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FOREWORD

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EVE DEMANDS HER SPIRITUAL RIGHTS

BY AARVI SINGH¹

INTRODUCTION

Religion from its very inception has never been “women friendly,” Pandora brought the evil on earth, Eve defied the laws of the God and brought sufferings for herself and Adam. The religious scriptures were written by men through their own perspectives and this religious imperialism enslaved her to a subordinate position². The androcentric inscription and practices of religion manifest women to their sexual functions thereby denuding them spiritual participation³. This phantasmagorical image of the woman is problematic in two ways, firstly it forces her to accept that her spiritual emancipation is as a biological entity (hence can be restricted) and secondly, the “natural biological processes” that she has, must accept herself as impure.⁴

BLEEDING FOR JUSTICE

Menstruation is a biological process but the female embodiment under religion creates a taboo around the biological process, categorizing it as impure. The menstruation process under Indian cultural and religious setup is very different from the biological process. The de-sacralization of women biological process as menstrual pollution has its root in Rig Veda. Leslie’s work *Roles and Rituals for Hindu Women* traces the patrilineal inheritance of the religious meaning of menstruation and the myth comes from *Vashistha Dharmashstra*⁵, God *Indra* after slaying *Vritya*⁶ (a demon) transferred the blood to a *brahmin* woman, who became the carrier of impure blood and this is how the entire stamp of impurity got imprinted with woman⁷. Many rituals and inhibitions are prevalent in India in relation to menstruation⁸.

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² Nina Hoel, and Elaine Nogueira-Godsey, *Transforming Feminisms: Religion, Women, and Ecology*, JOURNAL FOR THE STUDY OF RELIGION, vol. 24, no. 2, 2011, pp. 5–15, www.jstor.org/stable/24764281 (last visited Mar. 4, 2019).

³ Veni Soobrayan, *Custom, Religion and Women's Rights*, AGENDA: EMPOWERING WOMEN FOR GENDER EQUITY, no. 25, 1995, pp. 47–50., www.jstor.org/stable/4065847 (last visited Mar. 3, 2019).

⁴ Mitoo Das, *Menstruation as Pollution: Taboos in Simlitala, Assam*, INDIAN ANTHROPOLOGIST, vol. 38, no. 2, 2008, pp. 29–42., www.jstor.org/stable/41920072 (last visited Feb. 12, 2019).

⁵ JULIE LESLIE (ED.), *ROLES AND RITUALS FOR HINDU WOMEN* 17 (1st edn, Motilal Banarsidass Publishers Private Limited 1991).

⁶ Janet Chawla, *Mythic Origins of Menstrual Taboo Rig Veda*, (1994) 29 ECONOMIC AND POLITICAL WEEKLY 2819.

⁷ *Supra* at 5.

⁸ EMILY MARTIN, *THE WOMAN IN THE BODY: A CULTURAL ANALYSIS OF REPRODUCTION* (Beacon Press 2001).

The surfeit of rituals and religious prescriptions often come into conflict with the secular laws of state and it becomes incumbent upon courts to maintain the delicate balance between the two. The constitutional morality versus religious morality battle came to the Indian Supreme Court in case of *Indian Young Lawyers Association and others v. State of Kerala and others*,⁹ the court has to decide the rights of women (of age ten to fifty) to enter the temple of Sabarimala.

THE HARBINGER OF SPIRITUAL EMANCIPATION

India is a secular country¹⁰ and the Supreme Court has vigorously been protecting the secular fabric of the nation. The Religious clauses¹¹ and the Freedom Clauses¹² have been in constant conflict and religious exemptions from general secular laws have evolved since independence. *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*¹³ was the first case related to religious exemptions from general laws that came before the Supreme Court. This case established that Article 25 and 26 can be compartmentalised into two sets; religious and secular aspects. The textual interpretation of the codified laws permits the state regulation on any secular activity¹⁴ related to the religious institution whereas, any public character institution must open its gate for all classes of Hindus¹⁵. The ban on entry of women in Sabarimala of women of certain age group comes from the delegated legislation empowered by the 1965 Act which says: *(b) Women at such time during which they are not by custom and usage allowed to enter a place of public worship*¹⁶. This was challenged and the judgment delivered by the five judge has dissenting judgement of Justice Indu Malhotra.

Her dissent shocked the nation, she raised apprehension regarding the practical application of the judgement but the compelling interests of women outweighs the miniscule and fossilised view of clerical conservatives. A plenary reading of the judgement delivered by her highlights the underpinning of originalist school¹⁷ but the interpretations had many flaws. She gave a

⁹ *Indian Young Lawyers Association and others v. State of Kerala and others*, 2018 S.C.C. OnLine S.C. 1690.

¹⁰ *S.R. Bommai v. Union of India*. *S. R. Bommai v. Union of India* (1994) 2 S.C.R. 644.

¹¹ INDIA CONST. art. 25 and 26.

¹² INDIA CONST. art. 14, 15, 19 and 21.

¹³ In this case Madras Hindu Religious and Charitable Endowments Act, 1951 was challenged and petitioner claimed the law interfered with his right to administer and the court allowed complete autonomy in deciding the essential practices.

¹⁴ INDIA CONST. art. 25(2)(a), Secular activities include political or financial administration.

¹⁵ INDIA CONST. art. 25(2)(b).

¹⁶ Rule 3 of Kerala Hindu Places of Public Worship (Authorization of Entry) Rules 1965.

¹⁷ The constitution should be interpreted to protect those rights that are embodied in the original understanding of the constitutional makers and should not be extended to any set of rights thus they advocate upon narrow

liberal interpretation for the backing the ban but such interpretation tantamount to barring women to exercise their own constitutional rights. She opined that the constitution should be interpreted in a way that our forefathers had envisioned¹⁸. One of the valid compelling argument by the judge was that the link between the ban on entry in Sabrimala and untouchability as unsustainable as the meaning of untouchability is very different from those that our forefathers envisaged and framed Article 17 of the constitution¹⁹.

The dissent of Justice Indu Malhotra may become a Cassandra's warning as group of activists approached courts to enter into Sunni mosques. The Kozhikode-based progressive Muslim women's forum filed petition to enter mosque for prayers. The Kerala High Court did reject the petition but this is simply the tip of the iceberg. The courts in future will have to face problems with codified and non-codified personal laws inhibiting women's rights in some way or the other. The problem is that the grant of formal equality might not have an equal effect on all parties. It is true that *parens patriae* of the democratic setup is the constitution but the adjudication upon compelling interests of society and individual interests is an arduous task that might not bring the desired result. The Doppler effect of this judgement will be that the religious community will be apprehensive of their rights and management at risk of being subjugated at the cost of a "practical and factual" right of an individual which will completely disregard the "moral and religious ethos" that govern them.

The delicate balance of religious interests and individual interests can never be achieved only upon the application of objective test but when the inherent and apparent ritual of any religious is such that it aggravates the 'typification' of women as an filthy and impure biological entity cannot sustain in a nation like India. The fight between the two different interest groups will always remain but it's important that when does the subject matter of one's practice is so abhorrent that the other has to pay the price by accepting the unacceptable personal laws.

Justice Indu Malhotra further, tried to distinguish between 'worshipped' and 'worshipper' and said that the latter has no existence without the former but former exists as a celibate²⁰ thus, the 'worshipped' , she pronounced that *Lord Ayappa* has manifested himself as '*Naishtik*

interpretation of constitution for protection of rights. See A. Bickel, *The Original Understanding and Segregation Decisions*, 69 HARV. L. REV. 1(1955).

¹⁸ Indian Young Lawyers Association and others v. State of Kerala and others, 2018 S.C.C. OnLine S.C. 1690 para 310.2.

¹⁹ *Id.* at para 304.2.

²⁰ *Id.* at para 304.9.

*Brahamachari*²¹, and this is only in Sabarimala where he has vowed to be a celibate and the rest thousand temples do not have any such restrictions thus, this amounts to essential religious practices as it is sacrosanct in the mode and manner in which *Lord Ayyappa* exist. This enforces the stigma that a menstruating women is impure and may defile the purity of the Lord.

Another criticism of the dissent is that she declared that the ban on the entry as a custom²² as the ban has been practiced from time immemorial but a custom is valid if it is continuous and also not pervasive to the constitutional morals. The ban was placed after the notification in 1955. Before 1955, women were allowed to enter the Sabarimala for the first rice feeding ceremony of their children²³.thus, the custom was never continuous and is against the law of the land purporting to establish gender equality.

UBI JUS IBI REMEDIUM

Biological concessions of depriving women is simply irreligious, the juncture of gender orientation with religiosity should not be such that one is deprived of her constitutionally protected spiritual rights. Justice Chandrachud defended women's rights and held that:

“ Its effect is to impose the burden of a man's celibacy on a woman and construct her as a cause for deviation from celibacy. This is then employed to deny access to spaces to which women are equally entitled....A constitutional court such as this one, must refuse to recognize such claims²⁴. ”

The repertoire of scripts and sagas that reinforces sexual normativity was never in favour of Venus rather they were the underpinnings of Mars. This sexual legitimacy establishing what is the ideal sexual behaviour that each gender must play. It is this coercive reinforcement which was evident from the ban and the constitutional bench of supreme Court came as a good Samaritan in restoring women's spiritual emancipation. Justice Chandrachud opined:

“The stigma around menstruation has been built up around traditional beliefs in the impurity of menstruating women. They have no place in a constitutional order...The menstrual status of

²¹ means observance of celibacy forever.

²² Indian Young Lawyers Association and others v. State of Kerala and others, 2018 S.C.C. OnLine S.C. 1690. para 303.1.

²³ *Id.* at para 62.

²⁴ *Id.* at para 232.

a woman cannot be a valid constitutional basis to deny her the dignity of being and the autonomy of personhood²⁵.”

The constitutional rights under Article 14, 16 and 21 will always protect women’s right to preach, pray and propagate. Martha Nussbaum’s *capability approach* emphasises upon the protection of each individual’s choices. Real opportunities like decision making, ability to act or achieve should be left upon each citizen. She wrote:

The core idea is that of the human being as a dignified free being who shapes his or her own life in cooperation and reciprocity with others, rather than being passively shaped or pushed around by the world in the manner of a "flock" or "herd" animal.

The reductionist approach of viewing a menstruating women as impure animal is in violation of human rights, further, the onus to maintain the purity of the surrounding by shunning herself from worship or moving out is demeaning her identity.

CONCLUSION

Equality and liberty are not some theoretical concepts, rather they are the pearls that run through the thread of constitution. Denial to exercise this right on grounds that they bleed once in a month and this biological function is so contagious that it can potentially cause impurity and thereby affecting the celibacy of God isn’t a sound argument. It shows age old stigma around women’s body; the saying that *Woman is an animal at micturates once a day, defecates once a week, menstruates once a month and parturates once a year²⁶* no-where reflects the Indian constitutional morality. A quality life includes right to make choices and the freedom to act upon. A woman cannot be reduced to a mere biological entity. She has all the rights under the constitution to exercise the freedom to make religious choices. The court has been the harbinger of women’s rights and soon the rest nation will follow the path laid down by the courts.

²⁵ *Id.* at para 234.

²⁶ STANISLAUS JOYCE, THE COMPLETE DUBLIN DIARY OF STANISLAUS JOYCE, ED GEORGE H. HEALEY 11 (Ithaca: Cornell University Press 1971).

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