



## CUSTOM VS. CONSTITUTION- WHY NO TO WOMEN TO ENTER INTO RELIGIOUS PLACES?

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### Custom vs. Constitution

#### Why No to women to enter into religious places?

*When men are oppressed, it's a tragedy.  
When women are oppressed, it's tradition."*

### Abstract

While constitutional law is expected to be an area of clarity and certainty. Our Society is still facing some bottlenecks which are brought up by Customs. Customs in India are prevailing since decades and one can get amazed by the behavior of ardent cohorts of these customs who followed them sightlessly. In some famous temples of India, women are debarred from entering the temples due to some very conservative reasons like biological cycle and deity is celibate. While discussing about this topic in legal perspective, it is appropriate, to talk about the constitutional validity of this custom and the stand of judiciary in matters relating to women rights and temple entry. In the recent judgment, the Maharashtra High Court allowed women in Haji Ali Durgah of Mumbai. It has turned into a symbol of hope to similar demands across other temples throughout the country.

<sup>1</sup> [Letty Cottin Pogrebin, Deborah, Golda, and Me: Being Female and Jewish in America](#)

Keeping these backward practices as the central issue, this paper seeks to do make a case against such restrictions. It tries to accentuate the need for state intervention to cure the injustice. It brings forth the ideals of gender justice and equality intrinsic in the constitution. It focuses on entangling the perplexity caused due to the conflict of interests of two different groups. The paper tries to counter the appearances given to impose such restrictions on women inside temples. Moreover, the imposition of certain fixed age limits on women as to when they are not permitted to enter temples, by some temple trusts have certainly, fixed the patriarchal norms over women devotees. Men can worship a female divinity, who signifies the value of women power, but they cannot regard the respect of a woman devotee. The write-up culminates to a conclusion that groups that impose such restriction has no proper justification for it.

### Introduction

India is a land loaded with customs, traditions, rituals and various religious beliefs. Earlier when there was no rule book like Constitution of India, people were guided by these religious rules only. But now we have law of land i.e. constitution but still this system persists in this 21st century. People keep these religious rules at par with the rules written in constitution. Women have long been discriminated against on various fronts and affections with a sanction assumed to be derived from religion. The dread of their sexuality is common to all religions across the country in some shape or the other and exhibits itself in different religious practices. They were banished from holding key positions in temples, they



were not permitted inside the inner sanctum of holy places and purification ceremonies were performed to purge the divinity of a woman's touch. Constitution takes everything under its ambit to rule upon but demonstrate liberty, when question Comes to religion and gave the authority to religious denomination to decide on religious faith, tradition and custom. But when liberty given without confining its range people start misusing it and the same is evident in present case.

### ***Religious perspective-***

#### **What religious scriptures says about women entry in temple?**

In the religious text named "Hadith" of Muslim religion, Prophet said<sup>2</sup> It is better for women to pray in the house, in her inner room, rather than going to Mosque, this is said not because of impurity of women but for facilitating their household work and to save their time, but people misinterpret this saying and start using it as restriction and when we refer Quran 'No verses contained regarding restriction on women for temple access<sup>3</sup>. Similarly four Vedas never stated anywhere that a woman's body is not pure or that she can't do religious ceremony during menstruation. Restricting women from entering temples and castigating them as impure is squarely against the teachings of the Vedas. This notion is believed to have been begun in the ancient period of civilization where the patriarchal social structure was just taking shape. It was the

beginning of male dominance and the consequent subjugation of women through these practices. So, there is no truth in banning them in the name of religion.

### ***Constitutional perspective -***

#### **Conflict between rights of religious denomination and women - whether Ban on entry of women is an essential practice of religion?**

Our constitution keep individual rights and group rights at par with each other. In terms of religion rights where Article 25 provides for freedom of religion to an individual, in the same Part<sup>4</sup> Article 26 gives shape to the freedom of religious denomination as a group right. Under Article 26(b), every religious section has right to manage its own affairs<sup>5</sup> in "matter of religion". Our apex court has interpreted this 'matter of religion' as essential and integral practice of religion and laid down the test in Lakshmindra case<sup>6</sup> to determine which religious practices can be termed as an essential religious practices. Essentiality of any practice is determined by their impact on the nature and essence of religion means practices which are fundamental to follow religious belief are essential. So in order to determine the validity of ban on entry of women in temples, in mosque or in church we have to refer their different religious texts. Like Hindu religious text talks about obligation on men and women to perform Agnihotra Yagna (Daily Havan) which is considered as Mahayagna. Here word 'Daily' clearly implied that women can perform it during

<sup>2</sup> Why are women, not allowed in the Mosque? zakirnaikqa.wordpress.com, <https://zakirnaikqa.wordpress.com/2013/07/02/q-why-are-women-not-allowed-in-the-mosque/>

<sup>3</sup> Ibid 2

<sup>4</sup> Part III of The Constitution of India (fundamental rights)

<sup>5</sup> Article 26(b) of Indian constitution

<sup>6</sup> The Commissioner, Hindu vs Sri Lakshmindra Thirtha Swamiar, 1954 AIR 28



their menstrual days also<sup>7</sup>. So when Vedas which is considered as highest source of knowledge do not consider them impure, who are the men to label them as impure. In case of Dargah it is already decided in decision of Bombay high court that no verses of Quran talks about this sort of restriction. This is just a religion independent custom or tradition which found no reference in any religious text books. It is a custom shaped by our trustees of temples who are trying to manage freedom of other persons on the name of managing religious affair.

This monopolization of religious denomination to manage its own affairs in matter of religion is limited to the essential religious practices, henceforth our followers of this custom cannot remain under the veil of 26(b) to continue this restriction and should not use the places of worship as a sword for discrimination. So, the claim of right of religious denomination in itself is faulty as a result of which women rights will prevail.

**Custom inconsistent with fundamental right be void under article 13**

Any custom or usage which is in force in India, which is inconsistent with the fundamental rights, that custom or usage is void.<sup>8</sup> The customs like sati system, devdasi system, polygamy etc, have been abolished because of this clause in article 13 of our constitution.

Court also stated in N. Adithyan v. Travancore Devaswom Board & Ors<sup>9</sup> case that 'Any custom or usage irrespective of even any proof of their existence in pre constitutional days cannot be countenanced as a source of law to claim any rights when it is found to violate human rights, dignity, social equality and the specific mandate of the Constitution and law made by Parliament'<sup>10</sup>

This custom should be abolished as it violate article 14 as this question of entry is a question of inequality, article 15(1) as age classification in essence is an discrimination on the basis of sex and the biological factor, which is a characteristic of the particular sex.

It is not just about sabrimala its about all the temples like haji ali drgah, shani singapur temple in Maharashtra, Pushkar in Rajasthan etc. which restrict women on one ground or the other, which is apparent violation of their right to pray and right to live with dignity under article 21 and freedom to religion under article 25. Article 25 says that 'all persons are equally entitled...' This means all 'person' irrespective of their gender, irrespective of their being biologically different, irrespective of them being able to produce, irrespective of them being a woman or a man have a right to practice religion.

***Traditional perspective-***

**It is not even a valid custom so how could it turn into law**

<sup>7</sup>Parkhe, M.S. Agnihotra, The Vedic Solution For Present- day Problems, Vaidika 1 SaŪœodhan Maõçala, Poona, 1982, P 50.

<sup>8</sup> Article 13 Constitution of India (MP Jain 7) (2016)

<sup>9</sup> N. Adithyan v. Travancore Devaswom Board & Ors. 2002 8 SCC 106

<sup>10</sup>The State Of Bombay vs Narasu Appa Mali AIR 1952 Bom 84



when we saw this so called discriminatory custom through the lens of validity of customs it is not qualified to pass that test. Custom do not arise from the conflict in interests. In order to be valid, a custom must be reasonable, should not be opposed to morality, public policy, express enactments of legislature and it must have an antiquity and certainty feature. A custom is unreasonable if it is injurious to the masses and detrimental to the commonwealth. It is reported that the queen of Travancore have visited the Sabrimala temple in 1940 when she might have been just 45 years old<sup>11</sup> then how could this custom be 1500 years old or of ancient times. In dargah also this restriction is not from the past but imposed just 6 years ago. This custom is clearly go up against constitutional morality by being not in conformity with the general principles of justice, equity and good conscience.

Yes it is true that clause 2(b) of article 25 provides power to state to reform such kind of derogatory practices But here in case of Sabrimala temple of Kerala, state in exercising this rule-making power by legislating Kerala Hindu places of public worship (authorisation of entry) Act, 1956 for the objective of facilitating temple entry to all classes and sections of Hindus in temple without discrimination end up with exactly the opposite goal. Rule 3(b) of Kerala Hindu places of public worship (authorisation of entry) rules, 1956 which

turns this custom into law is blunder on the part of state. if this rule not abolished in time, it have the potential to gulp down the whole edifice of the social reform legislation itself.

*Social perspective –*

**Fault is of menstruation but punishment given to victim of this biological process**

Every girl had a thought during her initial phase of puberty that why they are bestowed with this curse of menstruation. Yes she feels depressed, discriminated when she bombarded with huge no. of restrictions on those 3 days which tagged as impure days by our pnoxious society. Among those so many restrictions; one of them is not to enter religious places. When the question comes up why she is not allowed, she never got a satisfactory answer. The two reasons which are widely used by our society to keep their irrational custom continue are menstruation or the celibacy of deity. About menstruation, I want to ask do you consider Devi Khamakhaya of Assam and Devi Bhagwathi of Chengannur(Kerala) also impure who are believed to menstruate. If yes, then why to worship her and if no, that means you're no longer left with this argument to prohibit women. Ayurveda considered it as special opportunity for women to clean excess dosha monthly but our society consider menstruation itself as dosha to restrict women from accessing temple, it is like consider elixir as poison. It was said that earlier that if shudras enter in temples or touch the idols, god will became furious and disaster will happen but nothing of this sort happened because god do not discriminate among any class, caste or section of worshipper. It is only men who does that at God's name. In present scenario also there

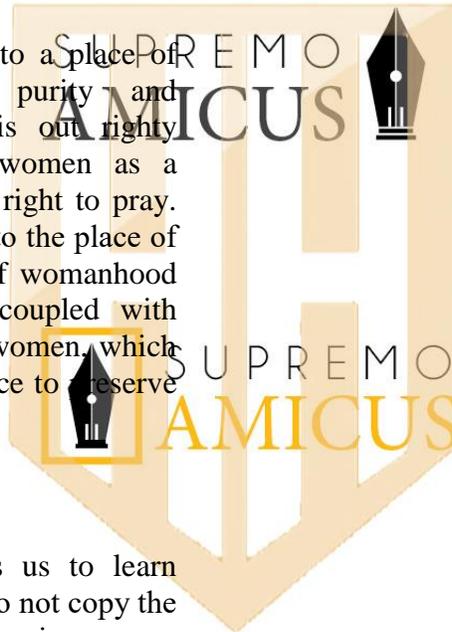
<sup>11</sup> Kerala for allowing women of all ages into Sabarimala temple, Atricle The Hindu FEBRUARY 08, 2008  
[HTTP://WWW.THEHINDU.COM/TODAYS-PAPER/TP-NATIONAL/KERALA-FOR-ALLOWING-WOMEN-OF-ALL-AGES-INTO-SABARIMALA-TEMPLE/ARTICLE15160720.ECE](http://www.thehindu.com/todays-paper/TP-NATIONAL/KERALA-FOR-ALLOWING-WOMEN-OF-ALL-AGES-INTO-SABARIMALA-TEMPLE/ARTICLE15160720.ECE)



are many temples where women are allowed, whether they are menstruating or not. So does the god is different there? Why does religious atmosphere not get polluted in those temples by menstruating females? And on the point of celibacy. If the deity is true celibate then the onus is on deity to not get disturbed by the women why blame women on disturbing you ? God is no man for whom it is difficult to control his senses. The whole point is we are so small to understand the ways of god so better is to understand the constitution and end these restrictions.

for the rights of dalits to enter into temples they termed them as civil rights and not religious rights. So abolishing this ban in all the temples, dargah, church etc. would work as a tool to protect their fundamental rights as well as a step towards their social upliftment. It is an issue of human rights, from a larger perspective and Indian constitution has ensured fundamental rights as well as human rights to each and every individual of this country which definitely can't be snatched away by the custom which has no source and no validity at all.

Denying a person to enter into a place of worship for reasons of purity and maintaining the sacredness is outrightly outrageous. Don't portray women as a goddess if cannot furnish her right to pray. Prohibition of women's entry to the place of worship solely on the basis of womanhood and the biological features coupled with womanhood is derogatory to women, which Article 51A(e) aims to renounce to preserve the dignity of women.



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**Conclusion**

Our moral principles teaches us to learn from the past but caution is 'Do not copy the past' and unlearn what comes in way as barrier to progress, so in this context we should unlearn rudimentary customs from the past and learn about the roles and respect given to women. Disallowing women's entry into religious places is not only disregard their fundamental rights, as enshrined in the Indian Constitution, but also acts as a prevention to their socio-cultural development as it is about their civil rights also even when B.R Ambedkar fought