

NEED TO ABOLISH THE DISCRIMINATORY PRACTICE OF PROHIBITION ON ENTRY OF WOMEN IN SABRIMALA TEMPLE

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ABSTRACT

The Sabrimala temple dedicated to lord Ayappa at Kerala has an age-old custom of barring the entry of women in the temple as the lord is believed to be a celibate and that visit to the temple by menstruating women would ruin the chastity of the deity. This exclusionary practice is discriminatory in nature and is in violation of the basic human rights and the fundamental rights of women as a community, enshrined in the constitution of India. The state by enacting the rule 3(b) of Kerala Hindu Places of Worship (Authorization of Entry) Act has also acted arbitrarily and thus it should take necessary measures to restore the constitutionality of the act and for the welfare of the society.

Further, the temple authorities that claim preservation of their age-old custom seek protection under article 25 and 26 however, to manage their own affairs; the temple should be a separate religious denomination which isn't the case here. Moreover, the custom should be an "essential religious" rite however barring entry of women does not form an essential religious custom as the same lord is worshipped by women in other temples.

INTRODUCTION

The Sabarimala temple is located along the Western Ghats in Kerala's Pathanamthitta district. Unlike other temples, the Sabarimala temple is not open at all times. The visit to Sabarimala temple is considered to be one of the biggest pilgrimages in the world. The temple is administered by the Travancore Devaswom Board, an autonomous authority under the Government of Kerala.

Kerala's Sabarimala temple is dedicated to Lord Ayappa. Lord Ayappa is being considered as one of the chief deities of the temple. Lord Ayappa is believed to be born of the union of Lord Vishnu and Lord Shiva. Ayyappan, the deity of Sabarimala Temple is a celibate. When he defeated the evil demoness Mahushasuri, she turned into a beautiful young woman. She had actually been cursed to live the life of a demoness until the child born out of the union of Shiva and Vishnu defeated her in a battle. Ayyappan, being the abandoned son of Shiva and Mohini (an incarnation of Vishnu), could set her free after defeating her in the battle. After the battle, the young woman proposed to Ayyappan for marriage, but he refused her saying that he had been ordained to go to the forest, live the life of a *brahmachari* and answer the prayers of devotees. However, the young woman was persistent, so Ayyappan promised to marry her the day kanni-swamis (new devotees) would stop visiting him at Sabarimala. Unfortunately for the woman, Sabarimala was visited by kanni-swamis every year, and she was not able to marry Ayyappan. The woman is worshiped as goddess Malikappurathamma at a neighbouring temple.

Therefore, the temple is a male only temple and that women between the age of 10-50 aren't allowed entry to the temple. Old women and young girls may approach the temple, but those who have attained the age of puberty and to a certain time of life are forbidden to approach as all sexual intercourse in that vicinity is averse to this deity (Lord Ayyappa). According to the board, a sight of menstruating women would tarnish the chastity and celibacy of the deity and that such women would also find it difficult to trek to the temple which is situated on a hilltop amidst eighteen hills at an altitude of 1260 m (4,134 ft) above sea level, and is surrounded by mountains and dense forests.

The Sabarimala temple had experienced two major stampedes-like incidents in which more than 100 people have lost their lives. A total of 53 people has died during a stampede on January

14, 1999, while 104 people were killed in 2011. Before visiting the holy temple, the visitors are supposed to fast for 41 days in a way to cleanse their minds. According to reports, over 3.5 crore people have visited the historic temple in 2016 alone. The temple is open for people of all religions.

TIMELINE OF THE SABRIMALA CASE

- 1990- A petition was filed in the Kerala High Court by S Mahendran seeking a ban on entry of women inside the Sabarimala temple.
- 1991- In a judgement on August 05, 1991, the Kerala High Court had upheld the restriction of women of certain age entry inside the holy temple.
- 2006- A petition was filed in the top court by Indian Young Lawyers Association seeking entry of women between 10 to 50 years at the historic temple.
- 2007- The then LDF (Left Democratic Front) government led by Chief Minister VS Achuthanandan had filed an affidavit in the court supporting PIL (Public Interest Litigation) questioning ban on entry of women devotees.
- 2016- A division bench of two judges of the apex court on January 11, had raised the question over the restriction of female devotees inside the historic temple. On April 11, 2016, the then UDF (United Democratic Front) government led by Chief Minister Oomen Chandy informed the apex court that it is bound to “protect the right to practice the religion of these devotees.” To its reply, the court noted that gender justice is endangered by a ban on female pilgrims. On April 21, Hind Navotthana Pratishtan and Narayanashrama Tapovanam had filed petition supporting the entry of women inside the temple. After the state assembly election, the LDF government was formed headed by Chief Minister Pinarayi Vijayan. The government in a fresh affidavit added that it favoured the entry of women of all age groups.
- 2017- The top court refers the case to Constitution bench.
- 2018- Five judge Constitution bench headed by the then CJI Dipak Misra had commenced the hearing over the matter. On September 28, the apex court in 4:1 judgement had allowed entry of women inside the temple. Following the judgement, several incidents of clashes took place between the protestors and the police. However,

even after the top court's verdict, a large number of followers had restricted the entry of women in the age group of 10 to 50 years.

VIOLATION OF FUNDAMENTAL RIGHTS

The SC in UOI v. Association for Democratic Reformsⁱ held that:

“Even a declaration of Fundamental Rights on the basis of the judgment rendered by the court would qualify for a Fundamental Rights included in chapter III. It is established that fundamental rights themselves have no fixed content; most of them are empty vessels into which each generation must pour its content in the light of its experience. The attempt of the Court should be to expand the reach and ambit of the fundamental rights by process of judicial interpretation. During the last more than 18 half a decade, it has been so done by this Court consistently. There cannot be any distinction between the fundamental rights mentioned in Chapter III of the Constitution and the declaration of such rights on the basis of the judgments rendered by this Court.”

Art.32 of the Constitution can be invoked even when there is a threat of violation of Fundamental Rights and the petitioner need not wait till the actual violation takes placeⁱⁱ.

The Fundamental Right should either be violated or imminently threatened; the violation can be actual or potential and this may arise in a variety of ways and it is not possible to give an exhaustive classification.ⁱⁱⁱ

Therefore, the exclusionary practice that bars the women between the ages of 10 to 50 from entering the temple of Sabrimala does amount to discrimination and is unconstitutional as the constitution of India recognizes the Right to equality and non-discrimination as its Fundamental Rights. Gender-based discrimination reveals ugly face of the society which is prohibited under the Constitution of India^{iv}.

Violation of Article 14 And 15

The bar on the entry of women between the age group of 10 to 50 years is merely based on the fact that they are women and that they menstruate. Therefore, there is a clear violation of Article 14 and 15 of the constitution since the discrimination is on the mere basis of gender.

Article 14 of the Constitution of India states that:

Article 14 – Equality before law: *The state shall not deny to any person equality before the law or equal protection of the laws within the territory of India.*

- ***Equality before law:*** The guarantee of equality before the law is an aspect of what Dicey calls the rule of law in England. It means that no man is above the law. Rule of law requires that no person shall be subjected to harsh, uncivilised or discriminatory treatment even when the object is the securing of the paramount exigencies of law and order.^v

Professor Dicey assigned three meanings of the Rule of Law^{vi} which are as follows:

1. **Absence of Arbitrary Power or Supremacy of Law-** It means the absolute supremacy of law as opposed to the arbitrary power of the government.
2. **Equality Before the Law**
3. **The constitution is the result of the ordinary law of the land.**

The practice of bar on entry of women into the temple on the basis of gender is based on arbitrariness which is authorized by the government as per rule 3(b) of the Kerala Hindu Places of Worship (Authorization of entry) act and from a positivistic point of view, equality is antithesis to arbitrariness. In fact, equality and arbitrariness are sworn enemies: one belongs to the rule of law in a republic while the other, to whim and caprice of an absolute monarchy^{vii}.

- ***Equal Protection of Law:*** It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed by the laws^{viii}.
- The word “any person” in article 14 of the constitution denotes that the guarantee of equal protection of laws is available to legal as well as natural person and citizens as well as non-citizens.

The practice also fails the test of reasonable classification.

The twofold test relies on two principles, that is, reasonable classification and nexus between the object sought to be achieved and the legislation.^{ix}

Since the act excludes women only on the grounds of gender and the fact that they menstruate, with no reasonable explanation, it fails the test of reasonable classification. “The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades article 14 like a brooding omnipresence”^x. “If the classification is not reasonable, the impugned legislation or executive action would plainly be arbitrary and the guarantee of equality under article 14 would be breached”^{xi}.

The next test is on the object sought to be achieved^{xii}. Putting a qualification based on gender has no rational nexus to achieve that object; unless the object is to project India as a patriarchal or a male chauvinist state. Furthermore, it is submitted that the rules of natural justice are implicit in the article 14^{xiii} and therefore such a practice marked by discrimination merely on physiological basis is in violation of article 14 and the burden to prove that it is not, lies on the state^{xiv}.

Moreover, according to Article 15, the state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them^{xv} and by enacting rule 3(b) of the Kerala Hindu Places of Worship (Authorisation of entry) Act, the government has failed to abide by Article 15.

Violation of Article 17

Article 17 abolishes untouchability. However ‘untouchability’ is not defined anywhere, it has been put forth that the constitutional intent in keeping the understanding of untouchability in Article 17 open-textured was to abolish all practices based on the notion of purity and pollution. This Article prescribes untouchability “in any form” as prohibited and the exclusion of menstruating women from religious spaces and practices is no less a form of discrimination than the exclusion of oppressed castes^{xvi}. The ban is based on a social taboo that considers menstruating women as impure and since it is based on notions of purity and impurity, it also violates women’s right against untouchability. Such notions regarding menstruation are also in violation of the dignity and privacy of the women, as laid down by *Puttaswamy v. Union of India*^{xvii}.

Untouchability cannot be understood in a pedantic sense but must be understood in the context of the Civil Rights Act to include any exclusion based on the notions of purity and pollution and that Section 7(c) of the Civil Rights Act, 1955 criminalizes the encouragement and incitement to practise untouchability in “any form whatsoever.”^{xviii}

Violation of Article 19

Article 19 provides for the protection of freedom of speech and expression under (1)(a). The term ‘expression’ includes the expression of one’s ideas through any communicable medium or visible representation, such as gestures, signs and the like.^{xix}

Thus, barring a particular class from offering worship at a particular temple is a violation of freedom of expression protected under this article.

Violation of Article 21

Further, such a practice is also in violation of article 21 of the constitution which provides for right to life and personal liberty. Article 21 of the constitution of India states that:

Article 21- Protection of life and personal liberty: *No person shall be deprived of his life or personal liberty except according to procedure established by law.*

Prior to *Menaka Gandhi’s* decision, Article 21 guaranteed the right to life and personal liberty to citizens against the arbitrary action of the executive, and not from legislative action. The state could interfere with the liberty of citizens if it could support its action by a valid law. However, after *Menaka Gandhi’s* decision Article 21 now protects the right to life and personal liberty of citizens not only from the executive action but from legislative action also.^{xx}

In *Kharak Singh v State of UP*^{xxi}, it was held that the expression ‘life’ is not limited to bodily restraint or confinement to prison only but something more than mere animal existence. The inhibition against its deprivation extends to all those limits and faculties by which life is enjoyed. Thus, right to life means the right to live with human dignity^{xxii}. Life in its expanded horizon includes all that give meaning to a person's life including culture, heritage and tradition with dignity of person. The fulfilment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and discrimination based on gender for human development^{xxiii}.

‘Life’ includes employment opportunities, health facilities, educational opportunities, cultural rights, linguistic rights and many more. The word “life” includes the right to livelihood.^{xxiv} Therefore, if women who menstruate are considered to be impure and are not given the right to worship just for this reason then it affects their dignity adversely.

INTERNATIONAL OBLIGATIONS

India is a signatory of United Nation Human Right Declaration (UDHR) and other core human right treaties which include ICCPR and ICESCR which binds India to international law to protect the human rights. The very preamble of UDHR states that human rights should be protected by the rule of law. India is also a signatory to Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).

Violation of Human Rights treaties

Article 1 of UDHR states that: “all human beings are born free and equal in dignity and rights. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Article 2 UDHR)

Everyone has the right to life, liberty and security of person. (Article 3 UDHR)

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. (Article 7 UDHR)

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law. (Article 8 UDHR).

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. (Article 12 UDHR)

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others

and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (Article 18 UDHR)

Furthermore, Article 3 of ICESCR and Article 2 of ICCPR state that there should be no discrimination on the basis of gender.

Further, the preamble of CEDAW states that “Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity.”

The term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field^{xxv}.

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men^{xxvi}.

States parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.^{xxvii}

Duty to upheld International Law

Article 51 (c) of the Indian Constitution, stresses upon “Pacta Sunt Servanda” principle^{xxviii}. Article 51 (b) and (d) explain how the relationship between India and other countries shall be maintained. Moreover, the principle of “pacta sunt servanda” in international law. According to this principle, given in Article 26 of the VCLT, every treaty signed by a country is binding on it and the obligations imposed by treaties must be performed by the country in good faith^{xxix}.

Any Article under Part IV (Directive Principles of State Policy) of the Constitution of India must be read with Article 37 of Constitution of India^{xxx} hence if is there any inconsistency between the International Law and the Domestic Law, the Court has to interpret and construe in harmonious manner to protect the interest of both the laws^{xxxi}.

Doctrine of incorporation

Legal principle that are, in general, the provisions of international law are enforceable in a jurisdiction so far as they are consistent with the provisions of its domestic law.

The Honourable Supreme Court of India interpreted with liberal construction in the case of **Gramophone Co of India vs. Birendra Bahadur Pandey**^{xxxii}. The Supreme Court of India in this instant case opined that “the comity of nations requires that the rules of international law may be accommodated in the municipal law even without express legislative sanctions provided they do not run conflict with the acts of parliament ...the ***doctrine of incorporation*** also recognizes the position that the rules of international law are incorporated into the nation’s law and considered to be part of national law , unless they are in conflicts with an act of Parliament.

Judicial activism on international agreements

In Vellore Citizens Welfare Forum vs. Union of India^{xxxiii}, the Supreme Court has laid down that “once these principles are accepted as part of customary International law, there should be no difficulties in accepting them as part of our Domestic law.

Hon’ble Supreme Court in cases of *Nilabati Behera v. State of Orissa*^{xxxiv} and *Vishakha v. State of Rajasthan*^{xxxv} tried to convey the idea that the international conventions can be used to supplement the domestic law if the former is not inconsistent with the latter. International conventions could be used to amplify the rights provided under the Indian Constitution.

In the case of *People’s Union for Civil Liberties v. Union of India*,^{xxxvi} court adopted the liberalized rules by stating that the peremptory norms which have already adopted by the

various states can be inculcated in the Indian municipal law if they are in conformity with the latter law^{xxxvii}

Gramophone Company of India Limited v. Birendra Pande^{xxxviii} it was observed by the court that international instruments must be respected provided they are not against the spirit of legislative enactments of the state. It becomes well-settled position in India that there is no need to enact the separate domestic laws for creating international obligation if the both operate without any conflict. It follows from the notion that the states have obligation to follow the international conventions and the rules of international customary law in conformity with their domestic laws. Moreover, India is a signatory of the Convention against Torture and International Covenant on Civil and Political Rights.

Therefore, the states are under an obligation to foster respect to the human rights and that discrimination on the basis of gender is a violation of the same^{xxxix}. Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms^{xl}.

WHETHER THE PRACTICE OF EXCLUDING SUCH WOMEN CONSTITUTE AN “ESSENTIAL RELIGIOUS PRACTICE” UNDER ARTICLE 25 AND ARE PROTECTED BY THE TERM ‘MORALITY’ AS USED IN ARTICLE 25 AND 26?

Article 25 (1) of the constitution guarantees to every person the freedom of conscience and the right to profess, practice and propagate religion. However, the right guaranteed under Article 25 (1) like other constitutional rights, is not absolute. This right is subject to public order, morality, health and to the other provisions of part III of the constitution. It was held in ***Javed v State of Haryana***^{xli} that the freedom of religion is subject to public order, morality and health^{xlii}.

Dealing with the meaning of the words “public order” the court held that if a thing which disturbs the current of the life of the community, and does not merely affect an individual it would amount to disturbance of public order^{xliii}.

Moreover, under sub clauses (a) and (b) of clause (2) of Article 25 the State is empowered by law-

- (a) To regulate or restrict any economic, financial, political or other security activity which may be associated with religious practice;
- (b) To provide for (i) social welfare and reform, and (ii) to throw open Hindu religious institutions of a public character to all classes and sections of Hindus

Thus, the exclusion of the entire class of women is against public order and morality and therefore, Article 25 doesn't protect the exclusionary practice directed against women. Furthermore, the state is empowered to open up the temple for women in order to reinstate social welfare.

Regulations associated with religious practices

The freedom to practice extends only to those activities which are the essence of religion or those practices that constitute ‘essential religious practice’. It does not cover secular activities which do not form the essence of religion.^{xliv}

The Supreme Court in *State of WB v Ashutosh Lahiri*^{xlv} held that if granting of exemption is not essential or necessary for effectuating such a purpose no such exemption can be granted so as to bypass the thrusts of the main provisions of the act. The court has the right to determine whether a particular rite or ceremony is regarded as essential by the tenets of a particular religion^{xlvi}.

Barring the entry of women into the temple is not an essential practice since the same celibate deity is worshipped by women at all the other temples except the temple of Sabrimala and therefore the practice is exclusive for the temple and not for the religion. “What constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself.”^{xlvii}

Further, mere sight of women cannot affect one's celibacy if one has taken oath of it, otherwise such oath has no meaning and moreover, the devotees do not go to the Sabrimala temple for taking the oath of celibacy but for seeking the blessings of Lord Ayappa. Maintaining celibacy is only a ritual for some who want to practice it and for which no justification has been given.

Social welfare and social reforms

Under clause (2) of Article 25, the state is empowered to make laws for social welfare and social reform. Thus, under this clause, the state can eradicate social practices and dogmas which stand in the path of the country's onwards progress. Such laws do not affect the essence of any religion^{xlviii}. This clause declares that where there is a conflict between the need of social welfare and religious practice, religion must yield. Social evils cannot be practiced in the name of religion^{xlix}.

Further, after referring to Sections 3 and 4 of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act and Rule 3 (b) framed thereunder, the expression "at any such time" occurring in Rule 3(b) does not lead to complete exclusion/prohibition of any woman. In other words, if at such time during which, by any custom or usage, any woman was not allowed, then the said custom or usage shall continue. In other words, if during late night, by custom or usage, women are not allowed to enter temple, the said custom or usage shall continue, however, it does not permit complete prohibition on entry of women. Further, any other interpretation of Rule 3(b) would render the said rule open to challenge as it would not only be violative of the Kerala Hindu Places of Public Worship (Authorization of Entry) Act but also of Article 25(2)(b) of the Constitution read with Articles 14 and 15.

Managing religious affairs

Article 26 says that subject to public order, morality and health every religious denomination of any section of it shall have the following rights:

- a) To establish and maintain institutions for religious and charitable purposes,
- b) To manage its own affairs in matters of religion,
- c) To own and acquire movable and immovable property,
- d) To administer such property in accordance with law.

The rights conferred under article 26 are subject to public order, morality and health^l. The practice barring the women from entering the temple is against morality and that is likely to disrupt the public order.

The word 'religious denomination' in Article 26 must take their colour from the word 'religion' and therefore it must also satisfy three conditions: (1) It must be a collection of individuals who have a system of beliefs which they regard as conducive to their spiritual wellbeing, that is, a common faith; (2) It must have a common organization; and (3) It must be designated by a distinctive name.^{li} Since all the temples which are dedicated to lord Ayappa are Hindu Temples and that they are bound to follow the basic tenets of Hindu Religion and therefore, individual ill practice of any temple contrary to the basic tenets of Hindu religion is impermissible. For the purpose of constituting a 'religious denomination', not only the practices followed by that denomination should be distinct but its administration should also be distinct and separate^{lii}. Thus, even if some practices are distinct in Sabrimala temple, since its administration is centralized under the board, it cannot attain a distinct identity of separate religious denomination. Mere difference in practices carried out at Hindu Temples cannot accord to them the status of separate religious denominations.

Therefore, since the temple does not qualify for a separate religious denomination, it cannot be given the right to manage its own affairs and therefore, the practice is not protected under Article 26 (b). Further, the Supreme Court while giving freedom under clauses (a) and (b) of Article 26, made it clear that what is protected is only the 'essential part' of religion or, in other words, the essence of 'religion' practiced by a religious denomination and, therefore, before any religious practice is examined on the touchstone of constitutional principles, it has to be ascertained positively whether the said practice is, in pith and substance, really the 'essence' of the said religion^{liii}.

Moreover, discrimination in matters of entry to temples is neither a ritual nor a ceremony associated with Hindu religion as this religion does not discriminate against women but, on the contrary, Hindu religion accords to women a higher pedestal in comparison to men and such a discrimination is totally anti-Hindu, for restriction on the entry of women is not the essence of Hindu religion and that even if Sabrimala temple is taken as a religious denomination, their basic tenets are not confined to taking of oath of celibacy for certain period of pilgrimage as

all pilgrims are allowed freely in the temple and there is no such practice of not seeing the sight of women during this period.

Not protected under Article 26

The right of a denomination to wholly exclude members of the public from worshipping in the temple though comprised in Art. 26(b), must yield to the overriding right declared by Art. 25(2)(b) in favour of the public to enter into a temple for worship^{liv}.

In *Durgah Committee, Ajmer v. Syed Hussain Ali*^{lv} wherein Gajendragadkar, J. clarified that clauses (c) and (d) do not create any new right in favour of religious denominations but only safeguard their rights. Similarly, in matters of religious affairs, it is observed that the same is also not sacrosanct as there may be many ill-practices like superstitions which may, in due course of time, become mere accretions to the basic theme of that religious denomination. After so citing, even if any accretion added for any historical reason has become an essence of the said religious denomination, the same shall not be protected under Article 26(b) if it is that abhorring and is against the basic concept of our Constitution.

Further, there are temples that do not allow entry to men however; the reason behind such a restriction isn't the association of notions of chastity. List of those temples along with the reason of the bar on entry is as follows -

- **Kama Devi Kanyakumari / Kumari Amman Temple, Kanyakumari**

The Kumari Amman temple situated in Kanyakumari has Maa Bhagawati Durga in its sanctum sanctorum. Here only sanyasis (celibate men) are allowed till the gate of the temple, while married men are prohibited from entering the premises. This place is believed to be the place where Mata Parvati did tapasya for gaining Lord Shiva as her husband. The temple is raised on the same spot. In this temple of Kanyakumari, Kanya (virgin) Ma Bhagawati Durga is worshipped by women only.

- **Mata Temple, Muzaffarpur**

Men are prohibited at the Mata Temple in Muzaffarpur, Bihar, as the temple management allows only women during the time of 'periods'. Here, the rules are so strictly followed that even a male priest is not allowed to enter the temple premises during that time. The temple turns 'women only' then.

- **Kamakhya temple, Visakhapatnam**

Like the famous Kamakhya temple of Guwahati, the Kamakhya Peetham in Visakhapatnam, where 'creative divinity' of women is worshipped, too denies entry to men for some days in every month. Men are barred from entering the temple for four to five days to observe the privacy of women during their period of menstruation.

- **Lord Brahma Temple, Pushkar**

This famous medieval Brahma temple in Pushkar, Rajasthan, prohibits married men from entering the sanctum sanctorum to worship the deity. Only ascetics can perform the puja here. All offerings by the devotees are accepted from the outer hall of the shrine by a celibate priest.

- **Attukal Temple**

The Attukal Bhagavathy Temple, a temple located in Kerala that worships women, has made it to the Guinness Book of World Records for hosting the Pongala festival which sees around three million women participate. Men are not allowed to enter the temple that sees the largest gathering of women during the festival.

- **Chakkulathukavu Temple**

Another temple located in Kerala that worships Goddess Bhagavathi and observes an annual ritual called '*Naari Puja*' in which the male priest washes the feet of women devotees fasting for 10 days on the first Friday of December. The day is called *Dhanu*. During '*Naari Puja*', only women are allowed to enter the temple^{lvi}.

CONCLUSION

Thus, it can be concluded that the exclusionary practice amounts to discrimination against women and is in violation of the fundamental rights provided for in the constitution of India. The said practice does not qualify for the “essential religious” right and thus it isn't protected under religious rights as provided under article 25 and 26.

ENDNOTES

- ⁱ UOI v. Association for Democratic Reforms 2002 (5) SCC 294.
- ⁱⁱ D.A.V. College V. State of Punjab 1971 (2) SCC 261
- ⁱⁱⁱ Andhra Industrial Work V. Chief Controller, E& I 1974 (2) SCC 348
- ^{iv} G. Gunavathy vs The State of Tamil Nadu (Writ Petition No. 3203 of 2006)
- ^v Rubinder Singh v Union of India (AIR 1983 SC 65)
- ^{vi} Dicey- Law of Constitution, p 49 202-3 (10th ed)
- ^{vii} E.P. Royappa v State of Tamil Nadu (AIR 1974 SC 555)
- ^{viii} State of West Bengal v Anwar Ali Sarkar (AIR 1952 SC 75)
- ^{ix} State of Madras v V G Row (1952 AIR 196)
- ^x Menaka Gandhi v Union of India (AIR 1978 SC 597)
- ^{xi} R.D. Shetty v Airport Authority (AIR 1979 SC 1628)
- ^{xii} Sunil Jatley v State of Haryana (1984 4 SCC 296)
- ^{xiii} Central Inland Water Transport Corpn Ltd. v Brojo Nath (AIR 1986 SC 1571)
- ^{xiv} Deepak Sibal and Oths v Punjab University (1989 AIR 903)
- ^{xv} Article 15 (1) of the Constitution
- ^{xvi} Indian Young Lawyers Association v The state of kerela (Writ petition (Civil) no. 373 of 2006)
- ^{xvii} K S Puttaswamy v UOI (writ petition (Civil) no 494 of 2012)
- ^{xviii} Indian Young Lawyers Association v The state of kerela (Writ petition (Civil) no. 373 of 2006)
- ^{xix} Lowell v Griffin (1939) 303 US 444
- ^{xx} Menaka Gandhi v Union of India (AIR 1978 SC 597)
- ^{xxi} AIR 1963 SC 1295
- ^{xxii} Chandra Raja Kumari v Police Commissioner Hyderabad (AIR 1998 AP 302)
- ^{xxiii} C.Masilamani Mudaliar vs. Idol of Sri Swaminathaswami Thirukoil [(1996) 8 SCC 525]
- ^{xxiv} Olga Tellis v Bombay Municipality Corporation (AIR 1986 SC 180)
- ^{xxv} Article 1 (CEDAW)
- ^{xxvi} Article 3 (CEDAW)
- ^{xxvii} Article 5 (a)
- ^{xxviii} Introduction to the Constitution of India – Durga Das Basu
- ^{xxix} Vienna convention on law of treaty (Article 27)
- ^{xxx} Commentary On The Constitution Of India – PK Agrawal , K.N. Chaturved
- ^{xxxi} Krishna Sharma vs. State of West Bengal
- ^{xxxii} 1984 AIR 667, 1984 SCR (2) 664
- ^{xxxiii} AIR 1996 SC (2715)
- ^{xxxiv} 1993 (2) SCC 746.
- ^{xxxv} AIR 1997 SC 3011
- ^{xxxvi} 1991 (1) SCC 301.
- ^{xxxvii} This has also been affirmed in case of *Apparel Export Promotion Council vs. A.K. Chopra*, 1999 (1) SCC 756.
- ^{xxxviii} This has also been affirmed in case of *Apparel Export Promotion Council vs. A.K. Chopra*, 1999 (1) SCC 756.
- ^{xxxix} Dr Asha Singh v Central Reserve Police Force (Appeal No.CIC/WB/A/2007/01243)
- ^{xl} National Legal Ser Authority v Union of India (Writ Petition (Civil) No. 604 of 2013)
- ^{xli} AIR 2003 SC 3057
- ^{xlii} Nikhil Soni v Union of India (Civil Writ Petition No. 7414/2006)
- ^{xliiii} Rev Stainislaus v State of MP (AIR 1977 SC 908)
- ^{xliv} Mohd. Hanif Quareshi v State of Bihar (AIR 1958 SC 731)
- ^{xlv} AIR 1995 464 : (1995) 1 SCC 189
- ^{xlvi} Acharya Jagdiswaranand Avadhut v Commr. Of Police (1984) 4 SCC 522
- ^{xlvii} The Commissioner, Hindu...v Shri Lakshmindra Thirtha Swamiar (1954 AIR 282, 1954 SCR 1005)
- ^{xlviii} State of Bombay v Varasu Bapamali (AIR 1953 Bom. 84)
- ^{xlix} Saifuddin v State of Bombay (AIR 1963 SC 853)
- ^l Dr Subramanian Swamy v State of Tamil Nadu (AIR 2015 SC 460)
- ^{li} SP Mittal v Union of India (AIR 1983 SC 1)

^{lii} Raja Bira Kishore Deb v State of Orissa (1964) 7 SCR 32

^{liii} The Commissioner Hindu Religious Endowments, Madras v. Shri Lakshmindra Thritha Swaminar of Sri Shirur Mutt (1954 SCR 1005)

^{liv} Sri Venkatramana Devaru v. State of Mysore and others (1958 AIR 55)

^{lv} 1961 AIR 1402

^{lvi} Available at <https://www.newindianexpress.com/nation/2018/sep/28/indian-temples-where-men-cant-enter-on-certain-days-1878292.html>

