**Dr. AMBEDKAR GOVENMENT LAW COLLEGE, PUDUCHERRY**

**COLONEL Dr. JEPPIAAR 3rd NATIONAL WOMEN MOOT COURT COMPETITION – 2020**

***Ms. Abeeda Wasim Zohri***

***v.***

***Union of Indusland***

The Union of Indusland is one of the progressive economies in the world today with a divergent demography comprising of approximately 17% of the world's population. The hallmark of this country has been diversity of its people in terms of religion, culture and language which is overridden by gender divide. Religion has had a history in terms of shaping up the present day map of Indusland. Ever since its independence in 1947 it has seen various clashes and discontentment of people regarding religion based issues. Despite of this, the governments from time to time have been deeply concerned with ameliorating the position of women in the society. Legislature along with the Judiciary in this country have been the front runners in this regard. Women are not only humble homemakers but are top notch administrators. Not only this, they are also defending the national boundaries. It was in 1992 that women were first inducted in the Indusland Army and as the Supreme Court noted, their entry ever since has had a "chequered history".

Initially, under the Army Act of 1950, women were ineligible for employment in the regular army except in such corps, departments or branches which the central government may specify by way of notifications. This was lifted almost after 42 years of the Act, by way of a government notification in January 1992, making women eligible for appointment as officers in five branches.

After the apex court's directive, within three months all serving SSC women officers will have to be considered for Permanent Commissions (PCs) irrespective of them having crossed 14 years or, as the case may be, 20 years of service.

 In the backdrop of this; the following developments have taken place in Indusland recently:

**PART A**

The Supreme Court on 7 February, 2020 upheld a 2010 Sohli High Court ruling and directed the Centre to ensure that women officers are given permanent commissions in the Indusland Army on a par with male officers, including for command posting.

A division bench condemned the central government for waiting for nine years before issuing a notification granting women officers permanent commissions, that too in limited streams. In compliance with the Sohli High Court order, the Centre had issued a notification in February granting permanent commissions to the Short Service Commission of Women Officers (SSCWOs), in eight streams, including Army Aviation, Army Service Corps, Army Ordnance Corps and Intelligence.

The top court rejected the Centre’s views on women’s physiological features and social norms and pulled it up for its lack of respect for women officers in the army. It said the order must be complied with within three months. “Despite a policy decision, the Centre submitted a note to the Supreme Court that perpetuates sex stereotypes. Arguments by the Centre founded on physical strength of men and women and grounds of motherhood, and family violate equality," it observed. The Centre, along with key political parties, welcomed the judgement. The bench also took on record the statement of policy submitted by the Union government in its letter dated 25 February 2019 and issued a slew of directions imposing conditions in favour of equality of women in the army. It held that terms of appointment of women officers in the army shall henceforth be the same as their male counterparts.

**PART B**

In 1990 a petition was filed in the Devalaya High Court seeking a ban on entry of women inside the Rudrivala temple. In 1991 the Devalaya High Court had upheld the restriction of women of certain age from entering inside the holy shrine of the Divine Lord. It was in 2006 that a petition was filed in the Supreme Court by the Indusland Promising Advocates Association seeking entry of women between 10 to 50 years in this shrine. By 2008 this matter was referred to a three-judge bench. In January 2016 the court had questioned this ban. The government of Devalaya led by its Chief Minister informed the Supreme Court in April 2016 that it is bound to protect the right to practice the religion of Rudrivala devotees but on November 7, 2016 the Devalaya Government told the Supreme Court that it was in favour of allowing women inside the sanctum sanctorum of the temple.

At this juncture the Supreme Court referred the case to the Constitution bench in 2017. Ultimately, in September 2018 a five-judge bench of Supreme Court allowed the entry of women of all ages in the revered shrine. The state government sought time to implement the verdict. However, even after the entry was allowed a large number of followers camped outside the shrine to prevent the entry of women of all ages in this revered shrine. Thereafter, a review plea was filed regarding which recently, in November 2019, the Court stated that this review is to be carried out by a larger bench of the Supreme Court.

**PART C**

In April 2019, a Dhule based woman, Aafreen Usaid Ali, and her husband, Usaid Ali, moved the Supreme Court seeking directions to the governments and Muslim bodies to allow Muslim women to enter mosques through the main door, and to have the “Islamic right to visual and auditory access to the ‘musalla’ (main prayer area).”

The petition contended that “there is nothing in the Quran and the Hadith that requires gender segregation” and added 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”. The petitioners argued that “the alleged act of prohibition of entry to mosque is violation of constitutional and fundamental rights guaranteed under the Constitution as there cannot be any discrimination based on caste, sex and religion”.

The matter was last heard on November 5, 2019 whereby it was remarked that Muslim women should be permitted to enter through the main door of mosques and have an Islamic right to visual and auditory access to the musalla (main sanctuary). It also stated that "any fatwa" of Muslim bodies restraining women from entering into mosques should be set aside.

It also said that the alleged customary tradition be held as "unconstitutional and violative of Articles 14 (right to equality), 15 (gender justice) and 21 (right to life and liberty) of the Constitution. Referring to constitutional provisions, the petitioners said there should not be any discrimination against any citizen of the country on the ground of religion, race, caste, sex and place of birth. They added that a life of dignity and equality is the most sacrosanct fundamental right and a Muslim woman cannot be prohibited from entering a mosque. The petitioners had told the court that the mosques in Indusland were enjoying the benefits and grant extended to them by the State and hence they can be directed to allow entry of women inside mosques. While issuing the notice, the Supreme Court had earlier said that it would hear the PIL only because of its judgment in the Rudrivala temple case.

**PART D**

On September 24, 2018, a three-judge bench of the Apex Court had referred the matter in ‘Babita Kumari v. Union of Indusland and Ors’ to a larger Bench of the Supreme Court. The petition, filed under Article 32 of the Constitution, had questioned the constitutionality of the practice of female genital mutilation (FGM) or ‘khatna’, or female circumcision (FC) or ‘khafd’, which the petitioner said was carried out on every girl child in the Aabaadi community. The “archaic ritual” of FGM, the petition argued, was carried out without any scientific medical reason, and without any reference in the Quran, and inflicted “atrocity, bodily pain, inhumanness, and mental torture” on innocent girls and women, the burden of which they were forced to carry for the rest of their lives.

The petition relied on the UN Convention on the Rights of the Child and the Universal Declaration of Human Rights, and urged that the practice is violative of Article 21 (right to life and personal liberty). It contended that FGM should be regarded as an offence under the Indusland Penal Code. A counter affidavit was filed resisting the stand of the petitioner, which submitted that the practice was almost 1,400 years old, and that it was an integral part of the religion of the Aabaadi community and is therefore, protected under Article 26 of the Constitution (right of religious groups to manage their own affairs).

**PART E**

The Special Leave Petition in ‘Noor Mehtab v. Zulfi Darrivala’ arose out of a judgment passed by the Mukhbaad High Court in 2012. The High Court had upheld the Valsad Parsi Anjuman’s right to stop a Parsi woman from visiting the Tower of Silence to perform her father’s last rites in the event of his death. The High Court upheld the Parsi Anjuman’s contention that having married a non-Parsi under The Special Marriage Act, 1954, a woman was no longer a Parsi, and was instead deemed to have become Hindu.

The petitioner was Noor Mehtab, who had moved the High Court in 2010 after her friend Gulbaar Darvin who too, like her, was a Parsi married to a Hindu, was denied entry to the Tower of Silence during Darvin’s mother’s last rites some years previously.

In the Supreme Court, it was argued that the question was, “in the case of marriage between an Hindu and Parsi, does it result in automatic conversion of religion?” In December 2017, a Constitution Bench observed that “DNA does not evaporate” after marrying outside one’s religion”, and that by marrying outside her religion, a woman does not “surrender her affection to her father”. Marrying under the Special Marriage Act was “only for the retention of original identity” the court said.

**PRESENT DAY SCENARIO**

In the matter of The Indusland Promising Advocates Association in November 2019, the majority of the bench said: “It is our considered view that the issues arising in the pending cases regarding entry of Muslim Women in Durgah/Mosque (being Writ Petition (Civil) No.472 of 2019); of Parsi Women married to a non-Parsi in the Agyari (being Special Leave Petition (Civil) No. 18889/2012); and including the practice of female genital mutilation in Aabaadi community (being Writ Petition (Civil) No.286 of 2017) may be overlapping and covered by the judgment under review. The prospect of the issues arising in those cases being referred to larger bench cannot be ruled out.”

Post this order and the judgement regarding permanent commission for women in the armed forces, a Public Interest Litigation has been filed by Ms. Abeeda Wasim Zohri, a student of law challenging the clubbing of distinctive cases under review for a particular matter. The petitioner draws the attention on the interplay between the freedom of religion under Articles 25 and 26 of the Constitution and other provisions in Part III, particularly Article 14. It attempts to draw the attention of the Court on the following points:

(i) What would be the permissible extent of judicial recognition to PILs in matters calling into question religious practices of a denomination or a section thereof at the instance of persons who do not belong to such religious denomination?

 (ii) What is the sweep of expression ‘public order, morality and health’ occurring in Article 25(1) of the Constitution specially when the permanent commission for the women in armed forces has been affirmed by the highest court of law?

(iii) The extent to which the court can enquire into the issue of a particular practice as an integral part of the religion or religious practice of a particular religious denomination or should that be left exclusively to be determined by the head of the section of the religious group?

\*\*Laws applicable in Indusland are in *pari materia* with those in Union of India.

Disclaimer – The contents of this problem including names, facts, etc. are fictitious. Any resemblance whatsoever is purely coincidental.

This problem has been prepared by Dr. Gurminder Kaur who is an Assistant Professor at Dr. Ambedkar Govt. Law College, Puducherry purely for academic purpose.