to do the vratam of 40 days before entering the temple and worshipping there. It is believed that a woman of menstruating age group is unable to do vratam of 40 days period because of monthly bleeding. Because of this monthly bleeding they do not qualify to embark the pilgrimage. According to the rules of Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965 the ban on the menstruating women was enforced.¹⁰ In 1991 the High Court of Kerala upheld the ban on the women of menstruating age to enter the holy shrine¹¹. Regarding the entry of women rules were framed under section 9 of the Temple Entry Act. Rule 6 (c) framed there under relates to entry of women. The restriction is only for entry of women at such time during which they are not by customs and usages allowed to enter temples. The Board issues notification every year informing the public about the prohibition regarding entry of women of age group of 10 to 50 years in the Sabarimala temple.

The whole issue of Sabarimala temple started when a petition was filed in the Supreme Court challenging the verdict of Kerala High Court which upheld the ban on the entry of women of menstruation age group in the Sabarimala temple ¹². The ban which was upheld by the Kerala High Court on the entry of women was against the right to equality and right to worship. The practice of the restriction on the women of menstruating age group to enter the temple was derogatory to the dignity of women. The Supreme Court observed that restrictions on women to enter the worshipping places are not only in sabarimala but in other places also. The Supreme Court held that the ban on the entry of women is against the Right of Equality and Right of Worship. This is the violation of the rights of women granted by the Constitution of India. It was further observed by the Court that everyone has right to freely profess, practice and propagate their religious beliefs as per the Constitution of India ¹³. The practice prevailed there is an utter discrimination and the violation of the right to equality. On September 28,

2018 the Supreme Court of India gave its judgment on the Sabrimala issue. The Court held that the practice of non entry of women of menstruating age group in the temple is unconstitutional and discriminatory in nature. It is violation of the rights of women. The Court struck down the rule 3 (b) of the Kerala Hindu Places Of Public Worship Act by stating that it is totally unconstitutional as it allows the restriction on the entry of women in the temple if the restriction is based on the usages and customs prevailed there. The dissent opinions were given by the judges of the bench which included Chief justice Deepak Mishra, Justice Nariman, Justice Chandra chud and Justice Indu Malhotra.

After the judgment many female devotees of this age group tried to enter the temple but they were stopped in their way sometimes by the men and sometimes by women. They faced the great resistance and violence from the men and women. The protests and hartals by the people show that people were not happy with the verdict of Supreme Court. Where it was a step towards the concept of equality there on the other side some people were showing anger against the verdict. The change in the society was not accepted by some people and they did not want these types of practices to stop.

Sabrimala Review Petition:

The Supreme Court received almost 56 petitions for review of the judgement allowing the women to enter the temple. On November 14, 2019 a five judge bench referred the Sabarimala review petitions to a seven judge bench which was headed by Chief Justice of India Ranjan Gogoi. Justices Chandrachud and Nariman held that when a judgment is delivered, it is final and binds all. The Supreme Court did not changed its judgment regarding the entry of women in the temple and also added other issues related to women with this issue. In another case *Dr. Noorjahan Safia Niaz v. Y.N Bhardwaj*¹⁴, there was a petition filed under Article 226 of Constitution by petitioners who were some social activists against the restriction on women's entry in Haji Ali Dargah before the High Court of Bombay. The case was filed because of gender discrimination and denial of entry of women in the sanctum sanctorum at Haji Ali Dargah. The Trust argued that women were denied to enter the dargaah because the entry involved various kinds of risks. The risks were such as : the visibility of their breasts when they offered the prayers, entry of women in their periods, and sexual harassment. The Court held that these points are totally illogical with respect to the ban on the entry and the restriction of women on entering the Dargaah is the contravention of articles 14, 15 and 25 guaranteed by the Constitution of India. This judgment became the precedent and ended the deadlock of superstition and religious barriers in India. The Court further held the State accountable for providing adequate protection to women at places of public worship.

Another incident of restriction of women to enter the temple refers to *Shani Signapur* temple. In Maharashtra, the popular temple of Shani Shignapur was also famous for the ban on the entry of women. For many years, social reformers and activists were criticizing the this ban there. But this came into the picture in January 2016 when a woman entered the temple by mistake and after that the temple was closed for purity. The idol situated in the temple was purified and in order to purification the idol was bathed with milk. This act downgraded the women and after that Trupati Desai, a social activist, with her organization 'Bhumta Brigade' lead 1000 women activists and entered the temple forcefully. This was a move against the gender bias rules prevailing there. In Maharashtra, the Maharashtra Temple Entry Act, 1956 has banned women from entering the temple. The Bombay High Court opened the ways of women's entry into the Shani temple and said that no rule could prevent women from entering the temple. It was further held by the Court that the law should be same for everybody irrespective of any consideration.

Conflict between Religion and Constitution:

When the historical judgment of Sabarimala issue was delivered by the Supreme Court of India some people were highly dissatisfied by the judgment while some were celebrating the victory of women. Many people protested against the judgment in order to protect their precious religious practices while other were appreciating the judgment. The protest was not limited only with men, but women were also protesting against the judgment. When the petition was filed in the court against the practice prevailed in the Sabarimala temple, then the conflict between religion and Constitution arose. The supreme law of the land provides women with right to equality, right to worship and religion is not allowed to snatch these rights from them. Rules based on biological characteristics will not muster Constitution. The reason for not

providing the women their right to worship in the temple was the celibacy of the deity and to impose man's celibacy on woman is to deny women rights and the Constitution doesn't recognize such rights. These practices are not only unconstitutional but also against the basic human rights of women.

Conclusion

The women are an integral part of the society without whom life is not possible. In India, the irony is that, although the different Goddesses are worshipped but women of a specific age are not allowed to enter in the temples. Freedom of religion is provided to all the citizens of the country, which include women also, but they cannot enter the various religious places. We live in a patriarchal system of society where only woman has to sacrifice her rights. Gender inequality is the root of various discriminatory practices which is prevailed against the women. The rights of women are being infringed because of various religious beliefs. Gender discrimination is prohibited by the Constitution of India under Article 15 and in case of any infringement of this right; relief can be claimed through the court. But it is not easy to litigate against every instance of such discrimination because these norms are being followed in almost every home without any complaint. A biological process has become a reason for the violation of constitutional rights of women. Menstruation is a physiological process which is considered as impure by the society. However, there is nothing like impurity in this process. The deep rooted notions of women impurity has taken the shape of denial of their roles as pandits, qazis, imams and other positions related to worship or temple. This fact was proved by Hon'ble Supreme Court in its verdict of Sabarimala temple issue. Not only in this verdict but there are some other decisions given by Court in which the emphasis was on the right to equality and worship. The Court stated the practice of restriction on the entry of women totally discriminatory and gender bias. In the verdict of *Dr Noorjahan Safia's* case, the court held that the exclusion of women from entering the sanctum sanctorum is illegal and illogical and in the verdict given by the Bombay High Court in Shani Shignapur temple's issue, the court also stated the. In the name of religious beliefs the women are deprived of their rights..

UDHR and ICCPR are the two covenants which provides the freedom of religion. India is signatory to both. UDHR provides that the every individual is free to profess and practice his religion. However, ICCPR says that freedom of religion is not absolute but restricted. It is restricted for the public safety, morality etc. But no where it is written that it should restrict the entry of women in worship places.

In order to eradicate such malpractices certain initiatives are required to be taken. Due to illiteracy and lack of exposure women are not aware about their constitutional and legal rights. Education is the only solution of this problem. Legal literacy camps should be organized by the government in which law graduates and persons having the knowledge of law should be appointed to inform women about their rights. Secondly, Menstruation taboo is the biggest problem women are facing these days. They feel ashamed while talking about it. A biological process has become a matter of shame. Women should be informed about this process and also that there is nothing like impurity in it. The education and awareness are the only weapons to change the mentality of people. Girls should be empowered with the menstrual knowledge and hygiene so that the concept of impurity should be removed. Thirdly, Moves like "Happy to Bleed" should be started by activists and supported by government

Outside some worship places there are boards on which it is written that menstrual women is not allowed inside the sanctum sanctorum. Such type of boards should be removed and where there it is found written, strict action should be taken. Lastly, the Government should appoint women as pandits, qazis, imams etc. In religious worship places in order to stop gender discrimination should be stopped in religious places whether to perform worship inside the temple or any other religious place should be the discretion of the person. No one should be allowed to stop someone from entering the worship place. It must be the choice of the person and one should respect it.

References

- 1 Mahatama Gandhi
- 2 Article 14, Constitution of India
- 3 Article15 ,Constitution of India
- 4 Article14,Constitution of India
- 5 Tomar,Shruti,The Periodic Misogyny of Tribal Madhya Pradesh, Hindustaan Times, 31st Mat 2015
- 6 Article 15(1) Constitution of India
- 7 AIR 1995 SC 1648
- 8 Article21,constitution of India
- 9 Feminist incarnation of Vishnu
- 10 Rule3(b)of Kerala Hindu Places of Public Worship(Authorization of Entry)Rules1956
- 11 S. Mahendranv. The Secretary Devaswam Borad
- 12 Indian Young Lawyers Association V. State of Kerala
- 13 Supreme Court Verdict on Sabarimala temple issue
- 14 AIR2016SCC

