

## Will Society ever allow the impure (Women & Scheduled Castes) to Temple Entry?

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### Abstract

*(All the members of human family possess dignity & equal rights. This is the basis of human rights philosophy. Any kind of discrimination defy the very idea of equality of all human beings irrespective of the gender or caste. The Indian Constitution was envisioned as transformative document, intended to correct instances of social exploitation wherever it exists. Any discrimination based on caste and gender itself invites the scrutiny of Articles 14 and 15 (equality and non-discrimination) of the Indian Constitution. The concept of impurity restrains the Women, Scheduled Castes and Dalits to enter the temple or any other place of worship. This paper tries to throw light on this issue that despite the legislation and the judicial verdicts allowing them their right to pray inside the place of worship the society at large has not accepted the verdicts whole heartedly).*

The study of inequalities in society is one of the most important areas of sociology, because our material resources determine a great deal about our lives. Sociologists use the concept of social stratification to describe inequalities that exist between individuals and groups within human societies. Societies can be seen as consisting of 'strata' in a hierarchy, with the more favoured at the top and the less privileged nearer the bottom. Stratified societies have changed throughout human history. In the earliest human societies, which were based on hunting and gathering, there was very little stratification – mainly because there was very little by way of wealth or other resources to be divided up. As the time passed we find a great increase in the stratification.

Hindu society is a hierarchical 'caste based' society which creates groups or 'castes' of people based on their social status. A caste system is a social system in which one's social position is given for a lifetime. In caste societies, therefore, all individuals must remain at social level of their birth throughout their life. Everyone's social status is based on personal characteristics such as perceived race, parental religion or parental caste are accidents of births and are therefore believed to be unchangeable. A person is born into a caste and remains there for life.

## Women and Scheduled Castes – the inferior children of God -

Untouchability is a direct product of the caste system. It is not merely the inability to touch a human being of a certain caste or sub-caste. It is an attitude on the part of a whole group of people that relates to a deeper psychological process of thought and belief, invisible to the naked eye, translated into various physical acts and behaviours, norms and practices. The practice of untouchability emanates from the idea of ‘pollution’ and ‘impurity’ due to certain characteristic associated with that person such as their occupation, which includes scavenging, sweeping, leatherwork etc. Caste discrimination has resulted in restricted public participation for communities such as Scheduled Castes and Dalits including their right to worship inside a temple or religious place.<sup>1</sup>

In India, the menstruation is also akin to the practice of untouchability. In this conservative society where internet pornography is popular and sex columns in the newspapers discuss masturbation and premature ejaculation, talk of menstruation is taboo. So, many Hindu and Muslim women have internalised the notion that it is unclean that they voluntarily stay away from temples and mosques when they have their periods.

Temples and mosques practice discrimination routinely naming few are Nizamuddin Shrine in Delhi, Baba Balaknath temple at Deot Siddh in Hamirpur, Himachal Pradesh. Many Hindu temples prohibit women who have their period from entering. The Sabrimala temple in Kerala goes a step further – since it is impossible to know whether a woman is menstruating, it has banned all the women aged between 10 to 50 years. Prayar Gopalakrishnan, President of the board that manages the temple stated that women will be allowed to enter only after a machine has been invented and installed to detect if they have their period.

The outcry that followed Gopalkrishnan’s comment turned the tide. The Indian women begun raising their voices that menstruation is not unclean, polluting or shameful.<sup>2</sup> Places of worship that deny or restrict women’s entry undermine the fight for gender equality and have no constitutional right to do so, said India’s highest court. The judges asked the temple to explain why it bans women. “What right does the temple have to forbid women from entering any part of the temple? Do you to mean to say that menstruation is associated

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<sup>1</sup> Arijit Ghosh, ‘The Sabrimala Temple Ban: An ‘Untouchable’ Rule’, <http://www.ohrh.law.ox.ac.uk/the-sabrimala-temple-ban-an-untouchable-rule>; accessed on 08-01-2020

<sup>2</sup> Amrit Dhillon, The Guardian, 13 January 2016, Will India open its temples and mosques to menstruating women? Accessed on 16-01-2020.

with purity of women? You are making distinction based on purity... Now the question is whether the Constitutional principles allow this? Can you deny a woman her right to climb Mount Everest?" asked a three-judge bench.

The Supreme Court bench was acting on a petition filed by the Delhi-based Indian Young Lawyers Association and five women lawyers who had asked that women be allowed entry without age restriction.<sup>3</sup>

The Supreme Court as well as the Constitutional bench has repeatedly demanded to the defence lawyers whether a biological function could be discriminated against. "Is menstruation a tool to measure the purity of women? How will you measure the purity of men?" asks the Supreme Court. Senior advocate Indira Jaising says that such a discrimination based on claims of 'impurity' is a violation of Article 17 of the Indian Constitution which forbids untouchability. Untouchability is the practice based on the idea of social humiliation and the belief that the presence of a certain person by itself can be 'defiling'.<sup>4</sup>

Judges on the three judge panel has proclaimed that such discrimination based on biological factors violates the very core of the Constitution under article 14,15 &17, which prohibit discrimination against citizens.

The tradition has gone deep into women psyche. And they develop a sort of guilty feeling if they go against the tradition. The restrictions are imposed by the older generations for female members of the family. This is how the myths and beliefs are passed from one generation to the other, however, bursting these myths are one's personal choice and responsibility.

The female mind is conditioned like this since her childhood. Nobody can go against the conditioned – mind. That would create friction or guilt conscience later. In short, when the life is controlled by the manifested – mind, belief has more strength than truth. If one goes against ones – belief and does something, it creates guilt and further conflict and can have psychological effects.... Belief doesn't need any logic and scientific basis.<sup>5</sup>

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<sup>3</sup> <https://thewire.in/gender/temple-or-dargah-restrictions-on-women-are-nothing-but-ways-of-imposing-patriarchy>; accessed on 16-01-2020

<sup>4</sup> <http://feminisminindia.com/2018/07/26/sabrimala-women-entry-supreme-court-judgment/>; Leah Koonthamattam, "The Sabarimala Controversy; Women and their Right to Pray"; accessed on 16-01-2020

<sup>5</sup> <http://www.udaipai.in/can-a-female-enter-temple-or-perform-pooja-during-the-periods-menstruation>; accessed on 16-01-2020.

Banning menstruating women to enter places of worship by priests is not new in India. What is interesting is that a few fundamentalists forces want to nurture and continue this practice in the name of religion and cultural practices. What needs to be argued is whether these priests or fundamental forces have the right to decide the appropriate behaviour for women in religious places. Secondly, are these forces above the Constitution and the constitutional rights given to its citizens by the State? Finally, what is the role of the State in protecting and ensuring the rights of its citizens?

It seems that there is an increasing interest and inclination towards religion, and worship of Gods & Goddesses in recent years. Earlier temple entry movements by marginalized sections were more of a symbol of protest against exclusion and challenge to establish a power hierarchy in the society rather than a renewed interest in the God & Goddesses.

Women's groups and organisations have come forward and challenged this whole notion of "purity - impurity" and are protesting against this unjust ruling by the temple heads in the name of God, religion, culture and practices. However, one should not forget that it is not their fight only. There is a need to fight against this whole design of fundamentalist forces to break the social fabric of society.<sup>6</sup>

Article 17 of the Indian Constitution mandates the abolition of untouchability. Although it has been argued that the provisions are only applicable to caste issues, the court should look at the Constituent Assembly Debates, which rejected the inclusion of words 'caste' and 'religion' in Article 17, to widen its scope. Additionally, it deserves a broader reading, as Article 17 is a horizontal right that aims to abolish untouchability, at the level of individuals and communities and not just against the State.

Any discrimination based on gender itself invites the scrutiny of Article 14 and 15 (equality and non-discrimination) of the Indian Constitution was envisioned as transformative document, intended to correct instances of social exploitation wherever it exists.<sup>7</sup>

### ***Jati Jo Kabhi Nahi Jati (Caste is something that never goes away) –***

The caste factor is so much engraved in the social behaviour & psyche of people that even the President of India is not an exception to the nasty incidents like one happened at

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<sup>6</sup> Anant Kumar, Menstruation, Purity and Right to Worship, Economic & Political Weekly, Vol. 51 Issue No. 9, 27 Feb, 2016. ISSN (online) 2349-8846

<sup>7</sup> *Supra* note 1

Jagannath Temple. The President of India Sh. Ram Nath Kovind and his wife faced the caste based bias at the hands of the servitors of the Jagannath Temple.

Jagjivan Ram held several top constitutional posts, but at social level he was always treated as an inferior notwithstanding his political heavyweight status. As the Defence Minister, he unveiled the statue of Sampooranad in Varanasi, present constituency of Prime Minister Narendra Modi, in January 1978. But after his departure, the same statue got “purified” by some Brahmins who poured Ganga jal on it claiming ‘unsolicited’ touching by a Dalit.

In the pre-independence era, there had been numerous movements seeking temple entry for Dalits and the history is full of stories of brutal attacks on the proponents of those movements. The temple entry movement of the 1920’s and 30’s in Kerala became a landmark in the history of social reforms for its uniqueness and sweeping success.

In Odisha, entry into temples was prohibited not only for untouchables, but for other lower castes as well. A law in this behalf was enacted by the British Government in 1809. The fundamental difference between the British rule and Independent India regarding temple entry for Dalits is that all laws enacted by the Britishers denying entry into the temples lapsed once the Indian Constitution was adopted with great vigor and fervor. But the rules of socially powerful class are still intact.

The Constitution only approves the idea of a citizen and whenever a citizen tries to take refuge under the principle of equality envisaged in the Constitution, the system of temples gets offended as the principle of equality is not applicable there. The structure of social power still comes between the citizen and the Idol in the temples.<sup>8</sup>

Even after 70 years since adoption of the Indian Constitution, those who control religious power structure of this country have displayed dozens of incidents of indecent behaviour with ministers, judges and other constitutional post holders belonging to Dalit community.

The President is the Supreme Commander of all the three armed forces of this country. But if he is a Dalit, he is always considered as an inferior in the social hierarchy notwithstanding being the first citizen of this country. In fact, every political party,

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<sup>8</sup> <http://www.news18.com/news/opinion/opinion-the-judgment-temple-incident-shows-that-the-socially-ruling-class-can-nudge-even-the-president-1795125.html>; accessed on 16-01-2020

irrespective of their ideology and principles, is bugged by this social hierarchy or social order and reels under its pressure. They don't even dare to challenge it and are unanimous in continuing them as ever.<sup>9</sup>

In Himachal Pradesh, also known as Dev Bhoomi, apparently there is no discrimination in practicing caste discrimination. Himachal Pradesh's social justice and empowerment minister Rajiv Saizal experienced it first hand when he was barred from entering a temple just because he is a Dalit. There is discrimination against Dalits during serving of mid – day meals in schools and entry in temples.<sup>10</sup>

Words are what make our world. They help us convey our thoughts. They help us connect to people. We establish our society – literature, culture, politics, ideology, philosophy – through the words we choose. Words help shape our thinking as much as our thoughts shape our words. In short, words play a vital role in human society.<sup>11</sup>

When one talks about the small hill state of Himachal Pradesh the image that comes to mind is that of a progressive place that has done reasonably well in terms of education, sanitation, electrification and even the public distribution system. Politicians and bureaucrats have often promoted it as 'Dev Bhoomi' or an abode of Gods where there is complete social harmony.

In this process, the issues of caste discrimination have gone unacknowledged and efforts have often been made to sweep the dark reality under the carpet.

Acknowledgement of the problem is first and foremost thing. Then comes the step of addressing it. There is urgent need for a social upsurge against these practices. Since, it is a social issues, a social angle has to be given to the prevailing practices.<sup>12</sup>

Subhash Mendhapurkar, Director of Shimla-based NGO Social Uplift Through Rural Action (SUTRA) says, "No legislation can change the mind-set, it's only education that can bring an end to this social practice and help change attitudes".

## **Conclusion –**

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<sup>9</sup> *Ibid*

<sup>10</sup> [www.timesofindia.indiatimes.com/city/shimla/not-allowed-to-enter-temple-dalit-minister-tells-himachal-oradesh-assembly/articleshow/73148162.cms](http://www.timesofindia.indiatimes.com/city/shimla/not-allowed-to-enter-temple-dalit-minister-tells-himachal-oradesh-assembly/articleshow/73148162.cms); accessed on 16-01-2020

<sup>11</sup> [www.thewire.in/caste/to-be-or-not-to-be-a-dalit](http://www.thewire.in/caste/to-be-or-not-to-be-a-dalit); accessed on 18-01-2020

<sup>12</sup> [www.thewire.in/caste/himachal-pradesh-caste-discrimination](http://www.thewire.in/caste/himachal-pradesh-caste-discrimination); accessed on 18-01-2020

Historically, policies of social reform have arisen from the political branches of the State. Throughout the 1950s and the 1960s, a wave of social-reform legislation created a State-supervised infrastructure that managed prominent religious institutions and removed caste-based restrictions on entry. But in the last few years, the courts seem to have become the chief interlocutors in the social-reform process, raising enthusiasm for the judicial process as its main mode.

The problem is not that the practices of organised religions are inherently hierarchical and exclusionary. Religions discriminate against genders and classes to restrict access to religious spaces or religious offices, exclude certain social relations from religious recognition and follow practices that manifest a deeply patriarchal culture. If that were the problem, then reform would require most of what we know as religion today to give way to state intervention.

Rather, the problem is that religious practices in India have a material and symbolic impact on excluded individuals and groups, far beyond the acts of worship. Religion in India has consequences for people's civic rights and their right to live with dignity. The Constitution-framers recognised this and consequently regarded religion as one of the crucial domains of reform. The Constitution not only prohibits the State from discriminating on the grounds of caste, religion or sex, but also empowers it to reform Hindu religious institutions and criminalise abhorrent practices, like untouchability.<sup>13</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>14</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, is clear violation of the constitutional mandate of equality, is the issue which need the prior attention.

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

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<sup>13</sup> Mohsin Alam Bhat, "Why a PIL on women's entry at the Nizamuddin dargah cannot be compared to Sabarimala". <https://caravanmagazine.in/religion/nizamuddindargah-pil-women-entry-sabarimala>; accessed on 07-02-2020.

<sup>14</sup> Women entry into public places of worship <http://www.neoias.com/index.php/neoias-current-affairs/498-women-entry-into-public-places-of-worship>.; Accessed on 07-02-2020

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 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.<sup>15</sup>

Empowering the women, the Bombay High Court had on August 26 held that the ban imposed by the Dargah Trust, prohibiting women from entering the sanctum sanctorum of the Haji Ali Dargah, contravened Articles 14, 15 and 25 of the Constitution and said women should be permitted to enter the sanctum sanctorum like men. Women were allowed to enter the shrine on 29 November 2016, after a ban imposed on them in June 2012. In a landmark judgement on 30 March 2016, the Bombay High Court asked Maharashtra government to ensure that women are not denied entry to any temple. On 8 April 2016, the Shani Shingnapur trust finally allowed the women devotees to enter the sanctum.

In a country like India which has come a long way by ending practices like Sati, these incidents remind us that we still have a long way to go. The society has to accept women and Scheduled Castes as an equal part of the society. These age old practices made up solely on the basis of patriarchal bias do not have any theological backing and must end, because in a democratic, secular nation like India, one cannot take away right of a woman and of the Scheduled Caste to practice their religion just like other men.<sup>16</sup>

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<sup>15</sup> Shiva Vishnoi, Research Scholar, Himachal Pradesh National Law University, Shimla, "Traditions Impinging Legal Rights-Ban on Women's Entry into Temples" Pen Acclaims, Volume 2, July 2018 ISSN 2581-5504

<sup>16</sup> The Right to Pray, The Human Rights Communiqué, Vol. II, Issue 6, February 2016