

**“Traditions Impinging Legal Rights-Ban on Women’s Entry into Temples”**

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**“As a devotee, I think God do not have any special conditions for any of his creations, and as a woman and a citizen I think my right to enter the temple is questioned here. It’s a clear and sheer discrimination with me and my rights.”**

**- Suneetha Balakrishnan**

**Abstract :**

According to a believer God is everywhere but if a woman finds her faith in a temple idol, how can tradition stand in the way of her right to worship, this was the first question that was posed by the Supreme Court to the Sabarimala authorities on the “class grievance” of women denied entry at the Kerala temple, presided over by a celibate deity. Article 25 of the Indian Constitution guarantees to all persons the right to “freely profess, practice, and propagate religion”, but most of the time what we is, that these rights are infringed and the perpetuator have various reasons with which he supports his arguments. Not surprisingly, most women do not object to these issues because they have been made to believe that what has been done till date and what still continues is for there best only. As today there is a dearth of laws aimed at safeguarding the rights of women, therefore the right of a women to worship at temple is always given a back seat, and the law that exists today are not so effective, which is a serious lacuna against this background and is required to be attended. This article will focus on the ban of entry of women into temples, and the problem that why this issue should be paid heed.

**Introduction :**

The restriction on women to enter the places of religious worship has now become a contentious issue of the time. This is not the case that has came up suddenly, such practices have been persisting in India from time immemorial<sup>1</sup>, but the awareness and the movements across the nation have recently espoused these concerns, leading to several petitions and appeals filed before the High Courts and the Supreme Court.<sup>2</sup> The right to freedom of religion and practising, professing and propagating it freely, subject to reasonable restrictions under the Constitution, forms the backbone

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<sup>1</sup> Several places of worship in India deny entry to women, including the Haji Ali Dargah in Bombay, the Patbausi Satra in Assam, the Sabarimala temple in Kerala, the Trimbakeshwar temple in Nashik and the Kartikeya temple in Pushkar. A common justification given is the fear that the sanctity of the temple premise would be compromised by menstruating women who are considered impure and polluted.

<sup>2</sup> DNA Web Team, Five Places of Worship in India that Deny Entry to Women(1 April 2016), <http://www.dnaindia.com/india/report-shani-temple-sabarimala-sree-padmanabhaswamy-haji-ali-entry-to-women-2196954>.

of our secular country.<sup>3</sup> Ensuring gender equality and striving towards a more inclusive society is also a salient feature of our Constitution. And who would have thought that the right to pray would be something to be debated upon? Cases involving the Sabarimala temple in Kerala, the Shani Shingnapur temple in Maharashtra and the Haji Ali Dargah, where women have been denied access to the inner shrine, have brought this issue into the limelight. Going with the wind and encouraging the trend, courts have upheld the rights of women to equality and freedom of religion, thus trying to end the years old custom and striking down the restrictions imposed. The Bombay High Court, for instance, ruled that the inner sanctum of the Shani Shingnapur temple in Ahmednagar, Maharashtra to be opened to women, as it is the fundamental right of women to enter all places of worship that allow entry to men, and the duty of the state to protect such right.<sup>4</sup> The Court relied on the **Maharashtra Hindu Places of Public Worship (Entry Authorisation) Act, 1956** which prohibits obstructing a section or class of the Hindu population from entering places of worship.<sup>5</sup>

In a landmark decision, the Bombay High Court permitted the entry of women entry into the sanctum sanctorum at the Haji Ali Dargah in 2016, terming the ban on entry unconstitutional.<sup>6</sup> Superseding various constitutional principles and provisions, the Bombay High Court dismissed the protectionist approach adopted by the state towards gender equality, reaffirming the state's constitutional obligation to guarantee equality and non-discrimination.

This denial of the entry into the temple is not for all women, only the women between the age of ten and fifty have been denied entry to the Sabarimala shrine in Kerala for over sixty years. In 1991, the ban on entry of women was challenged before the Kerala High Court, which upheld the ban.<sup>7</sup> India Young Lawyers Association has than sought a review of the issue through public interest litigation before the Supreme Court, arguing that the ban violates women's rights to equality, non-discrimination and religious freedom.<sup>8</sup> The petition presents a crucial opportunity for the Supreme Court to clear the path for equal rights for women in matters of religion.

### **Hypocrisy continues :**

In Indian, a vast section of Hindu men are an ardent devotee of goddesses.<sup>9</sup> Be it goddesses like Durga, Kali, or Mahalakshmi, the popular among female deities, one can never escape the

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<sup>3</sup> Adrija Roychowdhury, Women 'Polluting' Religious Spaces: How the Idea Came About (18 May, 2017), <http://indianexpress.com/article/explained/women-polluting-religious-spaces-how-the-idea-came-about/>.

<sup>4</sup> Reuters in Delhi, Indian Temples Cannot Bar Women, Rules Supreme Court, (12 April 2017), <https://www.theguardian.com/world/2016/apr/12/indian-temples-cannot-bar-women-rules-supreme-court>.

<sup>5</sup> Ruhi Bhasin, Shani Shingnapur Row: Allow Women Entry to Temples, says Bombay HC ( 31 March 2016), <http://indianexpress.com/article/india/india-news-india/women-cant-be-barred-from-entering-shani-shingnapur-temple-bombay-hc/>.

<sup>6</sup> Dr. Noorjehan Safia Niaz v. State of Maharashtra, 2016 SCC OnLine Bom 5394, [https://sabrangindia.in/sites/default/files/160826\\_haji-ali-judgment.pdf?584](https://sabrangindia.in/sites/default/files/160826_haji-ali-judgment.pdf?584).

<sup>7</sup> S. Mahendran v. Travancore Devaswom Board, AIR 1993 Ker 42.

<sup>8</sup> Satya Prasoan, The Sabarimala Case Has the Potential to Be a Constitutional Watershed, November 7, 2016, available at <https://thewire.in/77640/sabarimala-temple-case-constitutional-watershed/>.

<sup>9</sup> Meenakshi Gogoi, Discrimination Against Women's Right To Temple Entry In India: A Critique (2 November 2017), <http://www.countercurrents.org/gogoi260516.htm>.

astonishing sight of large swarming of men in these women goddesses temples. No wonder, men of all ages worship them as mother goddesses and believe them as Devi or Adi-Shakti and not like any other ordinary women. Men often, keeps their daughters names on women goddesses names like Durga, Parvati, Lakshmi, Saraswati etc but surprisingly, the same men fraternity disregard the dignity of a woman by imposing prohibitory rules on her in case of temple entry. More correct to say, prohibiting women from entering the inner sanctum of some famous temples in India. What makes a man naming his daughter on female goddesses names when he do not give equal rights of worshipping to his daughter, who is a woman and more so, make it conditional for her when to offer prayers and when not? Men can worship the yoni (private part) of a renowned goddess Kamakhya or to say, a bleeding goddess<sup>10</sup> but prohibits a menstruating woman from entering the inner sanctum of the temples. What an irony that women are restricted from offering prayers even though women are no less devotees than men. Undoubtedly, patriarchy has won too, over subjugating women in matters of worshipping and snatching away her very rights from entering the temples. Devotees of all ages and irrespective, of genders should be allowed to offer prayers in the inner sanctum because it makes them feel close proximity to the god or goddesses they worship. After all, it is a matter of one's devotion and not regulation.

Moreover, the imposition of certain fixed age limits on women as to when they are not allowed to enter temples, by some temple trusts have certainly, sealed the patriarchal norms over women devotees. Men can worship a female deity, who signifies the worth of women power, but they cannot respect the dignity of a woman devotee. When it is religiously believed that god and goddesses do not discriminate between men and women, for that matter anybody on this earth and everyone is welcome at worshipping places, then why are women prohibited from entering the inner sanctum of the temples, is it obnoxious and a sheer hypocrisy.<sup>11</sup>

The demand for right to worship at religious places to all classes has long been a part of the larger struggle for social reform in India. Initially begun as a movement towards seeking equality for Dalits with other upper castes, it has now also embraced within its scope women who seek parity with men in access to public places of worship.<sup>12</sup> Across the religious divide, women are staking their claim to equality and creating an imprint on one of the strongest bastions of patriarchy. Whether any authority governing a place of public worship is empowered to prohibit women's entry, in clear violation of the constitutional mandate of equality, is the issue which need the prior attention.

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<sup>10</sup> Anwasha, Kamakhya Temple: Story Of A Bleeding Devi (2 November 2017, 4:34 AM), <https://www.boldsky.com/yoga-spirituality/faith-mysticism/2013/kamakhya-temple-story-032807.html>

<sup>11</sup> Meenakshi Gogoi, Discrimination Against Women's Right To Temple Entry In India: A Critique (2 November 2017), <http://www.countercurrents.org/gogoi260516.htm>.

<sup>12</sup> Women entry into public places of worship (3 October 2017, 2:45 PM), <http://www.neoias.com/index.php/neoias-current-affairs/498-women-entry-into-public-places-of-worship>.

**History Of Women Entry To Religious Places :**

It would be wrong to presume that women were always seen as elements that disrupt the purity of any environment. On examining cave paintings and other historical sites, historians have concluded that during the hunting and gathering stage, women did not just engage in the same activities as men, but were in fact valued for their contribution towards the same. These paintings also conclude that the sexuality of women was highly valued in primitive societies since the whole survival of the community depended on their reproductive capacity.<sup>13</sup> As society moved from the nomadic lifestyle of hunting-gathering stage to the stage of agricultural settlement, labour associated with food production came to be divided along stricter lines of gender. While men were expected to work in the fields, women's labour was restricted within the household. From then onwards, the reproductive capability of women was valued, but no more their ability to contribute economically. Here on we see an insistence on controlling the movement of women since their share of labour in food production was restricted to the four walls of their home. It is during this transition that women appeared to have lost their superior position which they held at the dawn of civilisation. At this period, when men went out hunting, women who stayed behind in their caves observed natural life cycles and seasons and progressed from food gathering to early agriculture. It was believed that women are possessed with the divine power of reproduction and the embodiment of this power was their menstrual cycle which coincided with lunar cycles. Therefore, women were required to be kept under the control of men and hence the notion of patriarchy started taking shape.

Ancient scriptures like Manusmriti, supported this patriarchal notion of controlling women sexuality as it clearly states that it is the duty of the man to guard his wife in order to ensure the purity of his offspring. The tradition of no female presence in religious shrines has been in existence since the time of fourth century and the reasoning behind it was that the priests or other men should not be tempted to engage in any kind of sexual act.<sup>14</sup> A common thread of reasoning that surrounds all the religious places of worship is that of the 'purity' of the site, which is feared to get 'polluted' by the presence of women. Menstruation and pregnancy are most commonly cited as the factors causing 'pollution'. The other popular myth associated with the denial of entry is that women who are 'sexually needy and mischievous' are a threat to the religious structure and the men associated with it.

**Cases From Where The Issues Regarding Women Entry Into Religious Places Arose and came to lime light :****• SHANI SHINGNAPUR TEMPLE (MAHARASHTRA)**

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<sup>13</sup> Adrija Roychowdhury, Women 'polluting' religious spaces: How the idea came about (5 November 2017, 6:23 AM), <http://indianexpress.com/article/explained/women-polluting-religious-spaces-how-the-idea-came-about/>.

<sup>14</sup> Meenakshi Gogoi, Discrimination Against Women's Right To Temple Entry In India: A Critique (2 November 2017), <http://www.countercurrents.org/gogoi260516.htm>.

Women protested outside the Shani Shingnapur temple in Ahmednagar, Maharashtra claiming their rights to offer prayers at the inner sanctum of temple. The women were trying to break the allegedly 400-year-old tradition of the temple banning women from entering its inner sanctum.<sup>15</sup> But the authorities have refused to allow this, claiming that this restriction is based on Hindu tradition and culture. Finally, women have been allowed to enter the inner sanctum after the Bombay High court judgement as it was against women's fundamental rights to public and religious places.

They raised the voice against the age-old traditions that seek only to denigrate women and give them secondary status in a country that has given them equal status. This male-dominated society has, for ages sought to carry on with traditions that suit them.<sup>16</sup> They have conveniently carried on with tradition that subjugates women, snatches their identity and smashes their self-esteem.

- **TRIMBAKESHWAR SHIVA TEMPLE (MAHARASHTRA)**

Trimbakeshwar temple in Nashik that decided to allow men and women to pray inside the inner sanctum of the temple. However, the temple trustees said that women would only be allowed for an hour everyday if they wore 'cotton or silk clothes while offering prayers in the core area.'<sup>17</sup> This issue was similar to the another issue at Mahalaxmi Temple in Kolhapur (Maharashtra) who denied entry to women attired in Punjabi outfits. This imposition of conditions is viewed as an shoot of the patriarchal system which was keen to retain male dominance in the society and discriminate women from public space and places of worship. These conditions though superficially allowed women entry but are actually designed to prevent it.

- **SABARIMALA TEMPLE (KERALA)**

The Sabarimala temple, a famous Hindu temple situated in State of Kerala and dedicated to Lord Ayyappa has been stuck in a legal to and fro for disallowing girls and women between 10 and 50 years of age to enter the temple complex.<sup>18</sup> The reason cited often is that women during their menstruation period are not supposed to enter places of worship. A priest had to reportedly perform a 'purification ritual' after a 35-year-old woman has set foot inside the complex once. As Lord Ayyappa is a celibate (Bramhachari), the devotees are also required to observe celibacy (Bramhacharyam). Only girls below the age of 10 and ladies above the age of 50 are permitted to climb up the hills to Sabarimala. Ladies in the age group from 10 year to 50 years or in the

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<sup>15</sup> Manoj Dattatrye More & Garima Rakesh Mishra, Breaking 400-year-old tradition, women enter Shani Shingnapur inner sanctum (4 August 2017, 12:39 PM), <http://indianexpress.com/article/india/india-news-india/shani-shingnapur-temple-trust-finally-accepts-hc-order-lets-women-in/>.

<sup>16</sup> Women entry into public places of worship (9 November 2017, 4:21 AM), <http://www.neoias.com/index.php/neoias-current-affairs/498-women-entry-into-public-places-of-worship>.

<sup>17</sup> Trimbakeshwar temple lifts ban on women entry with rider (9 October 2017, 2:34 AM), <http://www.livemint.com/Politics/DvklVYU9kD5dBIs22LpOBK/Trimbakeshwar-temple-lifts-ban-on-women-entry-with-rider.html>.

<sup>18</sup> Five places of worship in India that deny entry to women (3 October 2017, 3:34 AM), <http://www.dnaindia.com/india/report-shani-temple-sabarimala-sree-padmanabhaswamy-haji-ali-entry-to-women-2196954>.

‘menstruating age’ are not allowed to make pilgrimage to Sabarimala Temple. This ban which has been imposed in the name of the religion and tradition has been justified on two grounds, Firstly, the women of the age group having the menstrual cycle will not be able to engage themselves in intense spiritual discipline for a long period prescribed for the Sabarimala pilgrimage. Secondly their presence in large numbers during the pilgrimage may naturally defeat the effort of the pilgrims to control their sexual urge which is the most important part of the austerities of this pilgrimage.

The Supreme Court questioned the ban<sup>19</sup> on women at the Lord Ayyappa temple while considering a plea and said the God does not discriminate between men and women, so why should there be gender discrimination in the premises of the temple.

- **HAJI ALI DARGAH(MAHARASHTRA)**

Located along the coast of Mumbai this iconic landmark, which has the tomb of the 15th-century Sufi saint Haji Ali, does not allow women to come close to the grave. Muslim women staged a protest demanding entry into the sanctum sanctorum of the historic Haji Ali Dargah, claiming that the restriction is of recent origin (since 2012) and is arbitrary since several Dargah in Mumbai does not restrict women from entering the inner sanctums of a Dargah. The reason cited by the trustees to the Bombay High court was “The trustees are unanimous on the point that entry of women in close proximity of a grave of male Muslim saint is a grievous sin as per Islam and as such governed by Constitution law and particularly Article 26 of the Constitution, which confers upon the Trust a fundamental right to manage its own affairs of religion and as such interference is uncalled for by any third agency.” But the women have rejected the saying that the discrimination is based on patriarchy and not religion.

Bombay High Court lifted the ban saying it contravenes the fundamental rights of a person. Under the Article 14 (Equality before law), Article 15 (which prohibits discrimination based on religious lines), Article 19 (ensures certain freedoms) and Article 21 (protection of personal life and liberty) any women can enter the Dargah if she wants to.<sup>20</sup> They prohibit discrimination on grounds of religion, gender and so on, and provide freedom of conscience and free profession, practice and propagation of religion.

Similar rules have also been in place at the Nizamuddin Dargah in Delhi, where women are only allowed close to the door and not inside the chamber where Hazrat Nizamuddin Auliya is buried.

- **PATBAUSI SATRA (ASSAM)**

Women are banned from entering the temple Patbausi Satra to preserve its ‘purity’. This temple also cites menstruation as the reason behind barring entry to women. When two women broke a

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<sup>19</sup> Supreme Court order on women entering Kerala’s Sabarimala Temple likely today (13 October 2017, 08:48 AM), SCROLL.IN, <https://scroll.in/latest/853924/supreme-court-order-on-women-entering-keralas-sabarimala-temple-likely-today>.

<sup>20</sup> Bombay High Court verdict on Haji Ali Dargah is "progressive": Manish Tewari (27 August 2017, 2:30 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/bombay-high-court-verdict-on-haji-ali-dargah-is-progressive-manish-tewari/articleshow/53887034.cms>.

500-year-old tradition by entering the sanctum sanctorum of a Hindu monastery in Assam, they were themselves stunned. The monastery, one of many formed by 16th century saint philosopher Srimanta Sankardeva, was in the news a year ago when Assam Governor J.B. Patnaik took a group of women into the temple.<sup>21</sup> Even though the Governor persuaded the spiritual head of the Satra (Sattradhikar) to shun the century-old tradition, the ban has been reimposed.

- **KARTIKEYA TEMPLE (RAJASTHAN)**

The temple worships the Brahmachari form of Lord Kartikeya. According to the devotees, when Lord Kartikeya was doing meditation Lord Indra gets jealous that Brahma might give him more power than himself. So he plans to distract Lord Kartikeya by sending the most beautiful Apsaras. Lord Kartikeya gets angry and curses that “any woman who comes to his place to distract him from his meditation shall turn into stone”.<sup>22</sup> There is a myth that the Lord curses women who enter the temple instead of blessing them. As a result, women are banned from entering the temple. As a result, women are banned from entering the temple so that they are not cursed. Another temple which worships this avatar or form of Kartikeya is present in Haryana as well and it also restricts entry of women.

- **RANAKPUR TEMPLE (RAJASTHAN)**

One of the five major Jain pilgrimage sites, this 15th century structure in Rajasthan prohibits the entry of menstruating women. Among many things women essentially need to do, while entering the temple or inside it, is to ensure that their legs are well covered below their knees. This temple made entirely of carved white marble is a landmark and several Indian and international tourists visit it to admire its beauty and grandeur.<sup>23</sup> However, a large board outside clearly defines when and how a woman can visit here. Again, women on their periods are asked to not to enter the temple vicinity. It also has rules about wearing western clothes and accessories. The temple requires women to cover their legs till below their knees.

### **Religious Arguments v. Legal & Modern Arguments :**

Religious Authorities make the obvious argument by relying on Article 26 of Indian constitution that every religious denomination has the fundamental right to manage religious affairs. They argue that interference by the state in matters wholly religious such as temple entry will infringe their rights. They further assert that faith cannot be subjected to the test of logic and reason. However, this claim is susceptible. Like any other right provided by our constitution, the right to manage

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<sup>21</sup> Teresa Rehman, Prayers answered: women enter Vaishnavite monastery (01 December 2017, 2:10 PM), <http://www.indiatogether.org/vaishnav-women>.

<sup>22</sup> Women are not allowed in these places of worship too, THE TIMES OF INDIA, (26 August 2017), <https://timesofindia.indiatimes.com/india/Women-are-not-allowed-in-these-places-of-worship-too/articleshow/53871816.cms>.

<sup>23</sup> Not Just Shani & Sabarimala Temples these Shrines Also Bar Women (11 November 2017, 2:34 PM), <http://www.mid-day.com/articles/not-just-shani-sabarimala-temples-these-shrines-also-bar-women/16852167>.

religious affairs is not absolute, but limited. Article 26 itself provides the inherent limitations of ‘public order, morality and health’ to this freedom of management. Moreover, courts in India have always assessed religion and its practices in the light of other equally important constitutional rights. For instance, in *Church Of God (Full Gospel) v. K.K.R. Majestic Colony Welfare Association and Others*,<sup>24</sup> the Supreme Court faced the question, whether noise pollution caused by the use of loudspeakers by religious denominations is entitled to the protection of the right to religious freedom. The court rightly said that these religious rights can only exist in harmony with other equally important constitutional rights and that “the state has to step in to set right the imbalance between competing interests.”

To understand how this balance often manifests, for a moment let us assume that there is a religious practise of human sacrifice. It is asserted that the practice forms an essential and inviolable part of religion. Such a tradition, no doubt, would be held impermissible, being offensive and threatening to human life. Even though the implication is comparatively smaller in the case of temple entry prohibition, it will be difficult for one to hold that religious freedom must give way to the right to life, but not to the right to equality. The prohibition on the entry of women in Sabarimala is based on discrimination against menstruating women. It specifically targets an entire section of the population by relying on outdated and sexist notions of purity and impurity. It perpetuates prejudice on a systematic and widespread manner and is *prima facie* unsustainable being violative of Article 14 of the constitution.

Another argument that is often made to support religious exclusivity in the matter of temple administration. It is said that temples could be compared to private book clubs or restaurants serving specific kind of cuisine.<sup>25</sup> A men’s book club cannot be said to be discriminatory against women and a vegetarian restaurant is not being unfair to a non-vegetarian, it is contended. This analogy, however intuitively attractive, is misplaced.

Indian constitution has a peculiar form of secularism emerging from its unique socio-cultural context. The provision in Article 25 of ‘throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus’ perhaps has no other parallel in any other constitution in the world. The country has struggled through targeted discrimination based on caste and sex in the matter of entry and access to religious institutions. The constitutional provision under Article 25, therefore, has the character of attempting to redress a historical inequality. Moreover, the importance of ‘public’ character of temples as different from private book clubs or restaurants cannot be trivialised. The public nature of temples changes the balance altogether in favour of the excluded individual or class. The owner of a private restaurant might be able to limit the access to her place of business, but the entity of state is bound to adhere to the constitutional norms in the

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<sup>24</sup> AIR 2000 SC 2773

<sup>25</sup> Thulasi Kaleeswaram Raj, Sabarimala Temple Case: Should Regressive Religious Arguments Be Constitutionally Protected? (3 November 2017, 2:34 AM), <https://thewire.in/190745/sabarimala-temple-case-women-entry-regressive-religious-arguments/>.



matter of access to public spaces. Going by what the Bombay high court emphatically held in the context of entry of women in the inner sanctum of the Dargah in *Haji Ali Dargah case*<sup>26</sup>, the state is under a positive constitutional obligation to ensure that there is no gender discrimination.

Another argument is that till date no woman has approached the court wishing to enter the Sabarimala temple. It is also said that even if the court rules in favour of women entry, Indian women will continue to respect the religious customs and restrict themselves from Sabarimala.<sup>27</sup> This argument is misconceived. Historically, legal reforms usually precede socio-political change. Legal abolition of several antiquated practices such as *Sati* or untouchability did not witness a social transformation overnight. Law very often stimulates a corresponding socio-cultural evolution. Moreover, the consideration of the court should not be whether women are willing to enter the Sabarimala temple despite a legal ruling. The initial hesitation could be sourced to patriarchal and sexist notions of how women should and should not behave. Constitutional courts, on the other hand, must concern themselves with the infraction of her fundamental rights, in this case, the right to equality and the right to freedom of religion and worship.

**Man's laws cannot make moral what God has declared immoral.**

**-Elder Dallin**

At some point of time the restrictions imposed seems to be true as Hindu temples are not just places of prayer, but places where different deities also reside. Each deity comes with his or her set of rules and traditions. Lord Ayyappa – the presiding deity of Sabarimala is considered a celibate yogi and celibacy is the theme of this temple. The Temple board says women of menstruating age are "unclean". Young women are traditionally not allowed in the sanctum sanctorum of the Sabarimala, since the deity Lord Ayyappa wants to be away from women of reproductive age.

There is a difference between **differentiation** and **discrimination**. There is no discrimination in not letting women inside Sabarimala temple. The pilgrimage ritual is also very stringent and difficult. Women in the menstrual age cannot complete the 41 day mandala ritual because of their monthly cycle. Especially if the monthly cycle starts while on pilgrimage, it will subsequently weaken the body. They need to rest and walking uphill would be very difficult for them, as it is a long walk against gravity. Also, this has been a practice from times immemorial and nobody knows its genesis. Some believe there is rationality behind this practice; others believe it is for the safety and sanctity of the temple and people. One cannot deny that this practice is deeply buried in the hearts and blood of devotees, especially, who observe the 41 day penance. Critics argue that there is *Nari puja in Pongal festival* where only women can participate. Is it gender discrimination according to

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<sup>26</sup> Landmark: Bombay HC opens Haji Ali Dargah to women (2 November 2017, 9:45 AM), <https://www.legallyindia.com/the-bench-and-the-bar/landmark-bombay-hc-opens-haji-ali-dargah-to-women-20160826-7924>.

<sup>27</sup> Thulasi Kaleeswaram Raj, Sabarimala Temple Case: Should Regressive Religious Arguments Be Constitutionally Protected? (3 November 2017, 2:34 AM), <https://thewire.in/190745/sabarimala-temple-case-women-entry-regressive-religious-arguments/>.

Article 14 & 15 of the Indian Constitution? Should there be a demand from men for participating in that puja? Attukal Temple, Chakkulathukavu Temple & Kamakhya Temple, Vishakhapatnam (only women are allowed), the Santoshi Maa 'Vrat' (only women can practice this) and in the Savitri Temple, Pushkar Goddess Savitri who is Lord Brahma's wife situated at Mount Ratnagiri in Pushkar Teertha, Rajasthan. Only women's have right to enter there and offer prayer. Men are totally forbidden here. Tamilnadu's Kanyakumari temple, built on the southern corner of the Country, is one of 51 shakti peeths. It is said that this is the last temple in the territory of India. Men are not allowed in the inner sanctuaries of Kanyakumari Temple.<sup>28</sup>

Many of us get struck in trying to prove whether or not these practices are scientific. The most women who follow menstrual rituals are not concerned with the modern outlook. For most women it is reverence to an old age belief system that they want to be the keepers of. Menstruation is closely linked to the functions of the doshas in the woman's body and menstruation is regarded as a special opportunity enjoyed by women for monthly cleansing of excess doshas. There is a build up of negative energy in the body of woman leading to menstruation and this energy gets dissipated from the body during menstruation. Menstruation is responsible for the downward flow of energy. Therefore, any activity that interferes with this necessary downward flow of energy during menstruation should be avoided. During menstruation, women are more likely to absorb other energies in their environment. So there are various menstrual practices like menstruating woman is not allowed to attending religious functions, visiting the temple, Avoiding cooking and eating with others members of the family, to avoid washing the hair and taking time off during menstruation. The menstruation blood is considered to be as impure and all these rules have been made for the benefits of the women only so that the woman should not have any inconvenience during menstrual cycle.

### **Why Should Women Be Allowed To Enter The Temple :**

Women of all ages should be allowed into the temple as there are various ground on which their's arguments stand valid. Starting from the **religious grounds** it should be allowed as it is also mentioned in the Manusmriti, which is the bedrock of Sanatana Dharma, says women deserve equal respect and it appeases the deities too.

Manu's saying is -

***“Yatra naryastu pujoyante ramante tatra Devta, yatra itastu na pujoyante sarvaastatrafalaah kriyaah”***

- which translated read as: “whenever women are given their due respect, even the deities like to reside there and where they are not respected, all action remains unfruitful.”

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<sup>28</sup> Mithlesh Naraniya, Temples-where only women enters and worships (2 November 2017 3:45 AM), <https://www.speakingtree.in/allslides/templeswhere-only-women-enters-and-worships/savitri-temple-pushkar>

Referring to the prevalent Hindu protocol, the bench in the Sabarimala Temple case<sup>29</sup> said that the mother has to be greeted ahead of father, ‘Kul Guru’ (teacher of the clan) and ‘Kul Purohit’ (priest of the clan) and hence, women should not be prohibited from entering the temples. The bench observed that in Hindu religion, there is no denomination of a Hindu male or female. A Hindu is a Hindu. According to the Supreme Court, “what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion”, and is to be determined, in the last instance, by the courts. To answer this question, courts have examined the foundational texts of a religion, as well as customary practices. For instance, in **Ram Prasad Seth v. State of UP**<sup>30</sup>, the Allahabad High Court analysed extracts from the Manusmriti, the Dattak Mimamsa etc., in order to find that polygamy was not an essential part of Hindu religion. In cases involving Islam, the Courts have consulted the Quran and its suras. For example, in **Mohd. Hanif Qureshi v. State of Bihar**<sup>31</sup>, the Supreme Court relied upon the Quran to hold that sacrificing a cow on Bakr’id was not an essential part of the Islamic religion.

The arguments also stand valid on the Constitutional grounds also as Articles 25 and 26 of the Constitution are equally applicable to both men and women and hence women should be allowed to enter the temple. Article 14 of the Constitution which is about the right to equality – stands violated if women are not allowed to enter the temples citing customary reasons. It has also held that the right to worship does not extend to any and every place. However, in **Ismail Faruqui v. Union of India**<sup>32</sup>, while holding that a mosque was not an essential and integral part of the practice of Islam, the Court also held that if a particular place had a “particular significance for that religion”, access to that place for the purposes of worship would be protected under Article 25.

If the petitioners cannot prove a constitutional right, the Supreme Court has held that, at the very least, the right to worship is a civil right under ordinary law, which can be enforced by a regular lawsuit. For instance, in **Sardar Saifuddin v. State of Bombay**<sup>33</sup>, Das Gupta J. pointed out that

“a right to office or property or to worship in any religious place or a right to burial or cremation is included as a right legally enforceable by suit.”

Court also affirmed that in the context of Hindu denominational temples -in general terms, that if it is found that “all persons are freely worshipping in the temple without let or hindrance, it would be a proper inference to make that they do so as a matter of right.” And if there exists a legal right to access, then there is a consequent duty upon all other persons to refrain from obstructing the exercise of that right.

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<sup>29</sup> Indian Young Lawyers Association vs The State Of Kerala, WRIT PETITION (CIVIL) NO. 373 OF 2006, <https://indiankanoon.org/doc/22558009/>.

<sup>30</sup> AIR 1957 All 411, (1957) ILLJ 172 All

<sup>31</sup> 1958 AIR 731 1959 SCR 629

<sup>32</sup> AIR 1995 SC 605 A

<sup>33</sup> 1962 AIR 853, 1962 SCR Supl. (2) 496

What of the claim, however, that the freedom of religion allows the Trust to determine who gets access to the shrine, in accordance with the tenets of Hinduism? What of the Trust's own religious rights? In fact, Article 26 of the Constitution expressly grants to religious denominations the right to manage their own affairs in matters of religion, and to establish and maintain institutions for religious and charitable purposes. Here, however, it is important to note that insofar as Articles 25 and 26 protect not just matters of doctrine or belief, but also acts done in pursuance of religion (such as, allegedly, the act of excluding women from the shrine), the Supreme Court has held<sup>34</sup> that such protection is restricted to "rituals and observances, ceremonies and modes of worship which are integral [or essential] parts of religion."

The logic behind this argument was explained by Dr. Ambedkar in the Constituent Assembly Debates. He pointed out that in India, the influence of religion is so great, that unless constitutional protection was limited to essentially religious practices, it would retain an unconscionably large hold upon peoples' lives from cradle to the grave. The distinction, in turn, was explained by Justice Sinha, in his dissenting opinion (although not on this point) in **Sardar Saifuddin v. State of Bombay**<sup>35</sup>. He noted:

*"We have therefore, to draw a line of demarcation between practices consisting of rites and ceremonies connected with the particular kind of worship, which is the tenet of the religious community, and practices in other matters which may touch the religious institutions at several points, but which are not intimately concerned with rites and ceremonies the performance of which is an essential part of the religion."*

It can also be seen from the Physiological and Biological aspects as Menstrual cycle is a biological and natural phenomenon and nobody can reverse it and also, nobody could stop women from climbing the Mount Everest because it is physically exhausting for them.

### **Conclusion :**

It is great that we ask these questions now. Men and women should get equal opportunity at work, social life and everywhere. We are saying how unfair it is? The author thinks that we will see the changes in our lifetime. Courts have played a significant role in eliminating discriminatory religious practices in furtherance of social justice. However, this judicial intervention through use of essential religious practices test has enabled the courts to narrow down the religion to its idea of what it should be. Honouring traditions is tricky, since many are steeped in medieval darkness and discrimination. The clock should not be turned back to the ancient times where women were not free. By giving access to women, the court and the state will be giving a signal, they will be saying "No" to a pernicious mindset that believes women and men are not equal. Women should not wait, dear lord, women should not be required to wait any longer. For the Courts, these dispute are more

<sup>34</sup> The Commissioner, Hindu Religious Endowments, Madras V. Sri Lakshmindra Thirtha Swamiar Of Sri Shirur Mutt., 1954 AIR 282.

<sup>35</sup> 1962 AIR 853, 1962 SCR Supl. (2) 496

than an opportunity to strengthen gender equality in India. It also gives the courts a chance to set a strong precedent in terms of adoption of a better approach towards horizontal application of fundamental rights and incorporation of constitutional morality into the Article 25 and Article 26 jurisprudence.