

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA FOR PASSING OF AN APPROPRIATE WRIT OF MANDAMUS THEREBY PERMITTING THE PETITIONER AND FEMALE MUSLIMS TO ENTER MOSQUE AND OFFER THEIR PRAYER AND APPROPRIATE WRIT ORDER OR ORDERS OR DIRECTIONS FOR SETTING ASIDE THE ALLEGED FATWA/DIRECTIONS OF IMAMS WHICH IS IN VIOLATION OF ARTICLE 14,15, 25, 29 AND DIRECTIVE PRINCIPLES OF THE CONSTITUTION OF INDIA

TO  
THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION  
JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF  
THE PETITIONER ABOVE-NAMED

**MOST RESPECTFULLY SHOWETH:**

1. This Writ Petition is filed under Article 32 of the Constitution of India praying for a direction against the Union of India and others seeking a writ or order or direction in the nature of mandamus declaring the practices of prohibition of entry of Muslim Women in Mosque in India as illegal, unconstitutional for being violative of Articles 14, 15, 21, 25 and 29 of the Constitution, and to pass such further orders as this Hon'ble Court may deem appropriate to provide a life of dignity to Muslim women. This petition is filed by the Petitioner in his individual capacity.

2. That the petitioners are citizens of this country and carrying on business in Pune. The petitioners have devoted his life for the welfare of the people, community and the country. The petitioners are proud to be part of the Indian Judicial System, the largest of its kind, imparting justice to the citizen of the country who has undoubted belief in the system to get true justice.
3. That the Petitioners do not have any personal interest or any personal gain or private motive or any other oblique reason in filing this Petition in public interest. The petitioners are not involved in any similar civil or criminal matters herein similar issue is involved.
4. That the entire litigation costs and other charges is being borne by the Petitioner himself.
5. That there will be no injury caused or likely to be caused to the public at large, as it is the violation of fundamental right of the petitioner as well as several other similarly placed citizens that they have approached this Hon'ble Court for appropriate relief.

6. That it is submitted that there is no civil, criminal or revenue litigation or Writ Petition, application including Review Application etc. or any other proceedings arising from or related to relief sought in the instant matter, involving the petitioners or any of the petitioners, which has or could have a legal nexus with the issue(s) involved in the Public Interest Litigation.
7. That the Petitioners are in position to deposit any cost imposed by this Hon'ble Court.
8. That the petitioners are filing the present writ petition in public interest. The petitioners have no personal interest in the litigation and the petition is not guided by self-gain or for gain of any other person / institution / body and that there is no motive other than of public interest in filing the writ petition.
9. That the petitioners have based the instant writ petition from authentic information and documents obtained from various governments departments/ portals/ RTI applications.
10. That the petition, if allowed, would benefit the citizens of this country generally as rule of law is essential for democracy and such brazen violation of law by the

respondents can be stopped by the orders of this Hon'ble Court only.

11. That the persons affected by such acts of the State are numerous and are not in a position to approach the Hon'ble Court hence the petitioners are filing the present PIL on behalf of such affected persons.
12. That this Hon'ble Court can only pass order in respect of relief sought by petitioners. That the respondent No.1 is the Supreme Court of India through the Registrar general of this Hon'ble Court and is a necessary party to this Petition since it is the appropriate authority to pass order for violation of fundamental rights and implement the relief sought for in this Petition.
13. The petitioner has approached this Hon'ble Court, as this Hon'ble Court is the appropriate authority and vested with power under the Constitution of India for passing appropriate directions.
14. That the Petitioner has not approached any other court for the reliefs claimed in the present Writ Petition. No representation has been filed with any Ministry /authority since the alleged act of prohibition of entry to mosque is

violation of constitutional and fundamental right guaranteed under the Constitution as there cannot be any discrimination based on caste, sex and religion and the reliefs claimed can only be granted by this Hon'ble Court.

- 15.** The petitioner had written on 19.10.2018 regarding permission for women to offer their prayer / Namaj in Mosque. The Mohmdiya Jama Masjid, Bopodi, Pune had responded to the petitioner's request stating that no practice of entry of women in Mosque is permitted in Pune and other areas, yet they have written a letter to Daud Kajha and Daud Ullum Devvand and would respond to petitioner's request. Copy of the letter dated 19.10.2018 is annexed herewith and marked as **Annexure P-2 (Pg No. to )**. Copy of letter dated 25.10.2018 is annexed herewith and marked as **Annexure P-3 (Pg No. to )**.

16. That as there was no response, as such the petitioner on 26.11.2018 had sent a reminder. In response to the said letter, the Imam of Jama Masjid, Bopodi, Pune had written that since no permission can be granted and he is not sure about entry of women in mosque, as such he had written to higher authorities for consideration of petitioner's request and requisite

directions. The Imam, who are considered to be religious head in Muslims had refused to grant permission citing vague reasons. Copy of letter dated 26.11.2018 written by the petitioner is annexed herewith and marked as **Annexure P-4 (Pg No. to )**. Copy of the reply sent by the Mosque and Imam is annexed herewith and marked as **Annexure P-5 (Pg No. to**

**17.** That the petitioner had again made a request to the police authorities for granting protection to the petitioner to permit his wife to enter mosque and offer her prayer/ Namaj but the police has also failed to perform their function. Copy of letter written by the petitioner to the police authorities is annexed herewith and marked as **Annexure P-6 (Pg No. to )**.

18. That the petitioner has approached this Hon'ble Court, as this Hon'ble Court is the appropriate authority and vested with power under the Constitution of India for passing appropriate directions protecting the violation of Constitutional and fundamental right of the women guaranteed under the Constitution of India.

19. This Writ Petition is filed for enforcement of the public interest. There is a proliferation of media images of a

burqa clad thoroughly victimised Muslim women who is in need of protection through the liberal rights discourse. Such representation of a universally victimised subject creates knowledge of the 'other' as oppressive and consequently an opposite self image of humane. Religious fundamentalism is often presented as a characteristic or feature of 'other' countries, 'other' worlds, and most frequently of course, the Islamic world and the Muslim community. This practice is reminiscent of the imperialist project of civilizing the "other" where imperialism was justified on the pretext of "white man's burden" where the knowledge production from the west created certain understanding about the culture of the non-west.

20. That this Hon'ble Court has recently held that, "Women is not lesser or inferior to man. Patriarchy of religion cannot be permitted to trump over faith. Biological or physiological reasons cannot be accepted in freedom for faith Religion is basically way of life however certain practices create incongruities"..... Anything destructive of individuality is anachronistic of Constitutionality. To treat women as lesser people blinks at the Constitution itself".

21. There is nothing in the Quran and the Hadith that requires gender segregation. There are diverging opinions among experts in Islamic theology concerning gender segregation. On one side of the spectrum, an Islamic theologian in Canada, Ahmad Kutty, has said segregation of the sexes is not a requirement in Islam, as men and women interacted in Muhammed's time without any partitions. On the other side of the spectrum, an Islamic theologian in Saudi Arabia, Abdul-Rahman al-Barrak, has issued a death warrant in the form of a fatwa against those who allow the mixing of the sexes. The Prophet Muhammad specifically admonished the men not to keep their wives from going to the mosques:

Ibn Umar (Abdullah bin Umar) reported what is translated as:

The Messenger of God said, "Do not prevent the maid-servants of God from going to the mosque."

—Muslim, No.888 (See also Nos. 884-891 and Bukhari Vol.1, Nos. 824, 832)

It is clear from the following hadith that in some mosques, the women prayed behind the men and were not separated in a separate room or even concealed by a curtain or partition where there wasn't one available

(where the screen is practiced in many mosques today, and in the past, it is as a precaution to prevent unnecessary socializing and distraction during prayers):

Asma' bint Abi Bakr (daughter of Abu Bakr) said what is translated as:

I heard the Apostle of God say, "One of you who believes in God and in the Last Day should not raise her head until the men raise their heads lest she should see the private parts of men."

—Sunan Abu Dawud, No. 850

22. This Hon'ble Court has recently held that, "Religion cannot be used as cover to deny rights of worship to women and it is also against human dignity." "Prohibition on women is due to non-religious reasons and it is a grim shadow of discrimination going on for centuries"

23. That the issues for consideration of this Hon'ble Court are as under:

a) Whether the act of preventing the females from entering mosque is violative of Article 44 of the Constitution of India, which encourages the State to secure a uniform civil code for all citizens, by

eliminating discrepancies between various personal laws currently in force in the country?

b) Whether the act of preventing/excluding the females from entering mosque and offering prayer is constitutionally valid?

c) Whether the Act of withholding women from entering mosque is invalid and can a right to exclude be claimed under Article 25(1) of the Constitution and violative of directive principles?

d) Whether the exclusion of women nonetheless barred by reasons of "public order", "health", "morality", or because of "other clauses of Part III", will take precedence over Article 25(1) of the Constitution of India?

e) Whether Article 15 of the Constitution clearly prohibits discrimination by the government on the basis of sex?

f) Does a woman's entry to a masjid or eidgah (a place where Muslims congregate for Eid-ul-Fitr and

Eid-ul-Azha celebrations) create *fitna* (distress)? If yes, then why not in the Hajj pilgrimage and Umrah (a lesser Hajj), where thousands of Muslim women gather and perform Hajj rituals such as *tawaf* (walking around the *Ka'ba*) and *sa'I* (running between the hills of Safa and Marwa) and *ramye zamrat* (stoning of the devil ceremony) along with their male counterparts?

g) Whether religious bodies that ask for and receive taxpayers' money from the government are also subject to this condition imposed by our Constitution?

h) Whether the historical sources also show that Prophet Muhammad had himself encouraged women to actively participate in mosque congregations and prayer and the most sacred mosque in the world for Muslims embraces both men and women and there is complete unanimity in the Muslim community on the Masjid-al-Haram in Mecca being the most sacred mosque to all Muslims in the world?

i) Whether the arbitrary prohibition imposed on women violate the fundamental right of the citizens guaranteed under Article 14 of the Constitution of India to be treated equally and is violative of fundamental rights under Articles 25 and 29 of the Constitution of India?

j) Whether the prohibition is void and unconstitutional as such practices are not only repugnant to the basic dignity of a woman as an individual but also violative of the fundamental rights guaranteed under Articles 14, 15, 21 and 25 of the Constitution?

k) Because this Hon'ble Court in *Khursheed Ahmad Khan v. State of Uttar Pradesh and Others*, (2015) 8 SCC 439 has taken the view that practices permitted or not prohibited by a religion do not become a religious practice or a positive tenet of the religion, since a practice does not acquire the sanction of religion merely because it is permitted?

24. That the Petitioner had conducted thorough research on the subject matter and all the relevant material in

relation to this petition has been collected from reliable sources.

25. That Article 15 directs that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. Any law discriminating on one or more on these grounds would be void.

26. That the core ethos of India has been a fundamental unity, tolerance and even synthesis of religion. It is an indubitable fact that hundreds of millions of Indians belonging to diverse religions lived in comity through the ages, marred through at times by religion revolts, economic exploitation and social suppression being often at the bottom of it all. India is a country built on the foundations of a civilization that is fundamentally non-religious. The Preamble of Indian Constitution aims to constitute India a Sovereign, Socialist, Democratic Republic. The terms socialist and secular were added to it by the 42nd amendment. The whole constitution is summarized in the preamble. It is the mirror to the spirit of the constitution. The arrangement of the words in the preamble is also very significant. Indian society is a

multi-religious society, it is having different caste, religion along with several religion diversification.

27. The constituent assembly has visualized the peculiar situations of the country and a very arranging the preamble it aims to secure to citizens justice, equality and liberty. The basic aim is to promote fraternity while assuring unity and integrity of the nation along with individual dignity. Fraternity is a very significant tool to combat the divisive factor. Religious harmony is a must to promote fraternity particularly in Indian context. So it's a constitutional mandate upon the state to combat the factors which curtails religious fraternity. It is also incumbent upon the state to take positive as well as negative actions to promote fraternity. Art. 25(1) guarantee to every person the freedom of conscience and the right to profess, practice and propagate religion. It is submitted that drastic comments/ remark/ suggestion falling from a sitting judge is uncalled for and shows a political colour and that too nearing his retirement.
28. That the Secular state is a state which guarantees individual and corporate freedom of religion deals with the individual as a citizen irrespective of his religion is not

constitutionally connected to a particular, nor does it seek either to promote or interfere with religion upon closer examination it will be seen that the conception of a secular state involves three distinct but inter-related sets of relationships concerning the state, religion and the individual. In *Indra V. Rajnarayan* 1975 AIR, S.C 2299, the basic feature of the secularism was explained by the Hon'ble Supreme Court which held that, secularism means' that state shall have no religion of its own and all persons of the country shall be equally entitled to the freedom of their conscience and have the right freely to profess, practice and have the right freely to profess, practice and propagate any religion". In *S.R.Bomma V. Union of India* 1994 AIR, SC 1981 this Hon'ble Court while upholding the dismissal of four state governments ruled by BJP, on the ground of religious conduct, held that "secular not only meant that the state should have no religion of its own and should be neutral as between different religious, but that political party which sought to capture the power, the religious would come to capture the power, the religions would come to acquire a secondary or less favourable position.

29. This Hon'ble Court has ruled in *Bal Patil and Anr. v. Union of India* that the State has no religion and State has to treat all religions and religious people equally and with equal respect without in any manner interfering with their Individual rights of religion, faith and worship. The objectives and parameters of a secular, socialist, democratic republic had to be expressed in such flexible, yet firm, fashion that a creative and realistic jurisprudence and complex of constitutional strategies could be put into operation which would harmonies not antagonize, religious minorities, integrate not acerbate, hostile strata, abolish not accentuate, the socio-religious discrimination endured by the weaker human sector and generate a system and society where secular unity would comport with cultural diversity. The acceptance of community specific rights reflects another feature of Indian secularism because it was born in a deeply multi-religious society, it is concerned as much with inter-religious domination as it is with intra-religious domination.
30. That the act of prohibition of females from entering mosque is void and unconstitutional as such practices are not only repugnant to the basic dignity of a woman as an

individual but also violative of the fundamental rights guaranteed under Articles 14, 15, 21 and 25 of the Constitution.

31. That in *Khursheed Ahmad Khan v. State of Uttar Pradesh and Others*, (2015) 8 SCC 439, this Hon'ble Court has also taken the view that practices permitted or not prohibited by a religion do not become a religious practice or a positive tenet of the religion, since a practice does not acquire the sanction of religion merely because it is permitted.
32. That there are no records stating that the Holy Quran and Prophet Muhammad had opposed women entering mosques and offering prayers. Like men, women also have the constitutional rights to offer worship according to their belief. At present, women are allowed to offer prayers at mosques under *Jamaat-e-Islami* and *Mujahid* denominations, while they are barred from mosques under the predominant *Sunni* faction. It is submitted that even in the mosques where women are allowed, there are separate entrances and enclosures for worship for men and women. There should not be any gender discrimination and allow Muslim women to pray in all

mosques, cutting across denominations. It is submitted that there is no such gender discrimination to offer worship in Mecca, the holy city. The faithful, both men and women, together circle the Kaaba.

33. That the Quran does not differentiate between man and woman. It speaks only about the faithful. But Islam has become a religion in which women are being oppressed. It is submitted that women are never allowed inside Sunni mosques to pray and they, too, have the right. Women were allowed to enter mosques even during the time of the Prophet. It is submitted that Muslim women are being 'discriminated' as they are not allowed to enter and pray in the main prayer hall of mosques in violation of Articles 14 and 21 of the Constitution. This is an encroachment into the realm of personal liberty and social security.
34. The freedom of conscience and free profession, practice and propagation of religion guaranteed by Article 25 of the Constitution is not absolute and, in terms of Article 25(1), "subject to public order, morality and health and to the other provisions of this Part". It is submitted that a harmonious reading of Part III of the Constitution clarifies that the freedom of conscience and free profession,

practice and propagation of religion guaranteed by Article 25 is subject to the fundamental rights guaranteed by Articles 14, 15 and 21. In fact, Article 25 clearly recognises this interpretation by making the right guaranteed by it subject not only to other provisions of Part III of the Constitution but also to public order, morality and health.

35. It is submitted that the Legislature has failed to ensure the dignity and equality of women in general and Muslim women in particular. Despite the observations of this Hon'ble Court for the past few decades, Uniform Civil Code remains an elusive Constitutional goal that the Courts have fairly refrained from enforcing through directions and the Legislature has dispassionately ignored except by way of paying some lip service.
  
36. Article 3 of the Universal Declaration of Human Rights provides that everyone has the right to life, liberty and security of person while Article 7 provides that everyone is equal before the law and is entitled without any discrimination to equal protection of the law. Since the adoption of the Universal Declaration of Human Rights, the universality and indivisibility of human rights have been emphasised and it has been specifically recognised

that women's human rights are part of universal human rights.

37. Non-discrimination and equality between women and men are central principles of human rights law. Both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (to both of which India acceded on 10.04.1979) prohibit discrimination on the basis of gender and guarantee women and men equality in the enjoyment of the rights covered by the Covenants. Article 26 of the International Covenant on Civil and Political Rights provides for equality before the law and equal protection of the law, while Article 2(2) of the International Covenant on Economic, Social and Cultural Rights requires States to guarantee that the rights enunciated in the Covenant can be exercised without any discrimination of any kind including on the lines of gender or religion. It is submitted that discrimination and inequality can occur in different ways, including through laws or policies that restrict, prefer or distinguish between various groups of individuals. It is further submitted that to achieve actual equality, the underlying causes of women's inequality must be addressed since it is not enough to guarantee identical treatment with men.

A true copy of the International Covenant on Civil and Political Rights is attached as **Annexure P-7 (Pages to )**. A true copy of the International Covenant on Economic, Social and Cultural Rights is attached as **Annexure P-8 (Pages to )**.

38. The United Nations Economic and Social Council's Committee on Economic, Social and Cultural Rights explained in its General Comment No. 16 of 2005 that the parties to the International Covenant on Economic, Social and Cultural Rights are obliged to eliminate not only direct discrimination, but also indirect discrimination, by refraining from engaging in discriminatory practices, ensuring that third parties do not discriminate in a forbidden manner directly or indirectly, and taking positive action to guarantee women's equality. It is submitted that failure to eliminate de jure (formal) and de facto (substantive) discrimination constitutes a violation of the rights of women envisaged in such international treaties and covenants.
  
39. That the concept of secularism is embedded in our constitutional philosophy. India's constitutional commitment to secularism emerged out of the freedom struggle. In 1908, Gandhiji wrote in Hind Swaraj: "India

cannot cease to be one nation, because people belonging to different religions live in it... In no part of the world are one nationality and one religion synonymous terms; nor has it ever been so in India." The Hon'ble Supreme Court observed that, "The term 'Secular' has advisedly not been defined presumably because it is a very elastic term not capable of a precise definition and perhaps best left undefined." The apex court itself declared in no uncertain terms that secularism is part of the basic structure of the Constitution.

40. The present Writ Petition is filed bona fide and in the interest of justice.
41. The Petitioner has no adequate or equally efficacious remedy but to approach this Hon'ble Court by way of the present Writ Petition.

### **GROUND**

A. Because a life of dignity and equality is undisputedly the most sacrosanct fundamental right guaranteed by the Constitution and it prevails above all other rights available under the laws of India. It is therefore submitted that the solutions to societal problems of universal magnitude pertaining to horizons of basic human rights, culture, dignity,

decency of life, and dictates of necessity in the pursuit of social justice should be decided on considerations other than religion or religious faith or beliefs, or sectarian, racial or communal constraints.

B. Because the Constitution neither grants any absolute protection to the personal law of any community that is unjust, nor exempts personal laws from the jurisdiction of the Legislature or the Judiciary.

C. Because Entry 5 of List III in the Seventh Schedule confers power on the Legislature to amend and repeal existing laws or pass new laws in all such matters which were on August 15, 1947, governed by personal laws, and the Legislature has practically abdicated its duties and permitted the basic fundamental rights of Muslim women to be widely violated which also affects the entire country as a matter of public order, morality and health.

D. Because the freedom of conscience and free profession, practice and propagation of religion guaranteed by Article 25 of the Constitution is, in

terms of Article 25(1), "subject to public order, morality and health and to the other provisions of this Part". It is submitted that the Constitution does not preclude the State from introducing social reforms and enacting laws on subjects traditionally associated with religion, especially when such laws aim to secure public order, morality, health and the rights guaranteed by Part III of the Constitution.

E. Because the Constitution only protects religious faith and belief while the religious practices under challenge run counter to public order, morality, and health and must therefore yield to the basic human and fundamental right of Muslim women to live with dignity, under equal protection of laws, without any discrimination on the basis of gender or religion.

F. Because the Legislature has failed to ensure the basic dignity and equality of women in general and Muslim women in particular when it concerns matters related to entry in mosque, wearing burqa.

G. Equality should be the basis of all personal law since the Constitution envisages equality, justice and

dignity for women. Failure to eliminate de jure (formal) and de facto (substantive) discrimination against women including by non- State actors, either directly or indirectly, violates not only the most basic human rights of women but also violates their civil, economic, social and cultural rights as envisaged in international treaties and covenants.

H. Because as held by this Hon'ble Court in the case of Sabraimala, that "Religion cannot be used as cover to deny rights of worship to women and it is also against human dignity. Prohibition on women is due to non-religious reasons and it is a grim shadow of discrimination going on for centuries".

I. Because Article 15 of the Constitution clearly prohibits discrimination by the government on the basis of sex. It is submitted that Religious bodies that ask for and receive taxpayers' money from the government are also subject to this condition imposed by our Constitution, he said. It is very unfortunate that not a single political party or a chief minister, women included, has thought of advancing the interest of Muslim women by providing them with access to mosques that receive

monetary aid from taxpayers' money. It is because of such failure that a need has arisen for Muslim women from several states to approach the Supreme Court.

J. Because women are allowed to enter mosques that have a separate space for them, but most mosques in India do not. Socially, Indian women are not encouraged to regularly pray at mosques even if they do have separate enclosures. Most women visiting the Jama Masjid, for instance, would be Muslim tourists in Delhi rather than residents of the capital. Maulana Syed Ahmed Bukhari, Shahi Imam of Jama Masjid in Delhi, said there was no ban on Muslim women entering a mosque. "Islam gives permission for women to enter and pray inside," the imam of India's largest mosque said. He, however, blamed male chauvinists in the community for barring women inside many smaller mosques. "Traditionally, these local committees have never allowed women to enter mosques.

K. Because the Quran does not contain any verse or commandment that prohibits women from entering

a mosque or praying there. It is submitted that the Quran casts the same religious duty on both the sexes - women are not subject to less religious duties or obligations. Further, both sexes are promised the same spiritual rewards - men are not promised more. It is submitted that historical sources also show that Prophet Muhammad had himself encouraged women to actively participate in mosque congregations and prayer.

L. Because the most sacred mosque in the world for Muslims embraces both men and women. Also, there is complete unanimity in the Muslim community on the Masjid-al-Haram in Mecca being the most sacred mosque to all Muslims in the world; every able bodied Muslim is required to visit it at least once in his lifetime. The Masjid-al-Haram in Mecca has always invited Muslim women from every part of the world to pray in it. It does not discriminate between men and women simply because any such discrimination would have violated the Quran.

M. Because in most of the countries from around the world, generally, women are allowed to enter mosques. Indeed there are multiple hadith from the Prophet that advises men not to prohibit women from attending mosques, and that certain women learned entire Surahs from the Qur'an from the Prophet's recitation. For example:

It was narrated that Umm Hisham bint Harithah bin An-Nu'man said: I only learned 'Qaf. By the Glorious Quran' through listening to the Messenger of Allah (SAWS); he used to recite it in Subh. (Hasan)

Sahih Muslim Book 4 Hadith 150

Salim narrated it from his father ('Abdullah b. Umar) that the Messenger of Allah (may peace be upon him) said: When women ask permission for going to the mosque, do not prevent them.

Sunan An-Nisa'i Book 11 Hadith 74

Note here that the narrator is "Umm Hisham bint Harithah" -- literally the mother of Hisham, the Daughter of Harithah -- clearly indicating she was female and prayed Fajr in the masjid.

Sarakhsi (one of the major scholars in the Hanafi school) in one of his books said "it is disliked in our age". In his age, there was a fear that women might be attacked. Note, however, that this was in the 11th century, and that Sarakhsi was very specific about the applicability of this.

N. Because there is not a single verse in **QURAN**, which prohibits ladies from entering mosques. There is only one Hadith, which perhaps could have been misunderstood to mean that women should not go to the mosque. That Hadith is as follows:

"Abdullah Bin Mas'ud reported the Prophet (pbuh) as saying: It is more excellent for a woman to pray in her house than in her courtyard, and more excellent for her to pray in her private chamber than in her house. [Sunan Abu Dawood Vol.1 Chapter 204 Hadith No.570]

O. Because the Prophet (pbuh) said that if a person prays in the mosque he gets 27 times more blessings (Sawab). Some women argued that they had infants at home and other household work and therefore could not go to the mosque. Thus, the men would have a greater advantage than women

for receiving such blessings. It is then that the Prophet (pbuh) said the above Hadith. It is submitted that in situations where women have infants and household work, which too is an important duty that cannot be neglected, women would not be deprived of the sawaab (blessings) if they pray in their own homes. Islam permits women to pray in mosques. Ladies should have separate and equal facilities. Islam does not permit the intermingling of sexes.

P. Because in recent times, women are not allowed in mosques in a few countries especially in India and its neighbouring countries. Otherwise, in most of the other countries, women are allowed in mosques. Women are allowed in mosques in Saudi Arabia, in U.A.E; in Egypt, in U.S.A; in the U.K and in Singapore. Women are also allowed in the sacred mosques, Masjid-e-Haram in Makkah and in Masjid-e-Nabawi in Madinah. It is a misconception that women are not allowed in Mosques, Women have their own separate prayer room (except for Masjid Al Haram, Makkah, because of logistical problems) and in Indian subcontinent, they stopped building

separate chambers for women again for logistic purposes rather than religious.

Q. Because Ibn 'Umar reported the Messenger of Allah (May peace be upon him) as saying; Do not prevent the female servant your women from visiting the mosques of Allah. Sunnan Abi Dawood 566. However there are some rules, for women to enter prayer area Zainab Ath-Thaqafiyyah that: The Prophet [SAW] said: "Any one of you (women) who wants to go out to the Masjid should not go near any perfume." Sunan An-Nasa'i 5262

R. Because Does a woman's entry to a masjid or eidgah (a place where Muslims congregate for Eid-ul-Fitr and Eid-ul-Azha celebrations) create *fitna* (distress)? If yes, then why not in the Hajj pilgrimage and Umrah (a lesser Hajj), where thousands of Muslim women gather and perform Hajj rituals such as tawaf (walking around the Ka'ba) and sa'I (running between the hills of Safa and Marwa) and *ramye zamrat* (stoning of the devil ceremony) along with their male counterparts?

Why does the Muslim clergy not raise their eyebrows for this assembly?

S. Because the Fundamental Rights, Directive Principles of State Policy enshrined under the the Constitution of India that prescribe the fundamental obligations of the states to its citizens and the duties and the rights of the citizens to the State. These sections comprise a constitutional bill of rights for government policy-making and the behaviour and conduct of citizens. These sections are considered vital elements of the constitution, which was developed between 1947 and 1949 by the Constituent Assembly of India. The Fundamental Rights are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, applied irrespective of race, place of birth, religion, caste, creed, or gender. They are enforceable by the courts, subject to specific restrictions. The Directive Principles of State Policy are guidelines for the framing of laws by the government. Article 15 prohibits discrimination on the grounds only of religion, race, caste, sex, place of birth, or any of

them. This right can be enforced against the State as well as private individuals, with regard to free access to places of public entertainment or places of public resort maintained partly or wholly out of State funds. It is submitted that the mosques which are receiving state funds cannot make segregation and discrimination amongst entry of people inside mosque based on sex and gender.

T. Because Directive Principles serve to emphasise the welfare state model of the Constitution and emphasise the positive duty of the state to promote the welfare of the people by affirming social, economic and political justice, as well as to fight income inequality and ensure individual dignity, as mandated by Article 38 of the Constitution.

U. Because Article 44 encourages the State to secure a uniform civil code for all citizens, by eliminating discrepancies between various personal laws currently in force in the country.

V. Because India has the second largest Muslim population after Indonesia. Many women are sadly not allowed to enter many mosques and eidgahs (an open gathering place to perform prayers) in India. This is a basic right they should have. The reason we are offered is simple: A woman's entry instigates *fitna* and the avertable male gaze. It is submitted that critiques tend to argue that Islam stipulates a separate enclosure for women and a strict *purdah* (veil) system. These two provisions are enough to counter the cynical clergy who are opposed to women's entry into a place of worship. Interestingly, to see Batla House market in southeastern Delhi teeming with market-goers, with women jostling for their way, nudging and elbowing. The same crowd is not allowed to mix in a place of worship despite proper disparate arrangement. The arguments of the clergy are not only flawed on the basis of reason; they are in gross violation of Prophet Muhammad's directive: "Do not stop Allah's women-slave from going to Allah's mosques."

W. Because Prophet has given special instructions when it comes to Eid prayers. Um-'Atiya reports: "We

*were ordered to go out (for`Id) and also to take along with us the menstruating women, mature girls and virgins staying in seclusion. The menstruating women could present themselves at the religious gathering and invocation of Muslims but should keep away from their Musalla."*

X. Because Ibn Abbas says that the Prophet would take his wives and daughters to the two Eids: Eid-ul-Fitr (Eid that marks the culmination of the month of Ramadan) and Eid-ul-Azha (Bakraeid, involving the sacrifice of an animal). Imam Muhammad Bin Ismail al-Bukhari (author of "Sahih Bukhari", the second most authentic book after Quran; died in 256 AH) specified one chapter as "The Preaching to the Women by the imam (guide) on Eid Day" and enumerated one hadith in that chapter which was reported by Ibn Abbas. Abbas said that the Prophet in one Eid finished his prayer and went straight to the women, gave them a sermon, advised them, reminded them of Allah and ordered them to give charity.

Y. Because this is a clear indication that Islam accords equal importance to the participation of women in

the Eid prayers. The only condition Islam lays down is a separate arrangement for women. In India, some mosques and organisations organise Eid prayers for women with adequate measures such as separate enclosure, separate *waju* (ablution) system, and separate entry and exit points. But the majority of Indian Muslims are sceptical and scared of *fitna*. The former group should be hailed and the sceptics should follow in their footsteps.

42. The Petitioner's annual income of an individual is in excess of Rupees twenty lakhs and is taxable. A true copy of the PAN Card of the Petitioners are attached herewith and marked as **Annexure P-4(Pg no to )**.
43. That the present petition is made bonafide and in the interest of justice concerning the cause of crores of citizen of the country.
44. That the annexure filed with the petition are true copies of the respective originals.
45. That the petitioner has not filed any other similar petition seeking similar relief.

## **PRAYER**

In the circumstances, it is therefore, most respectfully prayed that this Hon'ble Court in the interest of justice may graciously be pleased to –

- a) Issue a Writ / Order or Direction in the nature of mandamus to all Respondents permitting the Muslim Women to enter mosque;
- b) Issue a Writ / Order or Direction in the nature of mandamus to all Respondents permitting the Muslim Women to offer their prayer/ Namaj inside Mosque;
- c) Issue a Writ / Order or Direction in the nature of mandamus permitting Islamic women to enter through the main door and have an Islamic right to visual and auditory access to the musalla (main sanctuary);
- d) Issue a Writ / Order or Direction in the nature of mandamus permitting women to pray in the musalla without being separated by a barrier, including in the front and in mixed-gender congregational lines;
- e) Issue an appropriate writ of certiorari and/ or order or directions quashing / setting aside directions/ fatwa restraining the Muslim Women to enter mosque;
- f) Issue a Writ / Order or Direction in the nature of mandamus to the Union of India declaring the purported

customary tradition is unconstitutional and violative of Articles 14, 15, 21, 25 and 29 of the Constitution and Directive Principles of State ;

g) pass ad interim ex-parte relief in terms of prayer (a) to (e)

h) Pass such other or further orders as to this Hon'ble Court may deem fit and proper in the facts and circumstances of the case;

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

Drawn on : 14.02.2019

Filed on : .02.2019

Drawn & Filed By:

**ASHUTOSH DUBEY  
ADVOCATE FOR THE PETITIONER**



6. That the annexures filed with the petition are true copies of the respective originals.

DEPONENT

VERIFICATION

Verified at Delhi on this day \_\_\_\_\_ of February 2019 that the contents of my above Affidavit are true and correct to my knowledge and belief and the information derived from the record of the case and nothing material is suppressed therefrom.

DEPONENT

## **SYNOPSIS AND LIST OF DATES**

That the present Writ Petition is filed for enforcement of the public interest. This Writ Petition is filed under Article 32 of the Constitution of India praying for a direction against the Union of India and others seeking a writ or order or direction in the nature of mandamus declaring the practices of prohibition of entry of Muslim Women in Mosque in India as illegal, unconstitutional for being violative of Articles 14, 15, 21, 25 and 29 of the Constitution, and to pass such further orders as this Hon'ble Court may deem appropriate to provide a life of dignity to Muslim women. This petition is filed by the Petitioner in his individual capacity.

That the petitioner is citizen of this country and carrying on business in Pune. The petitioner has devoted his life for the welfare of the people, community and the country. The petitioner is proud to be part of the Indian Judicial System, the largest of its kind, imparting justice to the citizen of the country who has undoubted belief in the system to get true justice.

That the petitioners are filing the present writ petition in public interest. The petitioners have no personal interest in the litigation and the petition is not guided by self-gain or for gain

of any other person / institution / body and that there is no motive other than of public interest in filing the writ petition.

That the petition, if allowed, would benefit the citizens of this country generally as rule of law is essential for democracy and such brazen violation of law by the respondents can be stopped by the orders of this Hon'ble Court only.

That the persons affected by such acts of the State are numerous and are not in a position to approach the Hon'ble Court hence the petitioners are filing the present PIL on behalf of such affected persons.

That the Petitioner has not approached any other court for the reliefs claimed in the present Writ Petition. No representation has been filed with any Ministry /authority since the alleged act of prohibition of entry to mosque is violation of constitutional and fundamental right guaranteed under the Constitution as there cannot be any discrimination based on caste, sex and religion and the reliefs claimed can only be granted by this Hon'ble Court.

The petitioner had written on 19.10.2018 regarding permission for women to offer their prayer / Namaj in Mosque. The Mohmdiya Jama Masjid, Bopodi, Pune had responded to the petitioner's request stating that no practice of entry of

women in Mosque is permitted in Pune and other areas, yet they have written a letter to Daud Kajha and Daud Ullum Devvand and would respond to petitioner's request.

That as there was no response, as such the petitioner on 26.11.2018 had sent a reminder. In response to the said letter, the Imam of Jama Masjid, Bopodi, Pune had written that since no permission can be granted and he is not sure about entry of women in mosque, as such he had written to higher authorities for consideration of petitioner's request and requisite directions. The Imam, who are considered to be religious head in Muslims had refused to grant permission citing vague reasons.

That the petitioner had again made a request to the police authorities for granting protection to the petitioner to permit his wife to enter mosque and offer her prayer/ Namaj but the police has also failed to perform their function.

That the petitioner has approached this Hon'ble Court, as this Hon'ble Court is the appropriate authority and vested with power under the Constitution of India for passing appropriate directions protecting the violation of Constitutional and fundamental right of the women guaranteed under the Constitution of India.

This Writ Petition is filed for enforcement of the public interest. There is a proliferation of media images of a burqa clad thoroughly victimised Muslim women who is in need of protection through the liberal rights discourse. Such representation of a universally victimised subject creates knowledge of the 'other' as oppressive and consequently an opposite self image of humane. Religious fundamentalism is often presented as a characteristic or feature of 'other' countries, 'other' worlds, and most frequently of course, the Islamic world and the Muslim community. This practice is reminiscent of the imperialist project of civilizing the "other" where imperialism was justified on the pretext of "white man's burden" where the knowledge production from the west created certain understanding about the culture of the non-west.

That this Hon'ble Court has recently held that, "Women is not lesser or inferior to man. Patriarchy of religion cannot be permitted to trump over faith. Biological or physiological reasons cannot be accepted in freedom for faith Religion is basically way of life however certain practices create incongruities"..... Anything destructive of individuality is anachronistic of Constitutionality. To treat women as lesser people blinks at the Constitution itself".

There is nothing in the Quran and the Hadith that requires gender segregation. There are diverging opinions among experts in Islamic theology concerning gender segregation. On one side of the spectrum, an Islamic theologian in Canada, Ahmad Kutty, has said segregation of the sexes is not a requirement in Islam, as men and women interacted in Muhammed's time without any partitions. On the other side of the spectrum, an Islamic theologian in Saudi Arabia, Abdul-Rahman al-Barrak, has issued a death warrant in the form of a fatwa against those who allow the mixing of the sexes. The Prophet Muhammad specifically admonished the men not to keep their wives from going to the mosques:

Ibn Umar (Abdullah bin Umar) reported what is translated as:

The Messenger of God said, "Do not prevent the maid-servants of God from going to the mosque."

—Muslim, No.888 (See also Nos. 884-891 and Bukhari Vol.1, Nos. 824, 832)

It is clear from the following hadith that in some mosques, the women prayed behind the men and were not separated in a separate room or even concealed by a curtain or partition where there wasn't one available (where the screen is

practiced in many mosques today, and in the past, it is as a precaution to prevent unnecessary socializing and distraction during prayers):

Asma' bint Abi Bakr (daughter of Abu Bakr) said what is translated as:

I heard the Apostle of God say, "One of you who believes in God and in the Last Day should not raise her head until the men raise their heads lest she should see the private parts of men."

—Sunan Abu Dawud, No. 850

This Hon'ble Court has recently held that, "Religion cannot be used as cover to deny rights of worship to women and it is also against human dignity." "Prohibition on women is due to non-religious reasons and it is a grim shadow of discrimination going on for centuries"

That the issues for consideration of this Hon'ble Court are as under:

- a) Whether the act of preventing the females from entering mosque is violative of Article 44 of the Constitution of India, which encourages the State to secure a uniform civil code for all citizens, by eliminating discrepancies

between various personal laws currently in force in the country?

- b) Whether the act of preventing/excluding the females from entering mosque and offering prayer is constitutionally valid?
- c) Whether the Act of withholding women from entering mosque is invalid and can a right to exclude be claimed under Article 25(1) of the Constitution and violative of directive principles?
- d) Whether the exclusion of women nonetheless barred by reasons of "public order", "health", "morality", or because of "other clauses of Part III", will take precedence over Article 25(1) of the Constitution of India?
- e) Whether Article 15 of the Constitution clearly prohibits discrimination by the government on the basis of sex?
- f) Does a woman's entry to a masjid or eidgah (a place where Muslims congregate for Eid-ul-Fitr and Eid-ul-Azha celebrations) create *fitna* (distress)? If yes, then why not in the Hajj pilgrimage and Umrah (a lesser Hajj), where

thousands of Muslim women gather and perform Hajj rituals such as *tawaf* (walking around the *Ka'ba*) and *sa'I* (running between the hills of Safa and Marwa) and *ramye zamrat* (stoning of the devil ceremony) along with their male counterparts?

g) Whether religious bodies that ask for and receive taxpayers' money from the government are also subject to this condition imposed by our Constitution?

h) Whether the historical sources also show that Prophet Muhammad had himself encouraged women to actively participate in mosque congregations and prayer and the most sacred mosque in the world for Muslims embraces both men and women and there is complete unanimity in the Muslim community on the Masjid-al-Haram in Mecca being the most sacred mosque to all Muslims in the world?

i) Whether the arbitrary prohibition imposed on women violate the fundamental right of the citizens guaranteed under Article 14 of the Constitution of India to be treated equally and is violative of fundamental rights under Articles 25 and 29 of the Constitution of India?

- j) Whether the prohibition is void and unconstitutional as such practices are not only repugnant to the basic dignity of a woman as an individual but also violative of the fundamental rights guaranteed under Articles 14, 15, 21 and 25 of the Constitution?
- k) Because this Hon'ble Court in *Khursheed Ahmad Khan v. State of Uttar Pradesh and Others*, (2015) 8 SCC 439 has taken the view that practices permitted or not prohibited by a religion do not become a religious practice or a positive tenet of the religion, since a practice does not acquire the sanction of religion merely because it is permitted?

That Article 15 directs that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. Any law discriminating on one or more on these grounds would be void.

That the core ethos of India has been a fundamental unity, tolerance and even synthesis of religion. It is an indubitable fact that hundreds of millions of Indians belonging to diverse religions lived in comity through the ages, marred through at

times by religion revolts, economic exploitation and social suppression being often at the bottom of it all. India is a country built on the foundations of a civilization that is fundamentally non-religious. The Preamble of Indian Constitution aims to constitute India a Sovereign, Socialist, Democratic Republic. The terms socialist and secular were added to it by the 42nd amendment. The whole constitution is summarized in the preamble. It is the mirror to the spirit of the constitution. The arrangement of the words in the preamble is also very significant. Indian society is a multi-religious society, it is having different caste, religion along with several religion diversification.

The constituent assembly has visualized the peculiar situations of the country and a very arranging the preamble it aims to secure to citizens justice, equality and liberty. The basic aim is to promote fraternity while assuring unity and integrity of the nation along with individual dignity. Fraternity is a very significant tool to combat the divisive factor. Religious harmony is a must to promote fraternity particularly in Indian context. So it's a constitutional mandate upon the state to combat the factors which curtails religious fraternity. It is also incumbent upon the state to take positive as well as negative actions to promote fraternity. Art. 25(1) guarantee to every person the

freedom of conscience and the right to profess, practice and propagate religion. It is submitted that drastic comments/remark/ suggestion falling from a sitting judge is uncalled for and shows a political colour and that too nearing his retirement.

That the Secular state is a state which guarantees individual and corporate freedom of religion deals with the individual as a citizen irrespective of his religion is not constitutionally connected to a particular, nor does it seek either to promote or interfere with religion upon closer examination it will be seen that the conception of a secular state involves three distinct but inter-related sets of relationships concerning the state, religion and the individual. In *Indra V. Rajnarayan* 1975 AIR, S.C 2299, the basic feature of the secularism was explained by the Hon'ble Supreme Court which held that, secularism means 'that state shall have no religion of its own and all persons of the country shall be equally entitled to the freedom of their conscience and have the right freely to profess, practice and have the right freely to profess, practice and propagate any religion'. In *S.R.Bomma V. Union of India* 1994 AIR, SC 1981 this Hon'ble Court while upholding the dismissal of four state governments ruled by BJP, on the ground of religious conduct, held that "secular not only meant that the state should have

no religion of its own and should be neutral as between different religions, but that political party which sought to capture the power, the religions would come to capture the power, the religions would come to acquire a secondary or less favourable position.

This Hon'ble Court has ruled in *Bal Patil and Anr. v. Union of India* that the State has no religion and State has to treat all religions and religious people equally and with equal respect without in any manner interfering with their Individual rights of religion, faith and worship. The objectives and parameters of a secular, socialist, democratic republic had to be expressed in such flexible, yet firm, fashion that a creative and realistic jurisprudence and complex of constitutional strategies could be put into operation which would harmonize not antagonize, religious minorities, integrate not exacerbate, hostile strata, abolish not accentuate, the socio-religious discrimination endured by the weaker human sector and generate a system and society where secular unity would comport with cultural diversity. The acceptance of community specific rights reflects another feature of Indian secularism because it was born in a deeply multi-religious society, it is concerned as much with inter-religious domination as it is with intra-religious domination.

That the act of prohibition of females from entering mosque is void and unconstitutional as such practices are not only repugnant to the basic dignity of a woman as an individual but also violative of the fundamental rights guaranteed under Articles 14, 15, 21 and 25 of the Constitution.

That in *Khursheed Ahmad Khan v. State of Uttar Pradesh and Others*, (2015) 8 SCC 439, this Hon'ble Court has also taken the view that practices permitted or not prohibited by a religion do not become a religious practice or a positive tenet of the religion, since a practice does not acquire the sanction of religion merely because it is permitted.

That there are no records stating that the Holy Quran and Prophet Muhammad had opposed women entering mosques and offering prayers. Like men, women also have the constitutional rights to offer worship according to their belief. At present, women are allowed to offer prayers at mosques under *Jamaat-e-Islami* and *Mujahid* denominations, while they are barred from mosques under the predominant *Sunni* faction. It is submitted that even in the mosques where women are allowed, there are separate entrances and enclosures for worship for men and women. There should not be any gender

discrimination and allow Muslim women to pray in all mosques, cutting across denominations. It is submitted that there is no such gender discrimination to offer worship in Mecca, the holy city. The faithful, both men and women, together circle the Kaaba.

That the Quran does not differentiate between man and woman. It speaks only about the faithful. But Islam has become a religion in which women are being oppressed. It is submitted that women are never allowed inside Sunni mosques to pray and they, too, have the right. Women were allowed to enter mosques even during the time of the Prophet. It is submitted that Muslim women are being 'discriminated' as they are not allowed to enter and pray in the main prayer hall of mosques in violation of Articles 14 and 21 of the Constitution. This is an encroachment into the realm of personal liberty and social security.

The freedom of conscience and free profession, practice and propagation of religion guaranteed by Article 25 of the Constitution is not absolute and, in terms of Article 25(1), "subject to public order, morality and health and to the other provisions of this Part". It is submitted that a harmonious reading of Part III of the Constitution clarifies that the freedom of conscience and free profession, practice and propagation of

religion guaranteed by Article 25 is subject to the fundamental rights guaranteed by Articles 14, 15 and 21. In fact, Article 25 clearly recognises this interpretation by making the right guaranteed by it subject not only to other provisions of Part III of the Constitution but also to public order, morality and health.

It is submitted that the Legislature has failed to ensure the dignity and equality of women in general and Muslim women in particular. Despite the observations of this Hon'ble Court for the past few decades, Uniform Civil Code remains an elusive Constitutional goal that the Courts have fairly refrained from enforcing through directions and the Legislature has dispassionately ignored except by way of paying some lip service.