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Religious Liberty and Women Rights in India

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ABSTRACT

This article discusses about struggle that women have to face in terms of Religious Liberty in spite of India being a member to CEDAW as well as having one of the fundamental Right to Freedom of Religion under Article 25 of Indian Constitution. The major reason behind such struggle is mindset of people over equality concept of men and woman as well as static faith in orthodox religious beliefs. Moreover, there are several efforts made by Indian Judiciary to eradicate such discrimination on the basis of sex under freedom of religion particularly, right to worship at temples as seen in landmark cases of Haji Ali dargah case as well as Sabarimala Temple case. Thus, at the end author suggests that people to change their mindset then only there would be end to struggle of women and they would freely practise their religious beliefs.

I. INTRODUCTION

Although India is a party to UN Convention on Elimination of All Forms of Discrimination against women (CEDAW) which strives to eradicate all kinds of discrimination against women, Indian Society has neglected the discrimination against women in terms of Religious Liberty, more particularly under religious liberty, right to worship in temples. This discrimination starts from the very own families when oldest member of family stops his granddaughter to enter home temples during menstrual stage under the reason of impurity to deity, a religious faith or patriarchal mindset that follows. Besides this Convention, the text of Preamble of Indian Constitution mentions about Equality and Secularism, also Art 25² of Indian Constitution guarantees right to every person irrespective of their sex to practise or profess their religion but the harsh truth is that such right remains in the text and women has to struggle a lot for religious

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² **Article 25** : Freedom of conscience and free profession, practice and propagation of religion

(1) 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

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus Explanation I The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion Explanation II In sub clause (b) of clause reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly

liberty in reality. This article examines how Indian Judiciary has tried to bring reforms to impart gender equality in terms of Freedom of Religion. But their efforts would be of no use if there is no change in mindset of people regarding patriarchal concepts of religious faith. Thus, at the end researcher suggests that people should change their mindset as well as use their own intellect to judge which religious faith should be followed or imposed on other people based on today's concept of morality and equality.

II. EFFORTS OF INDIAN JUDICIARY TO ERADICATE DISCRIMINATION ON BASIS OF SEX UNDER FREEDOM OF RELIGION

The research article revolves around two debatable questions, firstly whether the power of religion which is governed by patriarchal mindset is over women rights in India and Are the women not oppressed by their own true selves or say other women blindly following religious faith or patriarchal culture? With respect to the first question, although Indian Judiciary has several times ruled in favour of women rights over power of religion. For instance, the question regarding gender equality in terms of Religious Liberty came before Bombay High Court³ in year 2014 when Bhartiya Muslim Mahila Andolan filed a PIL claiming that exclusion of women from entering the inner sanctum of famous Haji Ali Dargah violated their fundamental right to profess their religion. This claim was strongly opposed by Dargah Trust with the argument that they follow what is written in Shariat. Indeed the judgement given by Bombay High Court turned out to be a victory for women as the judge ruled women fundamental rights to religion in superiority to religious faith practised by Dargah Trust⁴. The scenario after the case is that even Dargah trust members have happily taken the decision and women are allowed to enter and worship at the inner sanctum of Haji Ali Durgah.

Moreover, in year 2017⁵, the Supreme Court declared instant triple talaq as unconstitutional. The argument that Muslim personal law enjoyed protection of the rights to religious freedom did not hold against the right to gender equality. Indeed, this was celebrated as a giant move towards equality for Muslim women claiming that it ended inequality and indignity perpetrated against them by male authoritarianism.⁶ Thus, judgement also came out as victory for women to eradicate discrimination on basis of sex, but still their struggle continues in longer run.

³ Dr. Noorjehan Safia Niaz And Anr V. State Of Maharashtra And Ors (MANU/MH/1532/2016)

⁴ Bhatia, Gautam. "The Haji Ali Dargah Decision Deserves to Be Celebrated. But Let's Not Draw Parallels with Sabrimala." *Scroll.in*, (Sept.5th 2016), scroll.in/article/815427/the-haji-ali-dargah-decision-deserves-to-be-celebrated-but-lets-not-draw-parallels-with-sabrimala. (Accessed 1 May 2021)

⁵ *Shayara Bano v. Union of India* 2017 (9) SCALE 178 : Writ Petition (C) No 118 of 2016 (Decided on August 22, 2017).

⁶ For more info: <https://timesofindia.indiatimes.com/blogs/igniting-flame-of-truth/is-the-law-banning-triple-talaq-a-move-in-the-right-direction/>

But in contrast to this case, the Gender Equality was again raised in 2018 before the Supreme Court with claim regarding entrance of women to Sabarimala Temple⁷, and this time a group of five women lawyers under the name Indian Young Lawyers Association challenged the age-old practice of not allowing to women to enter the place of worship as it violated their fundamental right to freedom of religion⁸. This challenge was strongly opposed by devotees of Lord Ayappan and argued that such practice was there since time immemorial as entry of women would question the purity and sanctity of the deity. This time also the Supreme Court ruled in favour of women allowing them to enter Sabarimala Temple.⁹

But this judgement was not accepted widely by the people, several review petitions were filed and moreover there were several protests made by men and women both who had religious faith not to allow such an age group of women to Sabarimala temple. So, with respect to the second question women are not only oppressed by men but also by other women who blindly follow this religious faith unaware about their fundamental rights. Thus, same case has returned to the Supreme Court in the form of more than 50 review petitions each claiming protection under Articles 25 and 26 and arguing that these are more fundamental than the right to gender equality guaranteed under Articles 14 and 15.

Although the effort of Indian Judiciary has been a remarkable attempt to bring reforms in gender equality in terms of freedom of religion but still women battle is not only against men with such religious faith but also with women who just follow patriarchal religious faith and are unaware of their right to religious liberty. Moreover, the way Indian Judiciary handles such cases raises a query that **Does it also mean that if genital mutilation is found to be part of religious belief system of Bohra Muslims, the practice would be granted protection under the law? Thus, Indian Judiciary need to weigh what is more important, the protection of orthodox religious beliefs or right to equality in freedom of Religion.**¹⁰

III. CONCLUSION

Thus, author at the end suggest that People need to realize that time has changed and they cannot continue old religious practices which do not fit in today's modern concept of equality and religious liberty. In ancient times Women were treated below men as well as property of

⁷ Indian Young Lawyers Association v The State of Kerala (2017) 10 SCC 689

⁸ Dignat Raj Sehgal, Case Comment on Sabarimala Case, iPleaders. (Nov 22nd 2019), <https://blog.ipleaders.in/case-comment-sabarimala-case/> (Accessed 1 May 2021)

⁹ The Quint, Thousands Take to Streets to Protest Against Sabarimala Verdict, The Quint (Oct 3rd 2018), <https://www.thequint.com/news/india/protest-against-supreme-court-sabarimala-verdict#read-more> (Accessed 1 May 2021)

¹⁰ For more info: <https://www.indiatoday.in/news-analysis/story/key-question-before-sabarimala-review-hearing-right-to-equality-versus-religious-freedom-1636498-2020-01-13>

men but now times have changed and they are given equal status in society. The efforts of Indian Judiciary would be futile if people do not change their mindset towards ancient practices of religious faith. They need to use their own intellect to judge which religious faith should be followed and not be followed depending upon today's era of concept of equality and religious liberty. This would help India in keeping up principles as promised in the preamble of constitution and truly it will be a **sovereign, socialist, secular, democratic and republic** nation with **liberty** of thought, expression, belief, faith and worship and **equality** of status and of opportunity
