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LawPublicus The Legal Portal

Religious Freedom of Women With Reference to Sabarimala Case

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Religious Freedom of Women With Reference to Sabarimala

Case

By: Madhuri Mitta

ABSTRACT

A country like India has diversity in religious beliefs and practices. The Preamble of the Constitution of India mentions that India is a secular and sovereign nation. India acts as birthplace to many religions including Hinduism, Buddhism, Jainism and Sikhism. 2011 census report shows that many new religions have originated and few foreign religions have flourished in the country. "This data shows that 80.5% adheres to Hinduism, 13.4% adheres to Islam, 2.3% adheres to Christianity, 1.9 % adheres to Sikhism, 0.8% adheres to Buddhism and 0.4% of population follow Jainism"¹. Religion is considered as a sensitive topic as it involves emotions and upbringing of an individual. A flaw related to religion is considered as sin. But we still see that women are still being discriminated against in the name of religion. Women are discriminated against in many societies as adhering to religion. Even though the frequency of discrimination against women has decreased but there are still people not raising their voice against discrimination in the name of religion. Women has successfully fought of discrimination in their home and workplace. Women are still treated less than men in most religions. Sabarimala Case is one of the cases which raises voice against such a discrimination. A group of five women are opposing Hindu culture. They are still not allowed to get education by some Islamic extremists. A Catholic woman cannot be chosen as priest in a Catholic church and The Bible states that women must cover their head and dress modestly. Looking from male perspective doesn't show the discrimination women faces every day by following their religion. The paper concentrates on women discrimination in various religions and which is done by adhering religious beliefs and customs.

KEY-WORDS: DISCRIMINATION, WOMEN, RELIGION, FREEDOM

¹ Available at
<https://www.census2011.co.in/religion.php>

INTRODUCTION

India is a secular country. There are people of various religions, cultures and beliefs living in India. Indian constitution mentions that no discrimination is allowed in nation. Gender is basically the roles played by men and women that are created by society and our culture. It also includes the assumptions embraced about the characteristics of men and women. These roles and expectations are learned from time being. These can be changed over time and can vary between different cultures. This concept is very important here as it expresses how men domination (or women subordination) is constructed. This domination or subordination is not fixed from birth and can be changed as it is not biologically predetermined.

India is a diverse nation where groups and communities play a very important part. Also, our constitution provides both the freedom to follow and religion by individual and right of religious denomination. It provides that it will protect the community's religion with individual religion also. These kinds of decisions have always put courts in such a position where they have to take a very tough call. Despite it being the 21st century, people still believe in such practices that make women inferior to men. Gender discrimination starts from family before the society. Half of the population is women that is the reason this discrimination acts as a barrier in development of society and nation. India is a male dominant country just like most of the countries in the world and the discrimination faced by women on basis of religion is from past many years.

Many religious communities, norms and beliefs have put in the mind of people that women are inferior from men and have no right over men. Women in India faces discrimination throughout her life, from birth to her death. The gender bias is deep rooted from our culture and beliefs. In countries like India, women life starts with discrimination and end in discrimination. Discrimination like Sati Pratha, dowry, denial of education, widow treatment, temple entry, divorce etc. are some kind of discrimination that women face on the basis of religion.

There were several cases from which some kind of discrimination which was done on the basis of religion was abolished and which marked the new steps towards freedom of women. While extending religious freedom and making decisions, the Supreme Court faced many difficulties. These new rules gave women equal rights as men and uplifted them from their position. These

cases were very important and will be known in the coming future. In these cases, we notice that women are putting their points in front of everyone for their freedom and against practices which are not good for society. Women discrimination happens in many ways not only on the basis of religious but in today's world many steps have taken to ensure that discrimination is abolished. It is only on the basis of religion that no one ever spoke of.

Purpose of the Study

In seeking to explain that women have been discriminated against and lived without their freedom in the name of religion. And how it is high time that the government and people work towards their freedom. It also includes how several steps have been taken toward this direction. In this paper we will also see how the government is supporting women for their religious freedom.

Objectives of the study

1. To understand the concept of religious discrimination faced by women.
2. To study the reason why women are discriminated against on the basis of religion.
3. To analyse the cases which uplifted discrimination from women and were steps for women freedom.
4. To understand how these cases were important for religious freedom of women.
5. To see what other laws are passed for women freedom
6. To see what is the future of women freedom and fight against discrimination done on religious practices and traditions.

DISCRIMINATION FACED BY WOMEN

“No nation, no society, no community can hold its head high and claim to be part of the civilized world if it condones the practice of discriminating against one half of humanity represented by women.” – Dr. Manmohan Singh²

Women are being discriminated against for a very long time on the basis of religious beliefs. Muslim women constitute a major part of our population and reflects ethnic and multicultural heritage of country. Many Muslim women who is Islamic by religion practice hijab in relation to their religious beliefs in favour or against their will. In Chapter 24 known as an-Nur (the Light), in verse 30, Allah commands Prophet Muhammad as follows:

“...and not display their beauty except what is apparent, and they should place their khumur over their bosoms...”³

In Chapter 33 known as al-Ahzab, verse 59, Allah gives the following command to Prophet Muhammad:

“O Prophet! Say to your wives, your daughters, and the women of the believers that: they should let down upon themselves their jalabib.”⁴

According to the Qur'an, women following Islamic culture must cover their head by *khimar*. They are also asked to wear loose outer garments. Muslim women wearing head coverings are discriminated and strained, dismissed access to public places and fired from their jobs. They should be free to express their religious beliefs, free with the will to wear hijab or not and clothes of their choice and free from any discrimination. Hinduism, Islamic, Christianity or any other religion does not abolish women from their right to education. All religions allow that education should be provided to men and women equally. We can see that in Islamic culture women are deprived of the choice of clothes they want to wear.

² Available at
https://www.azquotes.com/author/13652-Manmohan_Singh

³ Available at
<https://www.al-islam.org>

⁴ Available at
<https://www.al-islam.org>

Hinduism is a predominantly male dominated religion. Hindu law books prescribe restrictive conditions on women and are particularly male centric. Early back there existed Sati practice in India but in 1829, Bengal Sati Regulation banned Sati practice in India. There were major practices such as Sati practice and dowry system but time being these practices were abolished and banned by law. We're all human. Religion makes us more than that, not less. There exists gender discrimination in church too. They are included from many ministries which involve public speaking or work which involves leadership. The Bible includes statements which says that men are superior and women are secondary. We see that religion influences the lives of people in every way. People's decisions are based on their religious beliefs and traditions. And this is the reason of increasing religious discrimination against women. It makes men discriminate against women. Such thought systems prevent the world from half of its wise talent. Many passages in the Bible teach us that women are inferior and men should be superior to them. They should listen to men and follow their instructions blindly.

“Unto the woman he said, I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee.”⁵ It also states that when women go outside their houses they should wear pro[per] clothes which is the same as Islamic culture. In Buddhism, female nuns have to follow stricter spiritual guidelines than monks.

Talaq-ul-ibadat is a type of divorce practice in Islamic culture in which a man following Islamic religion has full right to divorce his wife by emitting constantly talaq word three times orally. Triple talaq is not mentioned in the Quran. Marriages have been considered private in India until it is recorded in the Special Marriage Act of 1954. In consideration to this, this triple talaq was not abolished in India for a long period of time. Entry in any religious place is not allowed if women is going through her menstrual cycle or if women is of menstruating age. This is discrimination which is faced by women in India and in all religion.

⁵ Available at
www.absentgod.com

MAJOR CASES AND DECISION TAKEN BY GOVERNMENT **AGAINST WOMEN DISCRIMINATION**

TRIPLE TALAQ AND THE SHAYARA BANO CASE

Triple talaq was the practice in which man had the right of uttering talaq three times by which he can divorce his wife. India's 90 million Muslim women faced the threat of a abrupt, verbally, and divorce without court procedures which was against constitution and had to be solved by the government. With the new technology, this belief was practised very badly by men. Husbands over India were sending voice notes and texts and getting divorce with their wives. Before Shayara Bano vs Union of India, there were so many cases related to this issue which forced the courts to solve the matter. The practice of triple talaq was declared as 'unconstitutional' by the Supreme Court. When it was put forward by Shayara Bano, it created confusion regarding personal laws such as liberty and freedom of women. It was also considered un-Islamic. Shayara Bano was a woman who survived domestic violence and was also a victim of triple talaq who applied a petition before the Supreme Court challenging 1,400-year-old practices, such as polygamy, triple talaq and Nikah Halal as they were illegal and violated Article 14, Article 15, Article 21 and Article 25 of the Indian Constitution.

Article 14 states that "The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India."⁶. This means that whether it is men or women they both are equal before law.

Article 15 states that "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."⁷ But by triple talaq, polygamy and Nikah Halal men were treated superior and women were treated inferior.

⁶ Available at
<https://www.manupatrafast.com/pers/Personalized.aspx>

⁷ Available at
<https://www.manupatrafast.com/pers/Personalized.aspx>

Article 21 states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”⁸ Article 25 states 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, practise and propagate religion.”⁹

On 22 August, 2017 declared that this practice violates constitutional morality. The practices like talaq-ul-ibadat violate fundamental rights of women. It was not that triple talaq was only opposed by people. It gained support from All India Muslim Personal Law Board (a non-government body) and their lawyer Kapil Sibal mentioned Article 371A which stated that the constitution does expect to protect the culture and traditions of communities.

There was some statement cited by the panel of judges:

“the things which are bad in religion is not necessary to be bad in law too”

These statements were given by Justice Kurian Joseph who thought that triple talaq violated the constitution. The practice was held as illegal by a 3-2 majority.

Some people raised questions that India should also ban this practice as countries like Pakistan and Bangladesh banned the practice of talaq-ul-bidat. It was one of the landmark judgements which was taken towards religious freedom of women. The country needed to take some steps against such practices as it did not abide by the constitution. Also, this was one of the big steps to stop worthless discrimination faced by women in the name of religion and traditions. It provided Muslim women equal status as any other women of India. This provided Muslim women freedom from a sinful practice. According to the Census 2011 data, 56.5 % women of all married Muslim women were married below the age of 18 years. Marriage at such an early age is against the law but as women are married at such an age it lessens the chance of obtaining education or being independent. Hence, they have no voice against such discrimination and has to follow what the society forces them into. Also, when the women get divorce by the practice of talaq-ul-biddat they have nowhere to go as they are dependent on their husbands for living. This sinful practice put women at a place where they were helpless and had their life totally

⁸ Available at <https://www.manupatrafast.com/pers/Personalized.aspx>

⁹ Available at <https://www.manupatrafast.com/pers/Personalized.aspx>

destroyed. There were many women who were happy by this decision and some wished that such a major decision should have been taken before. These kinds of decisions were a major turning point over the lives of people of India.

SABARIMALA CASE

The next major decision includes the Hindu section – the substantial holy majority in the nation. In this case a five women lawyers stood up to the discrimination and challenged Rule 3(b) of the Kerala Hindu Places of Public Worship. Rule 3(b) states that “Women at such time during which they are not by custom and usage allowed to enter a place of worship”¹⁰ which means that every human can enter the temple disbaring women of the age between 10 to 50 years. It recognized limitations on women of menstrual age to set foot in the temple. Firstly, they went to Kerala high court in 2016 and then filed the petition to the apex court after the Kerala High Court supported practice and ordered that only the minister of religion has the power to take decisions on such religious beliefs. The temple management put out the point that they have a full right to frame rules regarding temple without state’s interference. This petition led to #Ready To Wait campaign which opposed the petition. They claimed that the rules restricted women of only certain age to enter the temple and that it is not that they do not have any opportunity to enter the temple and worship deity. They have the opportunity to wait to enter the temple by attaining a certain age. In this case, people were concerned that the deity they worship is in the form of Naishtika Brahmachari. They also reasoned that the lawyers were puzzling variance of religion with religious freedom. While there were some women favouring the custom that was prevailing but there were some women fighting for their rights. Senior Advocate Indira Jaising said that Rule 3(b) was against Article 14 (equality), Article 15 (no discrimination) and Article 17 (untouchability) of the constitution. Article 17 abolishes untouchability and restricts discrimination on the basis of impurity. It was stated that no women are impure at the time of menstruation cycle. They ruled with majority 4:1 and made a rule of permitting women of all age groups to set foot in the temple. This bench was headed by Deepak Misra. They cited that such practices are discriminatory. It also violates the power of women to worship the deity. This rule had a big impact on the nation as it was the first time that the decision was made on women of menstruating age and had a big impact over temples all over

¹⁰ Available at
<https://www.religionworld.in>

the state. This case is not only having constitutional but also cultural importance. During the hearing, there were some observations made by the judges.

The Supreme Court took notes of Kerala High Court evidence that banning women from temples is not a uniform practice. The truth is that banning of only one practice will not result in fundamental change in any religion. It was also stated that the presence of women distracts the devotees, but it was the duty of the court to break the stereotypes. The Supreme Court mentioned several times that it was not enough to take the decision by the claims given by those who claim to be the 'keepers of religion'. The religious bodies have objected that the activity is religious and not secular. The same was attempted in the Sabarimala case too. But the majority of people said that Ayyappans were not a separate religious identity. The classification based on age of women is against the law and was proven in the court.

It was a surprise that only women on the bench were opposing the petition and this proved that not all women were in favour of the petition and were against it. She cited that the petition was against Article 25 and it was not the decision of the court to take down any religious practice. When people give themselves to the Constitution of India, it is the duty of our constitution to shackle injustice, inequalities and social injustice. Such practice does not have any place in a country where the law is by and for people. It is indeed shocking that after 70 years of independence we still have to fight for equality for half of the population. It was believed that exclusion of women from religious worship is against constitutional values of liberty and dignity even if it is provided in religious texts. It also provided that every person has the equal right of their worship. This landmark judgement also opened gates for religious freedom of women. It is interesting to know that there are so many attempts by the Indian courts to realise what is a 'matter of religion' and what is not. Some people also believe that the bill helped correct a historical wrong and was only about establishing gender equality. Women in various religions have suffered mistreatment of people in response to their beliefs. When this case was passed it affected people all over the world as this was a huge step against one of the biggest religious beliefs. But one believes that some major steps in these modern times are important to take as it does not do any good to the society as a whole.

CONCLUSION

These traditions and beliefs treat women as subordination of male community and load them with responsibility to maintain these practices followed in their religion even if they have no rights over male community. Over time, women have been given greater space and freedom in different aspects. Gender inequality is an international concern particularly when it comes due to religious activities and that is just only to promote their religion -and India is no special in it. India's constitution is the longest of any country which is sovereign and grants some special rights to its people. Seeing the communal diversity our leaders provided special religious laws which mentioned freedom of religion and non-intervention of the nation in holy affairs.

In India, two major religious group played a very important role in uplifting this discrimination. In 2018, Hindu group opposed the verdict of the Supreme Court of India which gave equal rights to women as men to enter Sabarimala temple. There were some opponents who criticized the decision of allowing women of every age to enter the innermost area of holy place which is against the divinity of the temple who has taken vow of celibacy. The judgement was regarded as an attack on traditions and customs of women. It also resulted in protest and movements against the judgement by women who wanted to go with the tradition.

Muslim women questioned about the inequality they face in the divorce rules despite being same citizens as others. Both these cases show how there are some challenges to gender equality even after so many years of independence. Despite several safeguards to the right of equality, women are discriminated against because our constitution compromised personal laws in India. The Hindu Code Bill (1955-56) was one of the largest steps towards reform of women after independence. There were similar reforms initiated by Muslim Personal Law. As a woman of faith who has experienced torture from the impacts of Islamophobia, one needs to understand the importance of working toward religious freedom. But the influence of these amendments has been restricted as citizens of India are still entwined in religious customs and traditions which discriminate against women and are against their freedom. These traditions and customs view women as second to men. There being some women who themselves provide for the religious patriarchy make it difficult for people who want to change these norms. Despite facing the same problem women all over the nation failed to form a unity group or

pressure group. Women need to identify the spots where they face discrimination and oppression to bring out freedom for themselves and for the coming generations. India has evolved in many fields now it is time to have cultural evolution to provide equal rights to women. Change in these norms will bring society towards idealism, Laws help society to change. Any law which is gender and religious sensitive should be passed, but it also means that the nation should build society in such a way that they understand these laws and these laws bring only a positive change and that these are necessary to be passed. This topic is not of debate between faith of people and women but the debate is about a fairer and inclusive society, where everyone is equally protected from harm of any kind. Only when the people and laws are parallel does the nation will have freedom for every citizen of it. Unless these rules are amended one cannot believe that women are free. Some men believing that these traditions are true treat women inferior to such an extent that its men take all over the rights of women and that's not right at all. Women should also try to get the right provided by the law. Once this nation is free from such traditions and customs it will lead to a wonderful nation. We also know that such major steps start from one nation and then the whole world follows them.

This case study is for information purpose only. Nothing contained herein shall be deemed or interpreted as providing legal or investment advice.