

# GENDER EQUALITY

V.

## RELIGION

*Position of Women in the Twenty-First Century India:*

*A step towards Right to Equality*



BURNISHED LAW JOURNAL

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## INTRODUCTION

Gender and Religion have an interdependence from the earlier times, both cannot exist independently, and are intertwined at some point. Due to this element of gender in religious practices arises the problem of gender inequality. The clash between Gender and Religion is prevalent not only today but has been imbedded in the Indian society since earlier times.

The root of the problem is not only the intolerance of people to accept Other Genders, other than male and female. But, believing that males are superior to females.

Every religion is influenced by various factors like geography, social, etc. To Understand the current status of gender equality in religion, one, has to understand not only the terms Gender and Religion separately but has to understand there inter relationship i.e. correlation of the two terms

### Meaning of Gender

The term gender as defined in Oxford Dictionary as, either of the two sexes (male and female), especially when considered regarding social and cultural differences rather than biological ones. The term is also used more broadly to denote a range of identities that do not correspond to established ideas of male and female<sup>1</sup>. However, there is a thin line of difference between the words Gender and Sex.

Sociology defines both the terms separately and removes the confusion caused. The term Sex means the biological characteristics of distinguishing males and females. This definition emphasizes male and female differences in chromosomes, anatomy, hormones, reproductive systems, and other physiological components and Gender refers to those social, cultural, and psychological traits linked to males and females through particular social contexts. Sex makes us male or female; gender makes us masculine or feminine. Sex is an ascribed status because a person is born with it, but gender is an achieved status because it must be learned.<sup>2</sup>

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<sup>1</sup> Oxford Dictionaries, Oxford Dictionary of English (Oxford University Press, United Kingdom, 3<sup>rd</sup> edition 12 August 2010).

<sup>2</sup> Linda L. Lindsey, The sociology of gender: theoretical perspectives and feminist frameworks (Pearson Prentice Hall, Upper Saddle River N.J, 4<sup>th</sup> edition,2005).

## Meaning of Religion

Religion on the other hand means a certain path of belief that one follows for spiritual faith and guidance. It gives not only hope but a motive to live and build things in life.

## The Clash

For women and other genders, religion is proving to be spiritual oppression. When the manifestation of a religious practice involves sexism, it should be modified according to the needs of society. People should understand that changing religion does not mean denouncing faith. Modifications are needed for the upliftment of the society. We cannot call ourselves democratic citizens when a portion of society is forced to follow religious practices.

In this way, we live in a world of democratic men. Women are the silent majority in most religions and religious institutions and other genders do not even have a stand. We need to draw strength from each other and from our beliefs to strive for an empowering environment in which discussion and challenges regarding religious practice lead to both personal and public spiritual liberation.



## POSITION OF WOMEN

The main problem in religion is patriarchy. That is what is still pulling the development of religion in a backward direction. In some areas the problem might occur because with the advancement in times and technology the growth of religion is not being accepted and understood logically. Moreover, it is still related to the so called 'moral' patriarchal norms which existed in the earlier times which people are not willing to change them in the fear of preserving their religion. ‘

It is saddening that while on one hand the (UDHR) Universal Declaration of Human Rights, states in its preamble that “all human beings are born free and equal in dignity and rights”<sup>3</sup>, and on the other hand women and other genders, are discriminated against. They are still fighting for their rights and position not only in religious institutions but in other dimensions like workplace and social connections also.

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<sup>3</sup> United Nations, Universal Declaration of Human Rights (UDHR, France, 1948).

Female Foeticide a deeply rooted problem that needs complete abolishment in Indian society. According, to the latest data of female foeticide available till May 2006, as many as 22 out of 35 states in India had not reported a single case of violation of the act since it came into force. Delhi reported the largest number of violations – 76 out of which 69 were cases of non-registration of birth. Punjab had 67 cases and Gujarat 57 cases.<sup>4</sup>

The following are stories on position of women in different parts of India where some dogma stricken processes and practices are treated in an entirely different manner.

### Story of The Kamakhya Temple

The Kamakhya Temple in Guwahati, Assam situated in the city's western side is known to be amongst the 52 Shakti Peeths of India. It celebrates the fertility festival which is called as Ambuwasi Puja.

It is believed that the goddess is going through her menstrual cycle during the last week of the sixth month i.e. from June 22 to June 25 and the temple remains shut for there days and opens on the fourth day with grand festivities. It is also said that during this time the river Brahmaputra turns red into color. The festivities take place during the monsoon period and the festival is considered auspicious as the local people believe that because of the continuous rain for one week the Earth becomes pure and is ready for harvesting.<sup>5</sup>

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It is very ironic and astounding that this ritual takes place in the same country wherein the majority of areas even today consider speaking openly about the monthly bleeding of a woman as taboo.

### Kumaris of Nepal

A somewhere similar story is of Kumaris in Nepal, Nepalis have a tradition of worshipping a pre-pubescent girl as she is considered to be a symbol of divine female energy which is known as 'Devi' in Hindi.

The girl child has to pass a selection process for becoming the kumari. Not only Buddhists but Hindus also Believe in this tradition. Though the tradition is debatable on many grounds, as the

<sup>4</sup> Information Technology Act 2000, India, available at <http://unicef.in/PressReleases/227/Female-foeticide-in-India> (Visited on February 12, 2019)

<sup>5</sup> Information Technology Act 2000, India, available at <http://www.bharatonline.com/assam/fairs/ambubachimela.html> (visited on February 13, 2019).

selection process of a Kumari is unjust. The girl who is to be selected should be flawless, should have never had any disease, should have never shed blood, delicate hands, and feet, etc.<sup>6</sup>

The Harsh Reality of religion and religious practices is they cannot be changed so easily. There may exist liberals who are willing to bring changes in religion for the sake of development and upliftment of women but at the same time, there are also extremists who hold their strong views on following religious practices and custom as they are being followed since various centuries. They may regard a change in the same as a **disrespect to their ancestors**.

It is unbelievable how even the worst possible conditions also exist, in some states, Religion restricts women not only from having a professional life but also when it comes to the division of property women are denied their shares, restricted on wearing a certain set of clothes. These religions and practices within them which restrict women from growing hamper their mental and physical health.

The major impact of religion as an institution is on women from the lower strata of society. In the name of religion, they become victims of sexual abuse. One example is when priests commit such crime on women, the women do not raise their voice and religion keeps them numb<sup>7</sup>. In the case of, *Gurmeet Ram Rahim v. Central Bureau of Investigation*<sup>8</sup> the famous Baba Ram Rahim also is known as the Messenger of God was convicted for raping women, murdering a journalist, and for many other crimes and was sentenced for twenty years of imprisonment for rape alone.

Many a times bringing changes for the upliftment of women and giving them a considerable position and a voice in any religion can prove to be very challenging and may upset or hurt the sentiments of a particular set of people. Even if the same is done not by people from amongst them but if done officially by the law, an example of which is the Sabrimala Temple case.<sup>9</sup>

The myths related to menstruation are not only prevalent in Hinduism but Islam also. Many sects in Hinduism forbid offering prayers to god or even going inside the temple is not preferred,

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<sup>6</sup> Information Technology Act 2000, India, available at <http://www.asianart.com/articles/kumari/index.html> (Visited on February 9, 2019).

<sup>7</sup> Information Technology Act 2000, India, available at <https://www.globalsistersreport.org/column/equality/power-religion-over-women-india-43236> (Visited February 8, 2019)

<sup>8</sup> CRL.R.RP

<sup>9</sup> *Dr S. Ganapathy v. State of Kerala*, [2018 SCC OnLine Ker 5802](#),

similarly, women in Islam who are menstruating are restricted from performing a fast during Ramadan.<sup>10</sup>

### POSITION OF THE THIRD GENDER

Gender has a broad definition and there are many genders, not just male and female, The, widely recognized third gender gained most of their rights on abolition of Section 377 of the Indian penal code,1860. The Supreme court decriminalized gay sex in the Naz Foundation<sup>11</sup> case, where the 153-year-old section 377 was removed.

Despite the judgement the society has not completely accepted them. It is a saddening fact that no religion accepts the third gender completely due to which they have to earn a living by doing various things like dancing and singing on the streets, prostitution, etc. It is surprising how many of them have been forced to choose their gender as either male or female many times.<sup>12</sup>

### RELIGION AND LAW

The Constitution of India Guarantees to its Citizens religion as a Fundamental Right (Chapter III) as mentioned in Articles 25-28.<sup>13</sup>

Article 25(1)<sup>14</sup> clearly states that the Constitution guarantees to its citizen the right to freely profess, practice, propagate any religion and also says that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them, either in general or in the matter of access to or use of general and public places and conveniences in Article 15.<sup>15</sup>

However, it is perilous to make changes to religion following the procedure of law, the lawmakers tend not to spoil the sanctity of any religion as that would cause an uproar in the society. They understand that, even during the 21<sup>st</sup>-century religion still plays a very sensitive role in people's lives and in the formation of societies directly or indirectly.

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<sup>10</sup>Baab as Salaam, The Holy Quran (Arabic) (baabassalam,2016)

<sup>11</sup> 160 Delhi Law Times 277

<sup>12</sup> Yogita Limaye "India Court recognizes transgender people as the third gender" BBC News, April 15, 2004.

<sup>13</sup> Article 25-28, The Constitution of India.

<sup>14</sup> Article 25(1), The Constitution of India.

<sup>15</sup> Article 15, The Constitution of India.

The two instances of amendments if seen, namely The, entry of Women in Sabrimala Temple and the abolition of Triple Talaq in Islam, proved to be a huge turning point for both the religions respectively. Not only in terms of uplifting women but changing a practice which has been going on since years.

In the case of *Indian Young Lawyers Association v. State of Kerala*<sup>16</sup>, the women of ages ten to fifty, basically the one menstruating were not allowed entry in the temple. The Supreme court held this practice which was continued from ages as unconstitutional as it was against the fundamental rights of women as mentioned in Articles 25 (1), 26, 14, and 15<sup>17</sup>. The Supreme Court Quashed Rule 3(b)<sup>18</sup>, framed by the Government of Kerala under the authority of the 1965 Kerala Hindu Places of worship (Authorization of Entry Act), where it provided that “women at such time during which they are not by custom and usage allowed to enter a place of public worship”<sup>19</sup>

Taking up the Case of the *Shayara Bano v. Union of India*<sup>20</sup>, the Supreme Court held the practice of Triple Talaq also known as Talaq-e-Biddat<sup>21</sup> unconstitutional. This practice allowed a Muslim man to pronounce divorce to his wife by saying or giving in writing the word ‘Talaq’ three times. The Divorce earlier was considered to be very much in practice but has now been declared unconstitutional in India by the highest Court as it was considered not only against the rights of women but against her dignity and chastity also.<sup>RNAL</sup>

The situation of Dalit women is no better, they are exploited in the name of Religion and Casteism. Since ancient times Hinduism has four varnas namely Brahman, Kshatriya, Vaishya, Shudra. Having their place in society in descending order, Shudras were always subject to discrimination and even now are discriminated against though it has become against the law now and the government has made many policies for their upliftment, and also reservation is there for them in jobs and various educational institutions. In modern society also, many Dalit women are a victim of sexual abuse and being an outcaste, they are seen to be as "available" to men.<sup>22</sup>

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<sup>16</sup> 2018 SCC OnLine Ker 5802

<sup>17</sup> The Constitution of India

<sup>18</sup> Rule 3(b), Kerala Hindu Places of worship (Authorization of Entry Act),1965

<sup>19</sup> Ibid

<sup>20</sup> (2017) 9 SCC 1

<sup>21</sup> Baab as Salaam, The Holy Quran (Arabic) (baabassalam,2016)

<sup>22</sup> Supra 17



Dowry Deaths are also a common part of crimes in India. Section 304 B<sup>23</sup> criminalizes Dowry deaths in India and tries to provide justice to the woman and her family who has been the victim of atrocities of dowry and there is a punishment for a minimum of seven years and a maximum is an imprisonment for life.<sup>24</sup>

In the name of religious practices child marriage and Sati are still prevalent in India. But the Law prohibits Marriage between a girl and a boy who are below the age of 18 and 21 is prohibited in India respectively, under the Prohibition of Child Marriage Act,2006<sup>25</sup>.The ritual, Sati Pratha includes a woman to Burn herself in the funeral pyre of her husband also known as forceful widow death. It is considered that the widow should always follow wherever the husband is going even if it is death. But this practice has been mistaken to be included in the Vedas when no such thing is mentioned. Despite Sati Prevention Act<sup>26</sup>, it is astonishing how the practice is still prevalent in certain areas of India like in Rajasthan.



### CONCLUSION

Religion as a societal dimension in India has proved to have a Patriarchal dominance over woman and other Genders and a strong spiritual power on humanity as a whole.

Religion developed into society as a way of living earlier and now has become a form of faith. This path should not be followed blindly. The patriarchal Dogma has rooted itself so deep in religion that it has become almost impossible to remove it in one go. The process is long and cumbersome which requires not only the changes in the Laws and society but changes in people's mentality.

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<sup>23</sup> Section 304 B Indian Penal Code,1860

<sup>24</sup> Ibid

<sup>25</sup> Section 2, The Child Marriage Act,2006

<sup>26</sup> Sati Prevention Act,1987