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Law

DISMANTLING BARRIERS: GENDER EQUALITY AND ENTRY TO PLACES OF WORSHIP

KEY WORDS:

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ABSTRACT

Even though women are more devotional and religious than men, inequality of genders is actually perpetuated by religion. Globally, inequality in enjoyment of rights is attributed to the deeply entrenched notions of subordination and patriarchy in tradition, history, religion and culture. Nearly all organised religions is inherently patriarchal with men holding all offices and a very negligible role for women. While the status of women has considerably improved across the world, they are not treated equal to men in religion and such inequality is widely regarded as 'natural'. This is evidenced by the barriers on entry of women to places of worship. Though defended in the name of religion and culture, the exclusionary practices impinge on gender equality and preserve patriarchy in organised religion at the expense of the rights of women. One such impinged right is a woman's right to enter a place of worship is entrenched in the Human Rights Instruments, though not implemented in practice. The research paper is an attempt to look at the right of women to enter places of worship from the lens of international law. It seeks to establish that the barriers on entry of women are a violation of the human rights framework is made. This is followed by looking into the obligation of the States under International law to dismantle the barriers on entry of women to places of worship specifically under the International bill of Rights and CEDAW.

INTRODUCTION

Even though women are more devotional and religious than men, inequality of genders is actually perpetuated by religion. Globally, inequality in enjoyment of rights is attributed to the deeply entrenched notions of subordination and patriarchy in tradition, history, religion and culture. Nearly all organised religions is inherently patriarchal with men holding all offices and a very negligible role for women. While the status of women has considerably improved across the world, they are not treated equal to men in religion and such inequality is widely regarded as 'natural'. This is evidenced by the barriers on entry of women to places of worship. Though defended in the name of religion and culture, the exclusionary practices impinge on gender equality and preserve patriarchy in organised religion at the expense of the rights of women. One such impinged right is a woman's right to enter a place of worship is entrenched in the Human Rights Instruments, though not implemented in practice.

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Locating Right To Entry To Places Of Worship Under International Law

The right to freedom of religion is an important right under the International Human Rights Law. The right to freedom of religion is enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

Article 18 of the UDHR Reads as:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

The full substance of the freedom came with the ICCPR which under Article 18(1) proclaims that:

"Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom,

either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

The guarantee of religious freedom has a broad scope as regards the protection of religion in all societal contexts and the protection of all behaviours implicated in the freedom of religion. It is seen that the right to manifest religion through worship is recognised by Article 18 of the UDHR and ICCPR. This includes participation in rituals and ceremonies and various practices integral to expression of belief. Entry to places of worship is a direct expression of belief and an essential pre-requisite to be able to worship. Hence the researcher asserts that the freedom to enter a place of worship of one's choice is implicit in the right to worship. Moreover, the very right to worship would be rendered meaningless in absence of the freedom to enter. Clearly the barriers on entry of women to places of worship are a violation of the right to manifest religious beliefs and hence ought to be dismantled.

The Human Rights Committee, 'The freedom to manifest religion or belief may be exercised "either individually or in community'. This implies that freedom to enter a place of worship is also an individual right. Thus every person is entitled to enter a place of worship of his choice.

Violation Of Equality And Non Discrimination

The moral imperative lying behind much of international human rights law is to treat all humanity as of equal worth. Hence guarantees of equality and non discrimination are like a golden thread running through the International Human Rights Framework. Several human rights instruments house separate provisions embarking the equality between men and women. In fact the express rationale of the Convention on Elimination of all forms of discrimination against women (CEDAW) is to prohibit discrimination on grounds of gender and taking measures towards its elimination. The struggle against barriers on entry to places of worship is largely a measure against subordination and inequality.

The principle of equality and non- discrimination is a peremptory norm of jus cogens. The principle of equality and non discrimination play a vital role in securing women's rights by prohibiting unjustified differential treatment on grounds of gender. Article 2(1) of the ICCPR obligates the State Parties to guarantee the rights guaranteed under the Covenant without discrimination or distinction of any kind. Therefore the States

have an obligation to ensure the right to worship is secured to women without discrimination of any kind. This includes an obligation to dismantle barriers on entry of women to places of worship. Article 26 of the International Covenant on Civil and Political Rights also provides for equality before the law and equal protection of the law.

Violation Of The Right To Be Free From Discrimination

The barriers on entry of women to places of worship are a manifestation of gender based discrimination against women which is intrinsically linked to the unequal position of women in society and religion. The right to be free from discrimination is enumerated in numerous international and regional human rights instruments. CEDAW marks out discrimination against women as a serious human rights violation meriting a specific human rights instrument. Article 1 of the Convention takes a broad view of 'discrimination against women', it reads as:

"For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in their political, economic, social, cultural, civil or any other field."

To view any custom or practice to be an act of discrimination against human rights law, it must fall within the premises of Article 1 of the Women's Convention. This means that it must be a distinction, exclusion or restriction based on gender which effects or intends to impair women's ability to enjoy her right equally with men. Exclusion from places of worship has the effect of nullifying the enjoyment of right to worship and other fundamental rights of women. Moreover, the barriers on entry of women carry a strong message that women are subordinate to men and also perpetuate the perceptions that women are impure or evil. Henceforth any ban or restriction on entry of women to places of worship fits within the definition of discrimination against women.

OHCHR Report substantiates on the Article and states that Gender based discrimination encompasses any difference in treatment on the grounds of sex which: Intentionally or unintentionally disadvantages women; Prevents society as a whole from recognizing women's rights in both the private and the public spheres; Prevents women from exercising the human rights and fundamental freedoms to which they are entitled. The restrictions on entry of women are a form of gender based discrimination which dis-privileges women and prevents them from exercising their right to worship and other freedoms. Moreover it also prevents the society from acknowledging the right of women to worship and enter places of worship. Henceforth undoubtedly any such restriction constitutes a case of gender based discrimination.

The question that may be raised is that since men also face barriers on entry to certain places of worship, can the exclusion of women be termed as exclusion or distinction based on gender as defined under Article 1? The researcher asserts that the answer is yes. While it is true that men do face exclusion in some places of worship, the social message of subordination and impurity is unique to women's exclusion. Moreover in places where men are denied access, the head priest is often a male. This however does not mean that the exclusion of men does not merit examination under human rights principles. It is merely used to assert that the exclusion of women does not cease to be a case of gender discrimination as defined in Article 1, on grounds that men too are prohibited entry to some places of worship.

Women's Right To Equality V. Right Of Religious Communities

A conflict between individual's right to freedom of religion

and group's right to freedom of religion arises because the exclusion of women is justified as a matter of religious conscience of the community. Although the exclusion does not have a clear support in any religious doctrine, communities believe it is mandated by the religion. Hence any interference with the ban is perceived as an infringement of the right to religion. However, under the International human rights framework the right is not absolute and in fact a superiority of the individual right to equality over the rights of religious community can be inferred from the ICCPR AND CEDAW.

Article 18(3) of the ICCPR states that,

"Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

This Article intends to clarify that the right to manifest one's religion is not an absolute right. By subjecting the freedom to manifest one's religion to the fundamental rights and freedoms of others, the researcher asserts that the Article establishes superiority of women's freedom to enter places of worship at par with men over it. Therefore the women's right to enter places of worship at par with men tramples over the right of religious institutions.

In fact, under the CEDAW women's right and equality are more explicitly protected and an obligation on the State to modify social and cultural practices or customs in cases when they are in confrontation with women's right to equality. Thus the customs and practices which impose barriers on entry of women to places of worship ought to be amended to make certain that women's equality is not compromised. Very often religion and tradition are invoked to justify violations of equality. However the same not justifiable and the States are bound to ensure that breaches of equality do not get protection. Moreover the right to freedom of religion as a group right exists to advance the individual's right to freedom of religion and not vice versa. Therefore the religious organizations cannot impose barriers on entry of women to places of worship and annihilate their right to freedom of religion.

Moreover the concept of equal rights is the basis of participation in public life. Accordingly, the researcher asserts that women should be treated on the same footing as men in terms of their participation in religious life and their treatment by religious institutions. By treating women as lesser than men and denying them the right to entry and thereby participation in religious life, the barriers on entry of women to places of worship violate are also an affront on the women to participate at an equal footing as men in religion. The barriers relegate women to a subordinate status than men and this is clearly against their dignity. Moreover the barriers restrict women's freedom of movement and autonomy to decide where and how to worship.

The researcher submits that the basis for restricting the right to religious freedom as regards entry of women lies in the detrimental effect that the barriers on women's entry to places of worship have upon the rights and status of women. Women must have the freedom to exercise their choice regarding entry to places of worship. Women who want to visit places of worship where entry for them is prohibited must be free to enter consistently with their faith. Likewise women, whose religious convictions require them to abstain from entering into the sanctum sanctorum, must be free to act accordingly.

Dismantling Barriers: Obligation Of The State Under International Law

It is established that the right of women to enter places of worship has sufficient support under the International Human

Rights framework. The human rights framework provides a means to dismantle barriers on entry of women to places of worship. Very often religion and tradition are invoked to justify violations of equality. However the same not justifiable and the States are bound to ensure that breaches of equality do not get protection. In this Part the researcher discusses the obligations of the States to dismantle barriers on entry of women to places of worship. At first the obligation under the International Bill of Rights is touched upon, followed by obligations enumerated under the Women's Convention.

International Bill Of Rights

As a general rule, the actions of state and not private actors come under the purview of international law. Thus prima facie it seems that the Government has no accountability for prohibitions on entry of women to places of worship as the barriers are imposed by the organised religious institutions without an active involvement of the Government. However, the absence of direct involvement does not relieve the states of their obligation to dismantle barriers on entry of women. This is because the international human rights law casts not only an obligation on the state to refrain from violating the rights but also to ensure universal enjoyment of the rights in their jurisdictions. Thus the Governments can be held accountable for failing to abolish the barriers on entry of women to places of worship. Government's duty to take action against exclusionary practices has its foundations in the PROVISIONS OF international human rights law treaties that require government both to respect and to promote the enjoyment of individual rights in their jurisdictions. Article 2(1) of ICCPR obliges the state to ensure the rights guarantees therein. It states: "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."

The use of the expression "to ensure" implies an obligation of the State extends to preventing violations of individual rights by private actors.

The CEDAW places explicit obligations upon Governments to prevent violation of the rights of women by private parties. It unequivocally obliges States to endeavour to get rid of the moulds that propagate damaging gender stereotypes and to craft a general framework to facilitate the recognition of full rights of women. Article 2(e) requires "the State Parties to take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise." Furthermore, the State Parties have an obligation under Article 2(f) "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women." Therefore the Governments have an obligation to abolish existing laws, customs and practices prohibiting or restricting entry of women to places of worship and also take affirmative steps to address such discrimination. Even though the barriers on entry are put in place by religious institutions, by virtue of Article 2 of CEDAW, the Government is nonetheless bound to dismantle the barriers and protect the human rights of women. Moreover Article 5 of the Convention is explicit in its demand that the States 'take all appropriate measures to modify the social and cultural elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes.' Clearly the prohibitions on entry are based on the idea of inferiority of women and thus states must take all measures to dismantle the barriers and create a social order conducive to the full enjoyment of right to worship of women.

The obligation of the Governments includes exercising due

diligence which means take all measures that can be reasonably taken in the circumstances in order to ensure the rights. The researcher asserts that in cases of gender based exclusion from places of worship, the duty of due diligence includes dismantling barriers on entry through legislations, ensuring security of person to women seeking to enter and penalising discrimination by any person or organised religion. This list is not exhaustive.

Though the obligation of the State parties to dismantle barriers on entry of women to places of worship can be identified in the International Human Rights Framework, it is difficult to adjudge how to best address such obligations and also what are the standards for determining government's fulfilment of the obligations. This is attributed to the fact that it is not the Government but organised religion which perpetrates and establishes such barriers and also the fact that the obligation of the State as regards entry of women has not been explicitly institutionalised at the international level. As a consequence of this gap serious breaches of the obligation persist globally, which is frustrating. It is hoped that the duty of the states in this regard will be expressly acknowledged and find express place in the expanding jurisprudence of the human rights bodies.

CONCLUSION

While the status of women has considerably improved across the world, they are not treated equal to men in religion and such inequality is widely regarded as 'natural'. Since the adoption of the UN Charter and subsequently the UDHR, women's rights have been acknowledged as a part of universal and indivisible human rights. However, while human rights instruments proclaim that everyone is equal, the attainment of this is hampered by the failure to perceive the barriers on entry as a form of gender discrimination. Moreover, the International Law is yet to definitively and specifically address the issue of barriers on entry of women to places of worship. In fact the issue of restrictions on entry of women at the international level has not been highlighted at the international level and there is inadequate questioning of this form of discrimination.

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