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# **OPENING DOORWAYS TO PLACES OF WORSHIP: GENDER EQUALITY AND INDIAN JURISPRUDENCE**

AUTHORED BY - DR. AASTHA AGNIHOTRI

## **1. INTRODUCTION**

Even though women are more devotional and religious than men, <sup>1</sup>inequality of genders is actually perpetuated by religion. Globally, inequality in enjoyment of rights is attributed to the deeply entrenched notions of subordination and patriarchy in tradition, history, religion and culture.<sup>2</sup> In most organised religion is inherently patriarchal with men holding all offices and a very negligible role for women. While the status of women has considerably improved across the world, they are not treated equal to men in religion and such inequality is widely regarded as 'natural'. <sup>3</sup>This is evidenced by the barriers on entry of women to places of worship. Though defended in the name of religion and culture, the exclusionary practices impinge on gender equality and preserve patriarchy in organised religion at the expense of the rights of women. A woman's right to enter a place of worship is entrenched in the Human Rights Instruments, though not implemented in practice.

India is a fascinating case study as regards barriers on entry of women. Despite the Constitutional mandate of throwing open the temple to all classes of society, discrimination and denial of entry to certain sections of society remains prevalent. However women in India are now coming out in the open to fight against such discrimination and are seeking the support of the Constitution and the Courts. The Courts are proving their sincerity and commitment towards women equality. However the reality reflects the unwillingness of the community to change. The researcher chose this as an issue of analysis for two primary reasons. Firstly as there is lack of research at the international level as regards barriers on entry of women to places of worship and secondly as the

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<sup>1</sup>Pew Research Centers, 'Theories explaining gender differences in religion' (22 March 2016) <<https://www.pewforum.org/2016/03/22/theories-explaining-gender-differences-in-religion/>>

<sup>2</sup>UN Human Rights Committee (HRC), *CCPR General Comment No. 28: Article 3 (The Equality of Rights Between Men and Women)*, 29 March 2000, CCPR/C/21/Rev.1/Add.10, PAR.5.

<sup>3</sup> Dianne Otto, 'Women's Rights' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (3<sup>rd</sup> edn, Oxford University Press 2014) 310.

matter remains caught up in a whirlpool of controversy in India despite of the Supreme Court mandate. Before proceeding, it is pertinent to specify that the term ‘places of worship’ refers to all places where people gather to worship, such as church, mosque, temple, synagogues etc. Though another issue of inequality witnessed inside places of worship is that of segregation, the same falls beyond the scope of the current research.

Through the course of the paper, researcher establishes that the barriers on entry of women to places of worship in India are unconstitutional. This is followed by a look into the jurisprudence from the country. Emphasis has been placed on the issues surrounding Sabarimala judgment as that verdict will go a long way in determining the relationship between women’s rights and religion.

## **2. BARRIERS ON ENTRY OF WOMEN TO PLACES OF WORSHIP: INDIAN CONSTITUTION AND JURISPRUDENCE**

The irony of the Indian society is that while women deities are celebrated and worshipped, women are prohibited from entering and worshipping in a large number of temples. Restrictions on women’s entry to worship places have persisted for decades in India. The women are now fighting tooth and nail for the right to entry at par with men. The ban on entry of women to places of worship falls foul of the Constitution of India and the same is established in this Part. That the act of prohibition of females from entering are repugnant to the basic dignity of a woman as an individual and also violate the fundamental rights guaranteed under Articles 14, 15 and 25 of the Constitution. It is further argued that these Rights must be harmoniously interpreted in light of Constitutional object, mandate and morality.

### **a. INDIVIDUAL’S RIGHT TO FREEDOM OF RELIGION**

#### **ARTICLE 25**

Article 25(1) reads as “Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.”

Article 25 secures to everyone and not just the citizens of India, the freedom of conscience and also the right to freely profess, practice and propagate religion. Religion has been acknowledged by the judiciary to be “a matter of personal faith and belief of personal relations of an individual

with what he regards as Cosmos, his Maker or his Creator which, he believes, regulates the existence of insentient beings and the forces of the universe.”<sup>4</sup> It is well settled that the right under an Article 25 is an individual right and that every person by virtue of this Article has a right to entertain and exhibit such religious belief as his conscience and judgment deems fit.<sup>5</sup> In **The Commissioner of Police & Ors vs Acharya Jagdishwarananda** <sup>6</sup>the Supreme Court held that the expression religion includes worship and that Article 25 secures to everyone the right to worship God according to the dictates of their conscience. <sup>7</sup> The researcher asserts that the right to enter a place of worship of one’s choice is intrinsic in the right to exhibit one’s religious belief and also the right to worship. In the Sabarimala case the majority observed that the right under Article 25 is rendered meaningless if there is a denial of entry.

The researcher therefore asserts that the barriers on entry of women are a violation of the freedom guaranteed under Article 25. The use of the expression ‘**all persons are equally entitled to**’ explicitly declares the non-discriminatory nature of the right. In *Indian Young Lawyers Association v State of Kerala*, the Honorable Court observed that, the expression ‘all persons’ demonstrates that the freedom is available to every person including women.<sup>8</sup> Justice Nariman observed that women are equally entitled to enter a place of worship of their choice and denial on entry is a violation of their fundamental right to **practice religion as they see it**. He furthermore asserted that any custom restricting entry must necessarily yield to the fundamental right of women.<sup>9</sup> What is freedom of worship for one is freedom for the other, in equal measure.<sup>10</sup> Henceforth, it is argued that any barrier on entry based is a violation of Article 25.

Two questions may be raised at this point, first whether a non citizen could claim the right to enter a place of worship extends? The researcher asserts that as the right under Article 25 is available to non-citizens, the right to enter places of worship of their choice is guaranteed by the Constitution of India to them. The second question which arises here is whether the right to enter places of worship includes the right to enter places of worship of a religion to which one doesn’t belong? The researcher asserts that there can be no denial to entry on grounds of religion as

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<sup>4</sup> *Shri A.S. Narayana Deekshitulu vs State Of Andhra Pradesh* , AIR 1976 SC 1765 para 85.

<sup>5</sup> *Ratilal Panachand Gandhi v. The State of Bombay & Ors*, 1954 AIR 388

<sup>6</sup> (2004) 12 SCC 770

<sup>7</sup> *Ibid* Para 76.

<sup>8</sup> (2018) 7 MLJ 889, Para 98.

<sup>9</sup> *Ibid* Para 29.

<sup>10</sup> *Rev. Stainislaus vs State Of Madhya Pradesh & Ors*, 1977 AIR 908 para 7.

everyone has a right to enter a place of worship according to his belief and belief of a person is not always confined to his or her religion. In fact, any denial on grounds of religion would be an affront to the non-discriminatory nature of this right Henceforth any barrier to entry is unconstitutional. Moreover, the right to enter places of worship is not dependent on arbitrary discretion of the authorities of the place.<sup>11</sup> Therefore, it is asserted that the right to enter a place of worship is not dependant on the will of the authorities of the place of worship and the barriers imposed on entry are unconstitutional.

RESTRICTIONS TO ARTICLE 25(1) - The right has been made subject to public order, morality and health and the fundamental rights enshrined in the Constitution. In the Sabarimala judgment it has been held that entry of women does not jeopardize public order, morality or health. The Court observed that the notions of public order, morality and health cannot be used as colorable device to deprive women of their legal right to enter and offer their prayers.<sup>12</sup> In fact exclusion of women is contrary to the restrictions. Morality as used under Article 25 means Constitutional morality. To quote the honorable Court, "The term 'morality' occurring in Article 25(1) of the Constitution cannot be viewed with a narrow lens so as to confine the sphere of definition of morality to what an individual, a section or religious sect may perceive the term to mean. Since the Constitution has been adopted and given by the people of this country to themselves, the term public morality in Article 25 has to be appositely understood as being synonymous with constitutional morality."<sup>13</sup> Liberty, dignity and equality are the basic tenets encompassing constitutional morality and exclusion of women is, hence, contrary to constitutional morality. <sup>14</sup> The exclusion of women is also violative of other fundamental rights, which is established in subsequent paragraphs. Henceforth, it is asserted that women have a right to enter places of worship and the restrictions under Article 25 have no effect on this right.

#### **b. VIOLATION OF EQUALITY AND NON DISCRIMINATION**

The right to equality and non discrimination have been enshrined under Article 14 and 15 of the Constitution. While Article 14 guarantees to all persons equality before the law and equal protection of law, Article 15 prohibits discrimination **including on grounds of gender. The cumulative effect of these articles is the extension of fundamental rights to all citizens that**

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<sup>11</sup> Nar Hari Sastri And Others vs Shri Badrinath Temple Committee, 1952 AIR 245para 17.

<sup>12</sup> Ibid (N 21)Para 111 and 144 (6).

<sup>13</sup> Ibid Para 144 (5).

<sup>14</sup> Ibid, Para 118

are supported by governmental duties to refrain from any form of discrimination and prevent private citizens and organizations from practicing discrimination.<sup>15</sup> It is also significant to note that while the right to religion is subject to other fundamental rights, the guarantee of equality is absolute and henceforth the latter overrides the former. Henceforth, the practices denying or restricting the entry to places of worship on grounds of gender nullifies these guarantees of equality and non discrimination and as the guarantee of equality overrides the freedom of religion, the barriers on entry cannot be protected under Article 26.

## ARTICLE 14

Article 14 titled equality before law is the fundamental Charter of equality in the Indian Constitution.<sup>16</sup> It reads as, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” The basic principle which informs Article 14 is inhibition against discrimination,<sup>17</sup> and a quest for ensuring fair treatment in every aspect of human endeavour and in every facet of human existence.<sup>18</sup> It is a guarantee of substantive equality to the disadvantaged groups which have faced structural and systemic exclusion.<sup>19</sup>

In Gender equality is inherently intertwined in the Constitutional guarantee of equality and the rights of women are constitutionally protected at par with the rights of men. This means that women have a right to enter places of worship at par with men. Hence it is derived that the Article secures an equal participation for women in all spheres of human life and requisitions dismantling of the gender based hierarchy which causes exclusion and oppression of women.<sup>20</sup>

Clearly the exclusionary practices are an anathema to the guarantee of equality and henceforth violative of Article 14. Besides, the customs excluding women from entering places of worship are discriminatory, unjust and unfair. Henceforth, barriers on entry to places of worship are constitutionally infirm as violating the guarantee of equality under Article 14.

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<sup>15</sup> Sarkin, Jeremy, and Mark Koenig. 'Ending Caste Discrimination in India: Human Rights and the Responsibility to Protect (R2P) Individuals and Groups from Discrimination at the Domestic and International Levels', *The George Washington International Law Review*, vol. 41/no. 3, (2010), pp. 541.

<sup>16</sup> Navtej Singh Johar and others v. Union of India para 24. Justice Chandrachud

<sup>17</sup> Royappa v. State of Tamil Nadu (1974) 4 SCC 3 para 85.

<sup>18</sup> *ibid*

<sup>19</sup> Gautam Bhatia, “Equal Moral Membership: Naz Foundation and the Refashioning of Equality”(2017) 1(2) Indian Law Review 118. < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2980862](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2980862)> accessed 27 July 2019.

<sup>20</sup> Shayara bano v Union of India,(2017)9 SCC 1 para 63.

**ARTICLE 15**

Article 15 of the Constitution titled 'Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth', states:

- “1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—
- (a) Access to shops, public restaurants, hotels and places of public entertainment; or
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.”

Discrimination solely on grounds of gender is specifically prohibited by this Article. Denying women entry solely on the grounds of sex is discriminatory and violates Article 15. It is asserted that though there is no mention of places of worship the list given in Article 15(2), it is a form of place of public resort dedicated to the public and thus discriminatory denial on entry of women to places of worship is in violation of the Article 15.

Once it is established that the barriers on entry of women violates the right to equality enshrined under Article 14 and Article 15, it is important to discuss the limitation of the Articles. The expression “State shall” makes it difficult to use the Articles for justifiability in cases the violation is by non state actors. The researcher however asserts that the obligation of the State under Article 14 extends to ensuring that the same is not violated by private actors. Perhaps the obligation of state imbibes an obligation to ensure that there is no gender discrimination by religious institutions and to ensure women have a right to enter places of worship at par with men.

**ARTICLE 17- UNTOUCHABILITY**

The Constitution of India has abolished untouchability and forbidden its practice in any form.<sup>21</sup> This is a powerful guarantee against exclusion that aims to preserve human dignity. <sup>22</sup> Exclusion from places of worship is a form of untouchability which stigmatises one class of people as impure. In absence of a definition of the term untouchability, the understanding of the Article has

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<sup>21</sup> Article 17 reads as: “Abolition of Untouchability. “Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.”

<sup>22</sup> IBID (N 19)Para 77.

traditionally been limited to caste- based untouchability.<sup>23</sup> However Justice Chandrachud in the Sabaimala judgment, placed reliance on the Constituent Assembly debates and the use of the expression “**in any form**” in the Article, to acknowledge that untouchability also includes gender based untouchability.<sup>24</sup> The researcher asserts that customs which exclude one gender from entry to sanctum sanctorum of a place of worship on the ground that the entry of women are unconstitutional as they amount to untouchability. Exclusion of women is based on conception of purity and pollution which results in stigmatised some class of people and on conception of “purity and pollution” would run counter to the constitution’s prohibition of “untouchability.” Moreover, the thrust of Article 17 is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base.<sup>25</sup> Considering that the exclusionary practices are based on blind traditional beliefs, which have no space in a constitutional order, it is argued that Article 17 must be brought to the forefront to abolish such practices. It is pertinent to mention that this Article is also enforceable against non state actors including religious organisations. In *Asiad Project Workers* case, the honourable Supreme Court held that the State has a constitutional duty to ensure that the right under Article 17 is not violated even by private individuals and that the State duty also included taking all necessary steps to ensure untouchability is not practiced.<sup>26</sup> Henceforth, it is argued that the State is under a Constitutional duty to abolish the exclusionary practices across all religious organisations and ensure that there is no violation of the right to enter places of worship.

### **c. RIGHT OF THE PLACES OF WORSHIP TO MANAGE ITS’S OWN AFFAIRS**

Article 26 titled freedom to manage religious affairs, provides every religious denomination the right to manage its own affairs in matters of religion. No legislation or state action can violate it except for health, morality and public order. This Article is the right guaranteed to an organised religion which satisfies three conditions:-

1. Is a collection of individual who have a system of beliefs which they regard as conducive to their common faith.
2. Has a common organisation
3. Designated by a distinctive name.

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<sup>23</sup> In the social hierarchy of a Hindu society, those placed at the bottom were considered impure and polluted. Due to this reason they were socially excluded and contact with them was forbidden.

<sup>24</sup> Para 72 and 79.

<sup>25</sup> *State of Kanataka v. Appa Balu Igale*, AIR 1993 SC 1126 PARA 36.

<sup>26</sup> *People’s Union for Democratic Rights v. Union of India*, AIR 1982 SC1473 PARA 6.

Any religious group which meets the triple test and is thus held to be a religious denomination can manage its own affairs in religious matters.<sup>27</sup> The expression ‘matters of religion’ means religious practices, rites and ceremonies considered essential for religion.<sup>28</sup> The Honourable Courts through the doctrine of essential religious practices classifies religious practices as essential and non-essential<sup>29</sup> Practices recognised to be essential by religion are given immunity from being tested upon the touchstone of the Constitution. In *Khursheed Ahmad Khan v. State of Uttar Pradesh and Others*<sup>30</sup>, it was observed that merely because a practice is permitted or not prohibited under religion, does not mean that it is essential to religion. Though the barriers on entry are not prohibited under religions, they do not constitute an essential part of religion either. **Prohibition on women is due to non-religious reasons and it is a grim shadow of discrimination going on for centuries.**<sup>31</sup> Hence they do not have immunity and are bound to be struck down.

Moreover, even if it were to be assumed that the prohibition on entry of women is an essential practice, the same would still have to be dismantled as the freedom under Article 26 is not absolute. By subjecting it to morality, the founding fathers have set limits on the right of the religious denominations. Thus any tradition or custom must be moral, constitutionally moral. The barriers on entry of women to places of worship cannot take refuge as essential religious practice as they are an affront on the constitutional morality. Clearly the practices prohibiting entry of women are discriminatory and restrict the liberty of women to entry and thereby have no protection under Article 26.

#### **d. ARTICLE 25 OVER RIDES ARTICLE 26(B)**

The barriers on entry of women to places of worship have become symbolic of debates about freedom of religion and women’s rights. While right guaranteed under Article 25 is an individual right, the right under Article 26(b) is a group right.

A group is made up of individual persons and the protection rendered to the rights of the group is substantially to promote the well being of the individuals of the group. The researcher asserts that the group right to freedom of religion cannot annihilate the right of the individual as the former is

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<sup>27</sup> S.P. Mittal v. Union of India (1983) 1 SCC 51, para 80.

<sup>28</sup> J.N. Pandey, ‘Constitutional Law of India’ (51<sup>st</sup> edn. Central Law Agency 2014)

<sup>29</sup> Saifuddin Saheb v. State of Bombay, AIR1962 SC 62.364.

<sup>30</sup> SCC 2015 8 439

<sup>31</sup> IBID (N19)

intended to safeguard the latter.<sup>32</sup>Henceforth an organised religious group cannot create a barrier on enjoyment of the individual's right to freedom of religion. Moreover in the Sabarimala judgment the majority verdict explicitly held that the rights under Article 26 are subordinate to the mandate of the Constitution to open places of worship to all sections of society.<sup>33</sup>

#### 4. BREACH OF SOCIAL CONTRACT

The Preamble which begins with the words "we the people" symbolises the birth of a new social contract in independent India. This social contract is the foundation stone of the Constitutional order that holds the promise of justice, liberty, equality and fraternity. The use of the expression we the people signifies that women and third gender constitute a party to the social contract as much as men.

By virtue of the social contract everyone is entitled to the liberty of belief, faith and worship. A right to enter any place of worship of one's can be adduced from this guarantee of liberty. When women are denied entry it is a violation of the contractual guarantee of freedom to enter places of worship as dictated by their belief and faith. The social contract also secures equality. Read with the liberty to worship it means everyone is equally entitled to enter places of worship of their choice. When women are denied the right to enter places of worship on grounds of gender, they are treated as inferior to men and this clearly constitutes discrimination and breach of the guarantee of equality. Thus, the denial of entry to places of worship at par with men breaches the social contract guarantees of equality and the liberty to worship. Moreover it is also an anathema to the guarantee of social justice in the Constitution as also derogatory to the dignity of women.

The social contract is a reassurance to the disadvantaged sections of the society including women that the obligations owed to them will be fulfilled. Henceforth, the researcher asserts that the exclusionary practices are a blink at the social contract as they run contrary to the guarantees of equality, justice, liberty of worship and fraternity. The State owes a duty to women under the social contract to dismantle all barriers on entry of women to places of worship. Furthermore the duty of the state includes creation of a social and legal order where women are not treated as children of a lesser God. It is asserted that the obligation of the State under the Preamble is non negotiable and it cannot shield the exclusionary practices.

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<sup>32</sup> Satya Prasoona, 'The Sabarimala case has the potential to be a Constitutional watershed' (The Wire 7 November 2016) < <https://thewire.in/law/sabarimala-temple-case-constitutional-watershed/>> accessed on 19 August 2019.

<sup>33</sup> Article 25 (b) of the Constitution of India.

## 5. DISMANTLING OF BARRIERS BY THE JUDICIARY

The judiciary plays an important role in the protection of all rights and in ensuring that there is adherence to the Constitution. In the recent past the judiciary has set precedents on gender restrictions to places of worship by adroitly adjudicating the tense stand-off between women's claims to freedom of worship and gender equality on one hand and the freedom of the religious organisations to practice religion on the other hand. Demonstrating a commitment to upholding the Constitution, the courts have dismantled the barriers on entry and pressed for an end to gender based exclusion to entry. This has encouraged several petitions as regards entry of women to places of worship being filed in the High Courts and the Supreme Court. However the aftermath of these judgments also unleashes the reality of the society and the resistance to change. In this part, we discuss the jurisprudence on the right of women to enter places of worship and also the resistance to embrace change.

- **HAJI ALI DARGAH CASE: Dr. Noorjehan Safia Niaz and Another v. State of Maharashtra and Ors.<sup>34</sup>**

The Hajji Ali Dargah shrine in Mumbai is the resting place of the Sufi saint Pir Haji Ali. From 1430 to 2011 women were allowed in the inner sanctum (the tomb of the saint) of the shrine but through a separate entrance. In 2011 the Haji Ali Dargah Trust banned women from entering the inner sanctum sanctorum. Consequently the ban was challenged in the Bombay High Court through a Public Interest Litigation, filed by an organisation of Muslim women 'the Bharatiya Muslim Mahila Andolan' on the ground that right to freedom of religion enshrined under Article 25 of the Constitution, was also a right of the women and that the arbitrary ban was clearly a violation of Article 14(equality) and Article 15(non- discrimination) of the Constitution. The Dargah Trust defended the ban primarily on two grounds that the entry of women was a sin under Islamic law and secondly that by virtue of the right under Article 26 of the Constitution, the Trust had a right to manage its affairs in matters of religion without any interference. It also defended the ban on grounds that it was in the best interest and safety of women, and especially important for preventing sexual harassment at places of worship.

The Honorable Court restored the status quo ante i.e. permitted entry to women at par with men. It ruled that the ban contravened the right to worship, equality and non- discrimination. The Court did not find the exclusion of women from the sanctum sanctorum to be an essential or integral

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<sup>34</sup> 2016 (5) ABR 660.

part of Islam as there was nothing to show that entry of women would change the character of the belief or religion. It held that the right of the trust to manage the affairs of religion could not override women's right to worship and practice religion. Holding the Dargah Trust to be a public charitable trust and the Dargah to be a public place of worship, it ruled that the shrine had to be open to all and no one could be denied entry to it. The Court also held that the "State is equally under an obligation to ensure that the fundamental rights guaranteed under Articles 14, 15 and 25 of the Constitution are protected and that the right of access into the sanctum sanctorum of the Haji Ali Dargah is not denied to women."

The judgment is exemplary as it acknowledged an equal right to pray and opened the shrine for women, despite there being no explicit constitutional<sup>35</sup> or legislative mandate. Thus it sets the right precedent for cases of entry of women to places of worship, specifically Muslim places of worship. The judgment dismantles the barrier on entry by ruling that the exclusion had no constitutional protection under Article 26 and by holding that public places of worship cannot discriminate on grounds of gender. It is plausible that the conclusions are constitutionally backed and the Court even while examining the ban from the prism of 'essential practice' abstained from interpreting the Islamic doctrines. The Court affirms its commitment to gender equality and also obligates the State to ensure women have access to the sanctum. However as no custom was claimed by the Trust, it remains questionable if the Judges would arrive at the same conclusion in case of an established custom.

- **SABARIMALA CASE LAW:**

The Sabarimala temple which is located in the Southern state of Kerala is a revered hill shrine where women between the ages of 10-50 years have been banned entry to the sanctum sanctorum. The ban has been justified on the grounds that the deity, Lord Ayyapa, is a Nashtika Brahmchari i.e. eternal celibate and entry of women breaks his vow of celibacy. This blanket ban on entry of women has been questioned in a long legal battle (which is yet to be culminated<sup>36</sup>) and the issue has in the last few years' commanded national attention. A 4:1 majority of the Constitutional

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<sup>35</sup> Though the Constitution explicitly mandates opening of Hindu places of worship to all, it is silent on opening of Muslim places of worship. It is pertinent to mention that this sets the judgment on a different footing from the others as in those judgments as Constitutional mandate and legislative mandates were used to open temples to women.

<sup>36</sup> Though the Supreme Court delivered its judgment in the case, it is now looking into the Review Petitions for which hearing has been concluded but judgment is yet to be delivered. Over 54 Review Petitions were filed under Article 137 of the Constitution and though the researcher is critical of the review the same falls beyond the scope of the research.

Bench of the Supreme Court held that the exclusion of women was unconstitutional and the practice went against the guarantees of equality, liberty and freedom of religion.

### **FACTS-**

Rule 3(b) of the Kerala Hindu Places of Worship Rules, 1965 proclaimed that where a custom or usage of a place of worship so prohibits, women shall not be at liberty to entry or worship. Deriving from this the Travancore Devaswom Board which manages the Sabarimala temple issued notifications in the years 1955 and 1966 banning entry of women within the age group of 10-50 years, citing tradition.

### **HIGH COURT<sup>37</sup>-**

The Constitutionality of the ban on entry of women and the Rule 3(b) was challenged in the High Court in the year 1991. The Division Bench of the Court refused to accept the ban to be discriminatory and upheld its constitutionality. Emphasising that the prohibition is not on women as a class but only on women between an age group, it held that the ban was only a case of differential treatment and not constitutional discrimination. The Court also justified the ban on grounds of celibate nature of deity, the impossibility of women aged 10-50 to follow the 41-day vratham required to enter the temple and preservation of the sanctity of the temple. Most importantly it held the temple to be a religious denomination which had a right to determine its customs and courts had no jurisdiction to interfere with such customs. It also held that the individual right to freedom of religion can be trampled by the right of the religious denomination to manage its own affairs.

### **PETITION IN the SUPREME COURT-**

Fifteen years after the decision of the High Court, the Constitutionality of the ban was challenged in the Supreme Court in a Public Interest Litigation on the grounds that it runs against the guarantees of freedom of religion, equality and non-discrimination. The issue came to the forefront once again in 2006, when an actor from the prohibited age group claimed that she managed entry into the inner sanctum sanctorum. The case was referred to a five judge Constitutional Bench comprising the Chief Justice and four other Judges, including one woman judge.

The Supreme Court considered the constitutionality of the ban on entry of women and also

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<sup>37</sup>S. Mahendran v. Travancore Devaswom Board, AIR 1993 Ker 42. < <https://indiankanoon.org/doc/1915943/>>

considered whether or not such a ban was essential to religion and thereby protected. The Court also looked into the question if the Temple qualifies as a religious denomination.

## **JUDGMENT**

The Supreme Court held the prohibition on entry of women aged 10 – 50 years as unconstitutional and struck of the legislation by virtue of which the ban was imposed. Justice Mishra and Khanwilkar refuted the claims that Sabraimala constituted a separate religious denomination. They also held that the ban on women was not an essential practice and henceforth could not be protected. They also struck down Rule 3(b) on grounds that it was contrary to the Constitutional mandate that temples be opened to all sections and classes of Hindus. Justice Rohinton Nariman in his concurring but separate judgment held that The wordings of Article 25 make it explicit that the women of all age groups are equally entitled to practice religion and enter the sanctum sanctorum of the Sabarimala shrine. He also held the Rule 3(b) to be contrary to Article 15 i.e. discriminatory. Justice Chandrachud in his judgment emphasized in the transformative aspect of the Constitution and that the constitution was designed to remedy the tradition of discrimination against women and other marginalized sections of society. He held that any gender based exclusion could not pass the test of the Constitution. What is remarkable is that he embraced the exclusion as a form of untouchability because the ban was on grounds of purity and sanctity of the temples.

## **DISSENTING VERDICT**

Ironically the only woman judge on the Bench upheld the Constitutionality of the ban and reiterated the judgment of the high court. She held that a secular polity like India must respect the autonomy of a religious denomination to determine its internal affairs and the courts should not delve into the rationality of religious practices. Moreover she held that the petition was not maintainable as petitioners were not devotees of Ayyappa.

A reading of the dissenting judgment presents a de minimis rationale and is extremely flawed. She failed to drop the blindfold and see that under the traditional practice hides discrimination of women and deprivation of their rights. Her judgment is also an affront on the social contract. Her judgment sets a dangerous precedent as regards women's equality in matters of religion and it would be unfair to complete the research without rebutting her dissent.

## I. REJECTION OF MAINTAINABILITY OF THE PETITION IS ERRED

Justice Malhotra questions the locus standi of the petitioners on grounds that they are not devotees of the particular manifestation of the deity.<sup>38</sup> This is contestable as it questions the very institution of Public Interest Litigation and moreover neglects the fact that the internalisation of traditional practices restricts people from within the community to approach the courts or question the tradition. Also if her views are accepted, parties like the petitioners would have to be passive spectators to human rights violations that take refuge under tradition<sup>39</sup> and consequently such violations of rights would continue for centuries unharmed.

Moreover, she observes that 'In matters of religion and religious practises, Article 14 can be invoked only by persons who are similarly situated, that is, persons belonging to the same faith, creed, or sect.'<sup>40</sup> Clearly the judge errs in her application of the concept of similarly situated as the very institution of Sabarimala is secular where men from all religions and castes have an absolute right to entry and the prohibition is only on women aged 10-50. Also individuals simultaneously worship different deities and go to different places of worship at the same time and she creates an unreasonable classification among devotees, which itself is affront to the Constitutional guarantee of equality. Moreover temple entry cannot be relegated to the realm of internal affairs which is exclusively expected to be taken up within the community<sup>41</sup> and if this is accepted as constitutionally valid, the lower castes would also not have entry to places of worship, which is in contrast to the mandate of the founding fathers.

What's more is that she errs in saying, 'Permitting PILs in religious matters would open the floodgates to interlopers to question religious beliefs and practises, even if the petitioner is not a believer of a particular religion, or a worshipper of a particular shrine.' While it may be true that there would be some petitions but considering that the Supreme Court has started penalising fallacious petitions, her observations are clearly a hyperbole. Also it is highly condemnable for a Judge of the Supreme Court to turn a blind eye to human rights violation on the ground that entertaining third party petitions would open the floodgates to interlopers.

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<sup>38</sup> Para 7.1 'The right to move the Supreme Court under Article 32 for violation of Fundamental Rights, must be based on a pleading that the Petitioners' personal rights to worship in this Temple have been violated.'

<sup>39</sup> Prakhra Singh and Pragya Roy, 'Questioning the dissenting voice in Sabarimala' (EPW Engage 5 November 2018) <<https://www.epw.in/engage/article/questioning-dissenting-voice-sabarimala>> accessed on 7 August 2019.

<sup>40</sup> Para 7.4

<sup>41</sup> Ibid n 7

The researcher also finds it necessary to mention that her reasoning has set a bad guide which was embraced by the honourable Supreme Court while dismissing a petition, filed by a Hindu group, demanding entry of Muslim women to mosques.<sup>42</sup>

## II. Separate Religious denomination

The judge holds the Sabarimala temple to be a 'distinct religious denomination'. Moreover while through her judgment she gives a strict interpretation to the Constitution, she justifies her conclusion in this regards on the ground that a liberal interpretation ought to be given for advancing the Constitutional object of a pluralistic society.<sup>43</sup>

## III. Essential religious practices

Though the ban is unsubstantiated in history, she still holds it to be essential. Moreover, while the very essence of the 'essential practice doctrine' is to fashion religion according to the Constitution instead of accepting in toto the beliefs of the practitioners,<sup>44</sup> the judge emphasizes that the issue of what constitutes an essential religious practice is for the religious community to decide.<sup>45</sup> Thus her ruling is flawed and contradictory to the very jurisprudence she takes support of to justify her ruling. It would be ridiculous to bestow the custodians of religion with such a kind of impunity. By giving the community absolute power to decide on religious practices, she not only neglects a historical past and a patriarchy in religion but also opens the doors for women oppression.

## IV. Fallacious to hold that *courts should not delve into the rationality of religious practices.*

The Constitution casts an obligation on the judiciary to transform the status quo ante into a new human order in which social justice informs all institutions. The Supreme Court in *S.P. Gupta v. Union of India* held that in a society pulsating with urges of gender justice and equal justice between chronic inequalities, the Courts cannot act merely as umpires and must be functionally involved in the goal of social justice.<sup>46</sup> Thus it is erroneous for Justice to make such an observation and actually by protecting the religious practices over the fundamental rights of women, she rips

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<sup>42</sup> To quote the Chief Justice, "Let a Muslim woman come and challenge it."

<sup>43</sup> Shamani Joshi, 'India's Supreme Court Rejects Plea to Allow Muslim Women Entry Into Mosques' (The Vice 9 July 2019) < [https://www.vice.com/en\\_in/article/evywwm/indias-supreme-court-rejects-plea-to-allow-muslim-women-entry-into-mosques](https://www.vice.com/en_in/article/evywwm/indias-supreme-court-rejects-plea-to-allow-muslim-women-entry-into-mosques)>

<sup>44</sup> Para 12.3.

<sup>45</sup> Ronojoy Sen, 'The Doctrine of Essential Practices: The Judges shape a Rational Hinduism' in 'Articles of faith: Religion, Secularism, and the Indian Supreme Court' (Oxford University Press 2010).

<sup>46</sup> Para 8.6

<sup>46</sup> *S.P. Gupta v. Union of India*, AIR 1982 SC 149

the foundations of justice.

Moreover she holds that the courts cannot delve into the constitutionality of practices of a faith unless they are pernicious, oppressive or a social evil like Sati,<sup>47</sup> without answering why the exclusionary practice does not fit the criteria. The research contests her observation, as even though the ban on women is not as monstrous as a practice like Sati but it is nonetheless oppressive and evil.

Thus this observation is not just flawed but also unconstitutional.

#### **V. UNMERITED TO CONCLUDE THAT ARTICLE 25 OVER RIDES ARTICLE 14**

*In holding that equality under ARTICLE 14 CANNOT TRAMPLE OVER ARTICLE 25, she commits two major errors. Firstly she fails to acknowledge that the right and freedom of religion is also an individual right. Secondly by saying that equality cannot override freedom of religion she fails to acknowledge that the founding fathers have made equality an absolute right and not vice versa. Moreover she does not provide any reasoning as regards how do women's right to enter temples affect the freedom of religion and why the two rights can't be read harmoniously. She also fails to appreciate that the right to worship in a place of worship of one's choice is a constitutional right and holds that the ban on entry of women aged 10-50 is justified as women can worship the deity in other temples.. The judge while holding that the religious denomination's right overrides an individual's, failed to acknowledge that the Constitution is primarily for the individual and they constitute the basic unit of the Indian Constitutional polity.*

Arguably her judgment reveals a bias towards the exclusionary practices and sets a wrong precedent and provides a weapon to the supporters of the ban including the State to criticize the majority judgment. She failed to drop the blindfold and see that under the traditional practice hides discrimination of women and deprivation of their rights.

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<sup>47</sup> PARA 8.2

## 6. SABARIMALA CASE: AN OPPORTUNITY MISSED

While nationally and internationally much attention has been given to the transformative aspect of the Judgment, the shortcoming of the judgment has not been highlighted. The researcher highlights two of the shortcomings in this Part.

- FAILURE TO OVERRULE THE ESSENTIAL RELIGIOUS PRACTICE DOCTRINE-As per the Constitution, the customs and practices are only bound to be tested at the touchstone of the Constitution and no other text.<sup>48</sup> However, by virtue of the essential religious practice test which was evolved by the Judiciary in Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,<sup>49</sup> the validity of the religious practices are tested on the basis of religious texts rather than on the index of the Constitution. The researcher asserts that the test of essentiality is a barrier to equality as practices interpreted to be essential by the judges are given immunity from Constitutional scrutiny. As a consequence, even 70 years after the Constitutional order was established in India, the Constitutional principles of non discrimination and equality, which the founding fathers held dear, are trampled over by customs.

Moreover, the test requisitions judges to decide validity of a custom based on reading of religious texts, rather than the Constitutional law and thereby compels men of law to theologians. To quote Justice Chandrachud, “*Due to this essentiality doctrine, Judges including Supreme Court judges are now assuming a theological mantle which we are not expected to do.*”<sup>50</sup> He suggested that the testing of essentiality must be done away with and a practice must only be tested on the touchstone of the Constitution.

Though it is plausible that the majority judgments concluded that the exclusion is not an essential practice and even noted the re-examine the essential religious practice doctrine, the Supreme Court missed an opportunity to do away with the essential religious practices test and establish supremacy of constitution over all customs in law.

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<sup>48</sup> Raghav Pandey, ‘Dissecting the Triple Takaq judgment’ (Daily Pioneer 7 September 2017) <<https://www.dailypioneer.com/2017/columnists/dissecting-the-triple-talaq-judgment.html>>

<sup>49</sup> A.I.R. 1954 S.C. 282

<sup>50</sup> Murali Krishan, ‘Question of Law: Essential Religious Practices Test a “problem with our jurisprudence”, DY Chandrachud J.’ (Bar and Bench 26 July 2019) <<https://barandbench.com/question-of-law-essential-religious-practices-test-a-problem-in-our-jurisprudence-dy-chandrachud-j/>> accessed on 7 August 2019.

- It is pertinent to mention that in a few cases concerning rights, the Supreme Court mandates the Government and legislature to bring in policy to safeguard the right. However the Sabarimala verdict is quiet on it. Besides the verdict falls short of completely dismantling barriers on entry and the legality of a ban will have to be decided case to case basis. This also burdens the judiciary as a number of petitions have been filed in the High Courts and the Supreme Court. It also remains questionable if a place of worship has prohibiting women and no legislation governing it, like in the case of Nizamuddin Dargah, would the Court still uphold the supremacy of the Constitution over the exclusionary practice.

## 7. TRANSFORMATIVE JUDGMENT

In quest for upholding the Constitution, the Supreme Court has brought down by its innovative judgments many customs and practices. Particularly in the last decade the Supreme Court and even the High Courts have had the audacity to change the status quo as regards women in a patriarchy minded society. The Sabarimala judgment is the latest addition to the transformative jurisprudence that changes the status quo as regards entry of women to temples. It firmly entrenches constitutional morality and liberates women's rights from the choking hold of organized religion. It disrupts the existing norms and stereotypes about women, particularly women of the child bearing age in religion and thereby acts as a catalyst of change in the society. Through the Verdict in Sabarimala, the Supreme Court has also infused values of equality in society and this will go a long way in breaking mental blocks and shackles which hold women back from participating in daily life during menstrual cycle.<sup>51</sup> Thus it is not merely a landmark as regards entry to temples but also a case in point of judicial hammering that pushes the patriarchal Indian society to embrace gender equality and crawl out of medievalism.<sup>52</sup> It is not exaggeration to say that the Sabarimala judgment is the *Brown vs Board of Education of Topeka as regards equality of women in matters of religion and just like the latter it is a pragmatic bow to justice.*<sup>53</sup>

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<sup>51</sup> Elizabeth Seshadari, 'The Sabarimala judgment; Reformative and disruptive'(The Hindu Centre for politics and public policy 5 October 2019).

<sup>52</sup> Binoo K John, 'When the first women climb the 18 steps to the sanctum sanctorum, it will be a climb out of medievalism.' (News 18 , 30 September 2018) <<https://www.news18.com/news/opinion/opinion-18-steps-for-women-giant-leap-for-women-kind-kerala-crawls-out-of-medievalism-with-sabarimala-verdict-1893565.html>>

<sup>53</sup> Nigam Nuggahalli, 'Pragmatism bows to Justice: In Sabarimala as in Brown v. Board of Education' ( The Wire 6 Novemeber 2018) < <https://thewire.in/rights/sabarimala-row-judicial-rulings-cannot-consider-pragmatism-or-community-interests>> accessed online 1 August 2019.

Is it sheer coincidence that in the history of temple entry in India, only men have ruled on who can enter temples, when and how? Why should such things be decided on the good faith or lack of it of a dominant class/group that holds power over another, one way or the other? Even that, is a tradition, that cannot be justified on grounds that it cannot be changed, only because it is one.<sup>54</sup> Was that also the “will of the deity”, prevailing over everything else, and can be easily upheld in courts?

The judgment has also been criticized as a case of judicial overreach and social engineering on the ground that the courts cannot tell a community what to believe.<sup>55</sup> The fact that the popular conscience is against entry of women is being used to construct the verdict as a case of social engineering. However the researcher asserts that the test of popular acceptance does not furnish a valid basis to disregard rights which are conferred with the sanctity of constitutional protection.<sup>56</sup> Many question the Court’s verdict as interference with divine law. The researcher asserts that the practice could not be equated to divine law. Firstly it had no express basis in religious doctrine and secondly women have been allowed in between to enter. Thus the question of divine law does not withstand.

However it may be asked at this point that where should the court draw line while deciding on cases involving religions and traditions on one hand and individual rights to equality on the other and who decides the line ?

## 8. RESISTANCE: Limits to state capacity to reform

Despite the Supreme Court verdict, the right to enter places of worship continues to reside in controversy. It was greeted with outrage from the fanatic mob that refused to abide by the verdict and allow women to enter the shrine. Though the State Government of Kerala aided the entry of women from the prohibited age, all other political parties including the ruling party at the centre remained critical of it and added fuel to the fire. As a consequence in spite of police protection women could not enter the shrine. Two women who were able to enter the shrine subsequently faced violence and trauma, revealing the depth of the internalisation.<sup>57</sup> This reveals the limits on

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<sup>54</sup> Sowmya Sivkumar, ‘Sabarimala: Deities will cannot trump the Constitution on the Right to equality’ (The Wire 30 July 2018) < <https://thewire.in/law/sabarimala-is-temple-entry-a-destination>> accessed on 8 July 2019.

<sup>55</sup> Aneesha Mathur, ‘Sabarimala stand on women and untouchability not the same, Supreme Court told’ (India Today 6 February 2019).

<sup>56</sup> Outtaswamy 144

<sup>57</sup> ‘ Women who entered Sabarimala thrown out of husband’s house’ (India Today 28 January 2018) < <https://www.indiatoday.in/newsmo/video/woman-who-entered-sabarimala-temple-thrown-out-of-husbands-house-news-1447852-2019-01-28>> accessed on 6 July 2019.

the state's capacity to sort out unfair religious practices without mobilizing the believers themselves.<sup>58</sup>The mobilisation against entry of women is in fact a full throated mobilisation against the authority of the Court and legitimises the idea that religious faith has a final veto over the Constitution. Accordingly it exposes the challenge to rule of law from passions of faith and religion.<sup>59</sup>

## 9. CONCLUSION

While the status of women has considerably improved across the world, they are not treated equal to men in religion and such inequality is widely regarded as 'natural'.<sup>60</sup> Since the adoption of the UN Charter and subsequently the UDHR, women's rights have been acknowledged as a part of universal and indivisible human rights. However, while human rights instruments proclaim that everyone is equal, the attainment of this is hampered by the failure to perceive the barriers on entry as a form of gender discrimination. Moreover, the International Law is yet to definitively and specifically address the issue of barriers on entry of women to places of worship. In fact the issue of restrictions on entry of women at the international level has not been highlighted at the international level and there is inadequate questioning of this form of discrimination.

The exclusion from places of worship on grounds of gender continues to be in place in a number of places of worship across the country. Though, as previously discussed, such practices do not confirm with the Constitution and the state is under an obligation to prohibit them, the Indian state has made no effort to change these customs or introduce a new legislation to dismantle the barriers on entry and uphold the Constitutional principles. The failure of the legislature and executive to shape policy on these issues has compelled the judiciary to undertake the task of dismantling the barriers to entry of women. The Sabarimala verdict is a stepping stone in the quest of justice in a patriarchal society. However, quite the reverse of what should have been a reasonable outcome of the judgment in Sabarimala, the Government of India favours the continuance of customs which ban entry to women and arguably an environment is created by the State for such bans to thrive. The Prime Minister of India Narendra Modi himself came out in support of continuing the ban on entry of women at Sabarimala citing tradition, adding that alteration of such tradition by the State

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<sup>59</sup> Amy Kazim, 'India's temple battle epitomises the struggle between faith and law' (Financial Times 3 December 2018).

<sup>60</sup> Dianne Otto, 'Women's Rights' in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (eds), *International Human Rights Law* (3<sup>rd</sup> edn, Oxford University Press 2014) 310.

would be religious interference.<sup>61</sup> Likewise, while the Parliament should be having discussions on enacting a law that would dismantle barriers on entry of women to places of worship across the country, the discussions in and outside the Parliament revolves around bringing a law to protect the barriers on entry and overturning the judgment of the Supreme Court in Sabarimala.<sup>62</sup> The researcher asserts to protect the barriers under law would be a great folly, particularly given that the ban on entry of women does not conform to the human rights and is not essential to religion. Even if assumed to be essential to religion, the stand of the Government that customary prohibition on entry of women is immutable is erroneous as social injustices have always sought refuge in tradition.<sup>63</sup> While traditions need to be persevered and celebrated, women must not be dis-privileged in the process. **Moreover it is offensive that in a constitutional order based on equality, traditions founded on a social hierarchy and gender stereotyping could be termed as ‘immovable’ or ‘eternal’ by the State.**

The deep roots of religion and culture in the populace’s consciousness which manifested itself in the form of resistance in Kerala subsequent to the Supreme Court verdict outlawing prohibition on entry of women, is brought to the forefront to criticise the verdict and also to warn against interference with tradition. However the researcher asserts that resistance should not be a reason to continue a discriminatory and exclusionary practice. History has witnessed that any break away from age old traditions was met with resistance. In India ban on Sati, dowry and child marriage; reforms to Hindu personal laws have all been greeted with resistance from masses.<sup>64</sup> However the will of the State ensured that reforms were carried out. During the reformation of the Hindu family law and also while opening of temples to Dalits the Government faced nationwide protests

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<sup>61</sup> Smita Prakash, ‘Triple talaq is a matter of gender equality, Sabarimala is tradition: Narendra Modi’ (The Hindu 1 January 2019) < <https://www.thehindu.com/news/national/triple-talaq-is-a-matter-of-gender-equality-sabarimala-is-tradition-narendra-modi/article25881596.ece>> accessed on 9 August 2019.

<sup>62</sup> A Member of Parliament from Kerala even introduced a private member bill titled ‘*Sabarimala Sreedharma Sastha Temple (Special Provisions) Bill*’ to revert back the status quo of the ban and safeguard the Sabarimala customs and rituals. Press trust of India, ‘UDF MP introduces bill to preserve Sabarimala rituals’ (India Today 21 June 2019) < <https://www.indiatoday.in/india/story/udf-mp-introduces-bill-preserve-sabarimala-rituals-1553886-2019-06-21>> Special Correspondent, ‘Only a law to undo SC verdict will pacify the protesters’ (The Hindu 6 February 2019) < <https://www.thehindu.com/news/national/kerala/only-a-law-to-undo-sc-verdict-on-sabarimala-will-pacify-protesters/article26187579.ece>> accessed on 5 June 2019.

<sup>63</sup> Sati, slavery, devdasi, dowry, triple talaq, child marriage were all justified in the name of religion.

<sup>64</sup> Akshay Shnadilya, ‘Arguing for a Uniform Civil Code in India in light of Gender discriminatory practices under Muslim Personal Law’ (Researchgate March 2017) [file:///C:/Users/user/AppData/Local/Packages/Microsoft.MicrosoftEdge\\_8wekyb3d8bbwe/TempState/Downloads/BhattacharyaShandilya2016ArguingforaUniformCivilCodeinLightofGenderDiscriminatoryPracticesUnderMuslimPersonalLawNUALSL.J.%20\(1\).pdf](file:///C:/Users/user/AppData/Local/Packages/Microsoft.MicrosoftEdge_8wekyb3d8bbwe/TempState/Downloads/BhattacharyaShandilya2016ArguingforaUniformCivilCodeinLightofGenderDiscriminatoryPracticesUnderMuslimPersonalLawNUALSL.J.%20(1).pdf) accessed on 19 June 2019.

but the determination of the leadership ensured that reform process remained unhindered.<sup>65</sup> It is submitted that the current leadership must learn from the stewardship of Nehru and Ambedkar and rise above the vote bank. Very often Mount Athos and Okinoshima are also brought in the discussion to support the traditional ban on women<sup>66</sup>, the researcher however strongly disagrees as violation of rights of women can-not be justified on grounds that the same happens somewhere else in the world.<sup>67</sup> Moreover at the international level India has been a flag-bearer of rights of women and it must set the right example for the world as regards entry of women to places of worship.

In absence of the Government support to judicial rulings, ringing the death knell of such exclusion across the country is impossible. The Indian society is in midst of a women empowerment movement and the researcher asserts that there is no better time to dismantle the barriers on entry of women to places of worship. The judiciary has played the role of initiator of rights in the case of of exclusion of women from places of worship and it is time that State at least comes to embrace the role of an enabler of the rights of women and fulfil its Constitutional obligation by abolishing barriers on entry of women. One obvious recommendation is the bringing in of a central law criminalising the ban on entry of women to places of worship. In a diverse country like India it is very difficult to ensure that the entire society is satisfied with the reforms. However the state must irrespective contemplate reforms. Though the Courts gave not urged the Government to enact legislation as regards entry of women, the researcher asserts that a law abolishing the exclusion of women is the need of the hour. With at least three petitions as regards entry of women pending in the higher judiciary and a review petition, it is far more convenient and useful to have a law abolishing the restrictions on grounds of gender than a case by case delivery of justice by an already overburdened judicial system. There is also a need to strengthen the individual rights tradition in matters of religion.

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<sup>65</sup> Law commission para 1.8, Anant Ramachandran, 'Hindu temples must be open to all' (Huff Post 4 April 2019) < [https://www.huffpost.com/entry/hindu-temples-must-be-ope\\_b\\_9604546?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQAAAKfVQYIOD9Cdv3yEXFu8AOX6HOnPwSWFYJQuZpilhqfzO3bvibH-kV54cg3Y\\_qfflbBbmOMD8tlixHukAW-Q6TBvme7cl3FXr7k23KM0rAf2hNaZjM4\\_rthroXVIIIVLRGbabevx69kJtl-KxOqbsDKmFp\\_KMCCjYyVRAnjoTybB1N](https://www.huffpost.com/entry/hindu-temples-must-be-ope_b_9604546?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAKfVQYIOD9Cdv3yEXFu8AOX6HOnPwSWFYJQuZpilhqfzO3bvibH-kV54cg3Y_qfflbBbmOMD8tlixHukAW-Q6TBvme7cl3FXr7k23KM0rAf2hNaZjM4_rthroXVIIIVLRGbabevx69kJtl-KxOqbsDKmFp_KMCCjYyVRAnjoTybB1N)> Accessed on 7 July 2019.

<sup>66</sup> Swami Venkatraman, 'If Supreme Court has to intervene at Sabarimala, it must do so for all religions' (The Print 4 February 2019) < <https://theprint.in/opinion/if-supreme-court-has-to-intervene-at-sabarimala-it-must-do-so-for-all-religions/152330/>> accessed on June 15 2019.

<sup>67</sup> The bans on the other two places though of course violative of women's rights but they are also a lot more complex as compared to the situation in India. For example Greece has reservations to Treaties explicitly protecting the practices at Mount Athos which has a special status within Greece.

**It is important to note that banning exclusionary practice is only the tip of the challenge as the real challenge will be to implement such a ban and usher in a change in the popular consciousness.** The lower castes who were prohibited entry to temples continue to face discrimination despite the ban being abolished by law and their discrimination criminalized.<sup>68</sup> The carrying of purification ritual after two women entered the Sabarimala temple also unleashes the challenge.<sup>69</sup> However that is not to say that change is impossible as the society has evolved and many practices, for example sati and child marriage, that were once considered sacred are now acknowledged to be social evils. Likewise ban on polygamy, widow remarriage and women's inheritance rights under Hindu family laws have been embraced over a period of time. An essential pre-requisite however is to create a social and political environment for women to demand their rights and equality. Effectively combating exclusionary practices requires the state to take a series of measures. Ideally these include a coherent rights based policy, adopting legislation and setting up bodies. What is apparent is the need for concerted effort to address structural factors which perpetuates discrimination against women. Though gender equality in matters of religion cannot be attained over night, it is hoped that the Constitutional morality will prevail and all barriers on entry of women would have been dismantled in near future. The fight to enter places of worship is only the first step in attaining equality in matters of religion and not the ultimate goal.

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<sup>68</sup> Even now the dalits are forbidden entry to many temples and instances where disobedience is punished with torture, beatings and even death are common.

MC Rajan, '80 years since Travancore's temple entry, Dalits forced to fight for right to pray' ( The New Indian Express 6 September 2016)<<http://www.newindianexpress.com/magazine/2016/sep/10/For-Gods-sake-1517930.html>> ,S Senthilir, 'Dalit woman denied temple entry, incident goes viral on social media'( The Hindu 1 May 2018) < <https://www.thehindu.com/news/national/dalit-woman-denied-temple-entry-incident-goes-viral-on-social-media/article23740714.ece>> accessed on 1 JULY 2019.,

<sup>69</sup>' Priests sprinkle holy water, carry out 'purification' inside Sabarimala temple'(News Nation 2 January 2019) < <https://www.newsnation.in/india/news-nation-exclusive-sabarimala-priests-sprinkle-holy-water-carry-out-purification-inside-lord-ayappa-temple-watch-video-article-210392.html>> accessed online 9 August 2019.