



**WOMEN'S RESTRICTED RIGHTS TO  
PLACE OF WORSHIP: LABYRINTH  
OF PATRIARCHY OR PROTECTING  
THE LORD**

*By Anusree Manoj*

*From: JSS College Autonomous,  
Karnataka State Law University, Hubli*

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**ABSTRACT**

This article gives a brief idea of the ignominious reality that women who are being worshipped as goddesses are deprived of their fundamental right to enter into place of worship. With special reference to the recent Sabarimala case and Haji Ali Dargah case the glaring disparities which is deep rooted in the society has been analysed. Women have not been able to throw the yoke of the male dominance and are still caught in the web of culture, traditions which devoid her of the societal status which she deserves. Winds of change are blowing across countries and continents sweeping away many hallowed sanctions, customs, superstitions. It is high time that the Indian society focus on women empowerment rather than turning a blind eye towards the significance of the inevitable and utmost significant concept of "Religious Empowerment Of Women". God has never out casted the women nor has he abandoned her. Instead she is the God's best and beautiful creation. There is a great need to lift the veil of unrealistic and discriminating customs, moreover to explore

the world behind it and thus to balance the scales of justice.

***Keywords :*** *Women's Fundamental Rights, Human Rights, Manusmriti, CEDAW, UDHR, Sabarimala Case, Haji Ali Dargah Case*

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**INTRODUCTION**

*"I measure the progress of a community by the degree of progress which women have achieved"*

*-Dr. B R Ambedkar*

In India we have hold different views regarding women and their position in society. In early times, on one hand, it was believed that woman were honoured, gods feel delighted, while on the other hand, in the times of Manu, she was considered dependent and a weak human being who is protected by her father, when young, by husband in her youth, and by son in her old age, since it was felt that woman in never fit for freedom and she was bracketed with cattle and untouchable as worthy of beating. In spite of this distressing reality, shrines, festivals and places of worship honouring women serves as a symbol of a bizarre dichotomy throughout the country.

Equality and freedom, however, evaded women as in the chequered history of mankind one finds that different and disparate cultures, however distant they may be in time and space, have a similarity and that is contempt for women. This unequal status of women being offensive to human



dignity and human rights emerged as a fundamental crisis in human development, the world over. The complete development of personality of fundamental freedom and equal participation by women in political, social, economic and cultural scenario are concomitants of national development, social and family stability. All forms of discrimination on grounds of gender breed unrest.<sup>1</sup>

At the outset, it is necessary to define certain terms such as women's rights, women's liberation and women's movement. The term women's rights is used to describe that branch of women's movement which is primarily active in attempting to bring about legislative, economic and educational reforms to eradicate sex discrimination in social institutions. The phrase women's movement is used to describe the entire spectrum of women's groups from moderate to radical.<sup>2</sup>

*"Until women assume the place in society which good sense and good feeling alike assign to them, human improvement must advance but feebly."*<sup>3</sup>

The common thread that runs to these excuses patriarchy which is premised upon the notion of women's inferiority and impurity, which then becomes a justification for their subordination. The other connected thread is the perception that women are evil

seductresses who have the power to tempt men even while they are engrossed deeply in prayer and worship. The recurring motive of Eve, who brought about the fall of the mankind by luring Adam into sin and was banished forever from the Garden of Eden, a concept rooted in Judeo-Christian tradition, becomes a theme across different civilisation and religions.

### **POSITION OF WOMEN**

*"Within the Indian subcontinent there have been infinite variations on the status of women diverging according to the cultural milieu, family structure, class, caste, property rights and morals".<sup>4</sup>*

The male dominated society which existed in the earlier times outweighed the prominent role played by women in the society. The women were considered as an outcast and were deprived of their inherent rights and privileges. The women's position during numerous eras can be classified and listed as below.

### **I. WOMEN IN THE VEDIC PERIOD**

In India, feminine glory was at its zenith in the vedic period after which it suffered and declined. This period was characterised by the absence of Purdah system, equal rights in selecting life partners, polygamy being rare. Women participated in all spheres like men, studied in Gurukals and enjoyed equality in learning the Vedas. The respect which the men of that era enjoyed could be best illustrated by the verse "YATER NARIASYE PUJANTE, RAMTA TATER DEVITA" which explains the status of

<sup>1</sup> Mamta Rao, "Offences against women", in, Human Rights in India: Issues and Challenges

<sup>2</sup> Judith Hole and Ellen Levine, Rebirth of Feminism, 1975.

<sup>3</sup> Century of Struggle: The Woman's Rights Movement in the United States, Cambridge Mass: The Belknap Press of Harvard University, 1959.

<sup>4</sup> Romilla Thapar, Looking back in History, in Devika Jain, Indian Women publication division, Ministry of Information and Broadcasting, GOI, New Delhi, 1975, p.6



women i.e., God reside at places where women be worshipped. The religious rights and ceremonies were incomplete in the absence of a woman. Wife was considered as the route of Dharma, Prosperity and Enjoyment.

## II. WOMEN IN POST VEDIC PERIOD

The women status in the society deteriorated and suffered a setback when restrictions and limitations were put on women's right and privileges by Manu. It was in the late Vedic period, which witnessed the birth of Manusmriti an unlimited authority of men. The drastic and dreadful changes which took place in this era was the notion of a daughter's birth being considered as a disgrace and disaster for a father, denial of right to education to women, following the sinister practice of pre-puberty marriages. The subservience of women is precisely summed up in the famous injunction of Manu, where it is stated that women should never be independent.

## III. WOMEN IN THE MEDIEVAL PERIOD

The women suffered abominable and daunting threat to their societal status in this era of disparagement. Uneducated and bereft of any status, they were treated as chattels. The petrifying and alarming social evils like sati, child marriage, female infanticide emerged and women suffered several disabilities. Polygamy and the system of Devdasi also emerged as another puddle of social tranquillity.

## IV. WOMEN IN BRITISH PERIOD

This period was marked by the radical changes which took place in the attitude,

behaviour and living pattern of the society. Notable advancements were observed due to the western impact of socio-cultural life of India. Distinguished freedom fighters have vehemently criticized the custom of child marriage, temple prostitution, prohibition of widow marriage etc. By enacting progressive legislations, a social change was brought thus paving for increased women's mobility.

## V. WOMEN IN CONTEMPRARY INDIA

The most important event which took place soon after independence was drafting of Indian constitution enshrining the principles of Equality, Liberty and Social justice.

In a nutshell, it can be clearly depicted that the status of Indian society which is pre-eminent for its traditions, moral values shows declining position of women; women being eclipsed by the superiority and dominance of men.

## TEMPLE- THE ABODE OF SANCTITY, REVERENCE

God is omnipresent and ubiquitous. However idols and shrines portray the existence of God and serve as a means of practicing one's own religion. It is where God is believed to dwell and includes Hindu, Buddhist, Jain temples and so on. Hindu Temple symbolizes all elements of Hindu cosmos, elements of Hindu sense of cyclic time, and the essence of life. People flock in especially during the festive seasons, offering themselves at the mercy of the God. God has never carved a degraded position for women. Instead he chose women to be the procreator which itself explains how worthy she is. One important point in understanding the value structure in



Indian society is the dual concept of the female in Hindu Philosophy. On one hand woman is fertile, benevolent bestower of property; on the other hand she is considered aggressive, malevolent and destructive. This dual character manifests in the goddesses also, as there are dangerous ,aggressive, malevolent goddesses like Kali and Durga ; there are equally important Goddesses like Laxmi, Saraswati who are benevolent.

According to Susan Wadley, there is logic in this concept. She says , "The female is first of all Shakti ( energy or power), the energising principle of the Universe. The female is also Prakriti (nature), the undifferentiated matter of universe". She further observes, "uniting these two facets of femaleness , women are both energy / power and <sup>5</sup>nature, and nature is uncultured....uncultured is dangerous".

Veena Das says that in Shakti form the goddess usually stands alone and is not encompassed within a higher male principle. "The principle of power finds expression in the goddesses who represent 'Shakti' who come to the aid of man and the gods in the periods of cosmic darkness, by killing the demon who threatens the cosmic order".<sup>6</sup>

The women is indeed considered as relevant and worthy of all the rights and privileges. She who is deemed to be the embodiment of sacrifice, benevolence, bearer of all hardships is given neither the rights of the

normal human being nor is she given the respect which she deserves. Women's right to enter places of worship has always been a contentious and dubious issue. Their right to enter the place of worship is always subjected to limitations. India, the land of diversities marked by numerous religions, multilingual, multicultural facets also has appalling loopholes in its so called "diversity" of which it boasts about.

The people even in this modern era – the era of globalization, privatization are caught in tentacles of superstitious beliefs restrained by unrealistic, illogical views. They haven't been able to shake off the shackle of deep-rooted, baseless culture and is a major setback for the Indian economy.

#### **WOMAN EMPOWERMENT :**

It is a means of nurturing inner strength, creativity and self esteem of women in all walks of life. Women have been delivering multiple roles without any complaints from the time immemorial. They have been dispensing their duties without any hesitation, and in a flawless and gracious manner including her role as doting daughter, caring mother, highly skilled colleagues. They are however ignored and had witnessed the brunt of injustice, oppression. They have to be restored to their rightful status, for which the concept of woman empowerment was introduced. Uplifting women in all spears of life is inevitable; however in practice still woman empowerment has not surpassed the expected level. Moreover political, economic, social empowerment of women is looked upon by the society. "Religious empowerment" is the need of the hour as women are deprived of their fundamental right to profess and practice their religion.

<sup>5</sup> Susan Wadley , Women and the Hindu Tradition, In Women In India , Two perspectives ,By Jacobson and Wadley,1977p.144.

<sup>6</sup> Veena Das ,The Mythological Film and its Framework of Meaning ,in Indian International Centre,Quarterly, Volume 8, No.1, 1981.



The expression religious empowerment should be paid heed to. Religion is what that regulates the social life of a being and thus it becomes necessary for women to exercise equal rights in their religious matters. Restricting women from entering their religious space is not only against the equality principle but also proves to be hurdle to their socio-cultural development. The women are being denied of their rights namely,

### 1. CONSTITUTIONAL RIGHTS

*"Women comprises half the world population, perform nearly two-thirds of works hour, receive one-tenth of the world's income and own less than one-hundredth per cent of world's property"*

*-A report of the United Nations, 1980*

*"Half of the Indian population too are women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrificing and self-denial are their nobility and yet they have been subjected to all inequalities, indignities, inequities and discrimination"*

*- Justice K. Rama Swamy in Madhu Kishwar v State of Bihar (1996) 5 SCC 148*

The Indian Constitution adopted by the constituent Assembly on 26th November, 1949 is a comprehensive document enshrining various principles of justice, liberty, equality and fraternity. These objectives specified in the preamble and elsewhere form part of basic structure of the Indian Constitution. The Fundamental Law of the land assures the dignity of the

individuals irrespective of their sex, community or place of birth.

#### i) The Preamble

The preamble to the Indian Constitution contains various goals including "the equality of status and opportunity" to all citizens. This particular goal has been incorporated to give equal right to the women and men in terms of status as well as opportunity".

#### ii) Fundamental rights:

**Article 15(3)** lifts that rigour and permits the state to positively discriminate in favour of women to make special provision, to ameliorate their social, economic and political justice and accords their parity.

#### iii) Right against exploitation:

**Article 23** of the Constitution specifically prohibits traffic in human beings. In this context traffic in human beings include "devadasi system". Trafficking in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing human beings for a price just like vegetables.

All the provision of Constitution are equally applicable to men and women. This establishes the intention of the framers of the Constitution in a crystal clear manner to improve the social, economic, educational and political status of the women so that they can be treated with men on equal terms.

**Article 25** of Indian constitution guarantees, freedom of conscience and free profession, practice and propagation of religion. It provides that 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.

On one hand, women's rights are curbed in the name of maintaining status quo and on the other, they are looked upon as sole flag bearer of community identity, often trapped between either being loyal to religious identity or working towards their desire to claim equal rights and freedom.

In Islam although women are not prohibited from entering mosques, there is a separate space for them for prayers. On the contrary, most mosques in India do not allow women and are solely visited by men. **The Haji Ali Dargh** restricted entry for all women after 2012, where in the Haji Ali Trust claimed that it was necessary to manage religious affairs as explained in **Article 26 (b)** of Constitution of India. It gives complete freedom to the religious denomination to manage its affairs in matters of religion. The only restriction imposed by the Act is that the exercise of right is subjected to public order, morality and health. The Bombay high court upholding the woman's right to worship and to enter the mosque like her male counterpart granted them entry into the inner sanctum and thereby assisted her in disposing the religious and spiritual duties. The court ruled that it was the fundamental duty of the state to protect the fundamental right of woman. This move of Supreme Court is a blessing to those who have been striving hard for the betterment of woman's position in the society.

This judgement was challenged after a long time, it was after fifteen years that India

Young Lawyers Association received in SC through a PIL claiming that Rule 3(b) violates the Constitutional Principles of Equality, non discrimination and religious freedom. It was contended that Rule 3(b) violates Articles 14, 15 and 25 of Constitution. It was claimed that as per Article 26(b) religious denomination has the complete freedom to manage its own affairs in the matters of religion.

The terms "matters of religious" has to be interpreted in a scrupulous and rightful manner. Delivery deeper, SC has over the years, developed a doctrine of "essential religious practices" to determine the religious practises, rites which enjoy constitutional protection. Essential religious practices signifies those practises which are "building blocks" or "back bone" of that religion. The alleged religious practise should have the power of changing the nature of religion fundamentally. Can the individual right to religion (Article 25) be completely eclipsed and retracted by a denominational right to manage internal affairs (Article 26(b) )?. The contestable custom of bottling up women exasperates the value of non discrimination which is the central pillar of Constitutional morality. Right to enter temple is also restricted. Hindu, Buddhist, Jain temples in the pretence of the "impurity" of women during menstrual days prohibit the entry of women inside the temples. The ban on menstruating women was enforced under Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules 1965, which states that "women who are not by custom and usage allowed to enter a place of public worship in any place of public worship".



These rules were made under a registration, Kerala Hindu Places of Public Worship (Authorisation of Entry) Act, which was meant to attack discrimination and promote temple entry for all. The passing of the Act proved to be futile. Kerala HC upheld the ban in **S. Mahendren . V. The Secretary, Travancore Case.**

According to **Article 25(2)(b)** state has overriding power to bring a legislation to provide for social reform/throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. This act serves as a proof that makers of Constitution were very well acquainted with unfair, discriminatory practises within religious customs. **Rule 3(b) of Kerala Hindu Places of Worship (Authorisation of Entry) Rules 1965**, has the odour of bad faith. Section 3 of Act provides that no Hindu, of whether Section/class, shall in any manner be prevented, obstructed, discourage from entering place of worship. Rule 3(b) is contradicting to Section 3(b) of Act.

Does restraining women from entering inside the temple, to be precise 'menstruating women' qualify as discrimination under Article 15? **Article 15** of the constitution says, (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. It was contended that reasonable classification of menstruating and non menstruating women was made?, it was no discrimination as only menstruating women were denied their right? They were proscribed because of two reasons:

- i) Women in the banned age group between the age of 10 and 50 menstruate, thus become impure and hence are unable to observe the mandated 41 day penance before commencement of pilgrimage to Sabarimala.
- ii) The diet at Sabarimala temple is "Naishtika Brahmachari" and does not like young women over there.

#### CHRISTIAN VIEW

Hatred towards women and fear of their sexuality exists in Christianity and discrimination against women is apparent within religious worship and practice. Though there is evidence within early church traditions that women occupied important position as preachers, they were later barred from holding such positions. The fear of women and their sexuality still reigns, but women have challenged this notion and have succeeded in getting themselves ordained as priests and bishops within some progressive churches.

#### WOMEN'S IMPURITY

The Vedas refer to the menstrual blood as 'kusum' (flower), 'pushpa' (blossom) and 'jivartake' (giver of life). Mentioning has been done of women like Gargi who challenged Sagi Yagnevalkyia on religious philosophy. Knitted by the web of complex traditions and so called "immemorial customs" people fail to analyse and reason the controversy behind the issued raised. Menstruating women if considered as impure in the society then why does the society alienate the infertile women? Menstruation is the basic necessity for child birth, is the unique gift to women, she is being adorned the noun of femininity, which



society mistakes to be of "impurity". in both the ways, a menstruating lady, or an infertile lady are secluded by the society in certain aspects.

Taking shelter of the claim "time immemorial", the answer is a counter query. Do we motivate, support and allow all the traditions of pasts which turned out to be arbitrary, inhuman, prejudiced traditions like sati, in the present era. The Sabari mala case represents not just the aspirations and dreams of devout women seeking entry into temple, but also highlights the woman who is awaiting to set a precedent that would firmly ensconce the Constitutional morality in political vocabulary and literate the individual right from choke hold group rights.

Rather than focusing on female extrication the majority of government policies and practises further aggravate the situation. The record of rights violations in the 20th-Century unfortunately could go on and on.

**FOSTERING THE HUMAN RIGHTS AND WOMEN**

The **UDHR** included political and civil rights common to all democratic institutions such as right to life, liberty and equality before the law. **The International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights** were the two most important conventions adopted by UN General Assembly in 1966. Political and Civil Rights ensure people the opportunity to draw attention forcefully to general needs and to demand appropriate public action. the Convention on the Elimination of all forms

of Discrimination Against Women came into force on September 3, 1981. It outlines the purpose of doing away with discrimination against women. It impairs the enjoyment by women of Human Rights and Fundamental Freedoms in political, cultural, civil and any other field. Harmful gender stereotypes, must be dismantled and disturbed, so as to ensure that women are no longer compelled to do anything instead identified as people who are unique with their own needs and desires.

**NATURAL RIGHTS**

Gender equality is the most persuasive and atrocious form of discrimination as it effects the women including girls and girls who form half of the country's population. Mockery can be made of the fact that in a country like India where women are worshipped as shakti, the atrocities are committed against her in all spheres of life. From cradle to grave women are under constant tortures and clutches of enormous social evils, which exist within her family. The nature grants equal rights on her including her right to entire place of worship with no limitations. Gods makes no demarcation as to when and who should be permitted inside the temple. In the present era of technological advancements it would be downright absurd to bar women from entering the temple only on the grounds of her being a women?

Custom usage and statutory laws are so inextricably linked with personal law. Unless the personal liberty are respected and provided against religious dictates the concept of social justice would remain a myth. The restrictions has still been in force and follow to retain the patriarchal nature of



society, to re emphasise the fact that male dominance runs the worlds.

*" All history attests that man has subjugated women to his will, used her as a means to promote his self gratification, to minister to his sensual pleasures, to be instrumental in promoting his comfort; but never has he desired to elevate her to that rank she was created to fill."*

- Sara Grimke<sup>7</sup>

To usher in a just legal order and to enhance gender sensitization, it is necessary that the gender dimension is not localised to a few special branches of law. The difference between man and woman may be small but they have snowballing effects on the status of a majority of women. Gender acts as a prime factor in shaping the legal and cultural landscapes of all countries.

*"This humanity is male and man defines woman not in herself, but as relative to him ;she is not regarded as an autonomous being ....She is defined and differentiated with reference to man and not he with reference to her ;she is the incidental, the in essential as opposed to the essential , he is the Subject, he is the Absolute- she is other."*

-Simone de Beauvoir<sup>8</sup>

The need for women is gender justice which entails end of discrimination against them promising and ensuring them equality of status, opportunity and rights, equality before law and equal protection of law. Even the trivial positive achievement of women's

<sup>7</sup> Sarah M Grimke ,Letters on the equality of sexes and the condition of woman, Boston: Issac Kanapp, 1838

<sup>8</sup>Beauvoir, S., 1948.

engagement with law is worth celebrating without overlooking the naked truth that women's accomplishments with respect to law is still marked by inalienable, integral and indivisible part of universal rights .

### CONCLUSION

*"Half of the Indian population too are women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequalities, indignities, inequities and discrimination"*

- Justice K. Rama Swamy in *Madhu Kishwar v State of Bihar* (1996) 5 SCC 148

The sense of insecurity, humiliation and helplessness always keeps her mum. Cultural beliefs and traditions that discriminate against women may be officially discredited but they continue to flourish at grass root levels. The need for women in India is gender justice which entails end of discrimination against them and ensuring them equality of status ,opportunity and rights, equality before law, and equal protection of law. All human beings are born free and equal in dignity and rights.<sup>9</sup>The history of women's equal rights has, indubitably travelled a jiggered road. But even the minuscule positive accomplishment of women's engagement with law is no doubt worth celebrating without overlooking the bare fact that the material conditions of women's existence is still marked by gross inequality. Should we wait for patriarchy with all its entourage to

<sup>9</sup> U.N. Declaration of Human Rights (1948),Article 1.



start changing and leave the arena of law and legal reform as far as women are concerned? Concept of gender is , therefore, a socio-politico-cultural construct. The human rights of women are an inalienable, integral and indivisible part of universal human rights.

Custom, usage and statutory law are so inextricably mixed in personal law. Unless the personal liberty are respected and provided against religious dictates the concept of social justice will remain a myth. Unless the women irrespective of their religious affiliations have been conferred equal rights on par with men in personal matters the constitutional mandate of right to equality of status and opportunity cannot be a success.

In ancient Greek religion, there were women priestesses who presided over festivals and religious rituals. women priestesses served as Oracles, the most famous of them was the Oracle of Delphi. Feminist anthropologists and historians subscribe to the belief that patriarchy introduced the idea of women's impurity to reinforce male supremacy. Gradually as patriarchy took root, women were chastised for their power of healing and prophesying, and during medieval ages, many healers and midwives were burned as witches.

Our past is a palimpsest. Our traditions are layered and our stories multiple. we should be careful when we talk about honouring traditions, steeped as they have been in medieval darkness and discrimination. Women have always been discriminated against men and have suffered denial and are suffering discrimination in silence, self

sacrifice, and self denied are their nobility and fortitude and yet have been subjected to all kinds of inequities, indignities, incongruities and discrimination. The personal laws are discriminatory and after coming into force of the constitution a question arises as to how these laws enjoy immunity?

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