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**Publisher Details -**

**Bishikh Mohanty**

**E33, AWHO Colony Chandrasekharapur, Sailashree Vihar,**

**Khorda, Odisha, Pin - 751021**

**Telephone: +91 8106743973**

**Email: [ijconsstudies@gmail.com](mailto:ijconsstudies@gmail.com)**

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## RELIGIOUS PRACTICES THAT ARE VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION OF INDIA

*-Rashi Verma, student, Vivekananda Institute of Professional Studies*

The Indian Constitution establishes a distinction between a secular domain governed by the government and a religious sphere in which the government is prohibited from interfering. However, courts of law are frequently relied upon to decide a wide range of religious concerns, and their decisions can have a significant impact on religious beliefs and practices. In order for various concepts (such as “religion” or “worshipper,” “custom,” “usage,” “religious service,” “religious office,” “religious honour,” and so on) to be manageable within a legal context, standardised, clear-cut definitions must be developed. Furthermore, even while a religious domain can be demarcated from a secular one and shielded from government involvement, there are civil rights cases that involve religious problems, and civil courts may have an explicit responsibility to rule on these cases.

There are certain religious practices which are violative of Article 14 of the Indian Constitution. The Supreme Court's five-judge constitution bench has decided to refer the Sabarimala temple issue, along with three other ongoing matters involving women's religious liberties, to a larger seven-judge bench. As a result, the Supreme Court enters potentially dangerous and contradictory territory.

The new bench has been tasked with balancing the Right to Freedom of Religion with other constitutionally protected rights, particularly the Right to Equality (Article 14: The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India), as well as defining “essential religious practise” and “constitutional morality.”

### **Issues:**

#### **1. Entry of Women into the Sabarimala Temple-**

Sabarimala is a Hindu temple in Kerala's Pathanamthitta district, built on a mountaintop. The temple, which is devoted to Lord Ayyappa, draws visitors from all over the country and the world. In 1991, the Kerala High Court prohibited women above the age of 10 and under the age of 50 from entering the state because they were of the menstruating age. This prohibition

on women's admission had been in place for centuries, until it was lifted by the Supreme Court on September 28, 2018, by a majority verdict of 4:1.

Justice Chandrachud likened the bar on women based on the physiological aspect of menstruation as a form of untouchability. Such a restriction was derogatory to women and amounted to discrimination.

It ruled that the centuries-old Hindu religious practise was unconstitutional and illegal (Article 14 and 25). Custodians of the temple believe that because the deity there, Ayyappa, is a celibate, women of menstrual age are forbidden from giving prayers.

## **2. Muslim Women's Entry into Mosques-**

The All-India Muslim Personal Law Board (AIMPLB) stated that women just like men are allowed/permitted to enter mosques in order to offer 'namaz'. This was said in response to a PIL which was filed by Yasmeen Zuber Ahmad Peerzade. She sought judicial intervention in ensuring entry of Muslim women in mosques.

The Supreme Court was approached in April 2019 to seek guidance on enabling Muslim women to enter mosques by the main door and having the "Islamic right to visual and aural access to the musalla" (main prayer space).

According to the petition, "this act of ban is void and illegal because such acts are not only offensive to a woman's essential dignity as an individual, but also violate fundamental rights protected under Articles 14, 15, 21, and 25 of the Constitution." On November 5, 2019, a Bench comprised of CJI-designate Justice S A Bobde, Justices S Abdul Nazeer and Krishna Murari heard the case for the last time.

AIMPLB in its affidavit kept forward some topics to be deliberated upon by the nine-judge Constitution bench such as whether or not courts can judicially determine meaning of faiths and the extent of constitutional protection from interference in their practices.

## **3. Female Genital Mutilation among Dawoodi Bohras-**

The cruel practice of female genital mutilation is still happening to the girls from the Bohra community, a Shia sub-sect. For long, female genital mutilation remained a well-kept secret, a

taboo, a subject that was never to be discussed. The Bohra community also refers to it as Khatna.

On September 24, 2018, a Supreme Court bench referred the case of *Sunita Tiwari v. Union of India and Ors.*<sup>1</sup> to a bigger bench.

The petition, filed under Article 32 of the Constitution, questioned the constitutionality of the practise of Female Genital Mutilation (FGM), also known as ‘khatna,’ or Female Circumcision (FC), also known as ‘khafd,’ which the petitioner claimed was practised on every girl child in the Dawoodi Bohra community.

The petition cited the United Nations Convention on the Rights of the Child and the Universal Declaration of Human Rights to argue that the practise is in violation of Article 21 of the UN Convention on the Rights of the Child (right to life and personal liberty). The Bench requested that the case be referred to a higher court, which the SC agreed to.

#### **4. Entry of Parsi Women Married to Non-Parsis in the Agyari-**

The Special Leave Petition in the case of *Goolrukh Gupta v. Burjur Pardiwala*<sup>2</sup> emerged from a Gujarat High Court ruling in 2012.

Goolrukh Contractor Gupta, the petitioner, went to the High Court in 2010 when a friend of hers, who was also a Parsi married to a Hindu, was denied entrance to the Tower of Silence during her mother's death rites a few years prior.

Goolrukh Gupta's lawyer stated in court that the question was “does marriage between a Hindu and a Parsi result in automatic change of religion?” As a result, concerns of gender justice were raised.

In December 2017, a Constitution Bench found that “DNA does not evaporate” when marrying outside one's religion, and that a woman does not “surrender her affection to her father” by marrying outside her religion. Senior lawyer Indira Jaising argued that the refusal of respect and the right to religious belief simply because women marry outside of their faith violates the religious rights granted by the Constitution under Article 25 of the Constitution. Ms. Jaising

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<sup>1</sup> Writ Petition (Civil) No.286 of 2017

<sup>2</sup> 2013 (2) RCR (Civil) 91

argued that the identity of a woman would not be merged with that of her husband at the time of marriage.

The Valsad Parsi Anjuman Trust, which opposed her plea, said that the High Court decided the case after going through the affidavits of seven different Parsi priests. These Parsi priests were of the opinion that the religious tenets say that she ceases to be a Zoroastrian as soon as she married a Hindu man. Therefore, she can no longer be allowed to offer prayers in a Zoroastrian place of worship.

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