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Freedom of Religious Practice: Discourses of Limitation

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ABSTRACT

The work focuses on meaning of limitation on religious practice in India. It deals to examine the meaning of essential religious practice and the practices which falls under the ambit of essential religious practice. The standard changed throughout time as the courts exercised their discretion to decide what constitutes an inherent component of religion and what is not, deviating from the test's initial intent, which was to separate fundamentally secular from fundamentally religious. The study demonstrates how the cases that this test was applied to may have been resolved by delving further into the constitutional text. The paper also tries to offer a different test to the one that emphasises the requirement to deliver the constitutional using a deferential but vigilant application of Article 25, the language is given a literal reading. The latter part pf the paper also deals with the subjects which are the reasons of limitation on such religious practice named as public order, morality and public health.

Keywords: *Religion, Morality, Constitution, Public Order, Health.*

I. INTRODUCTION

Understanding religious freedom requires an understanding of the larger political management of group life process. B.R. was involved in the constitution-writing process for India many years ago. The Indian Constitution, according to Ambedkar, who steered successive drafts through the Constituent Assembly, is based on the person rather than the collective.[2] Yet Ambedkar's insight powerfully underscores how communities and communal life were to be perceived in the new era: their right to blossom in civil society would be acknowledged, and the Constitution would guarantee their rights to religion, culture, and education.[3] Even if these conceptual differences are ineffective, the Constitution's ideological goal is to give various organizations differing levels of legal status while depoliticizing strong conventional group formations. While the post-New Deal forecast that courts could not be trusted to decide social welfare issues was taken into consideration by India's constitutional lawyers, discussions about religious freedom

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[2] B.R. Ambedkar, Speech to the Constituent Assembly, VII *C.A.D.* 38-9 (4 November 1948).
[3] INDIA CONST. art. 25-30.

 [ISSN 2581-5369]

focused on more particular issues. The authors of the Indian Constitution decided against engaging in the intellectual excess of completely separating the State from religious life. The State was expected to have positive interactions with religious organizations.

We are aware that many governments place restrictions on the freedom of religion or belief from news coverage and perhaps from your own personal experience. They contend that, for one reason or another, they must restrict religious expressions. How do we determine when restrictions are appropriate and acceptable and when they are not? According to international human rights law, the freedom to practise any religion as one wishes is unalienable. It may never be restricted, but if four conditions are met, the right to manifest a religion or belief may be restricted or limited. Every restriction must be written into the law. The purpose of this is to prevent unpredictable or inconsistent behaviour on the part of the state court and police. The restriction must be required to safeguard the general welfare, including public order, health, morals, and other people's rights and freedoms. It is very different from choosing constraints based on what will garner the most support to impose restrictions because it is required to safeguard others. Limits must be reasonable to the issue the manifestation is causing and may not be discriminatory. Without these regulations, the government might impose restrictions on any group or practise they chose not to like. Limitations should not be used as an instrument of governmental control but rather as a last resort. Major violations of the right to freedom of religion or belief typically make it clear that these regulations are being broken because they are manifestly pointless, unfair, or unreasonable. Any religious activity outside of structures that have been registered for the purpose is prohibited in some counties. Seven possible criteria or questions could be used to assess the validity of the limitation. When the government imposes limits, the first concern is whether those restrictions violate someone's unalienable right to practise their religion or believe or to adopt a particular philosophy. The question of whether the behaviour being limited is a manifestation of religion or belief or just a behaviour arises if the absolute rights are being restricted. Nevertheless, if the manifestation or practise is being restricted. While our beliefs frequently serve as a direction for our actions, not every action we take is a protected expression of a religion or belief. The constraints that are put into place should be established by written law, case law, customary law that governs the limitation, or they should be imposed by authorities without a legal justification. The limitation is invalid if there is no legal justification for it. The restrictions on religious activity ought to be required to defend an appropriate cause. In general, there should be a clear connection between the behaviours being restricted and one of the legal justifications, and the restriction should be required to be put into place. Only the protection of public order, health, morals, or the rights

 [ISSN 2581-5369]

and freedom of others constitutes an acceptable justification under international law for restricting the exercise of one's religion or other belief.

People are divided into upper and lesser castes as well as casteless groups under the Hindu caste system. The Casteless population experiences severe prejudice as well as economic and social hardship. Hindus without a caste used to be prohibited from accessing some temples. When the caste system was abolished in India in 1949, casteless Hindus are no longer prohibited from entering temples. This restriction passes the test because there is a clear connection between ending caste discrimination and defending the rights and freedoms of others. However, not all restrictions have this strong of a connection, and occasionally the government will misrepresent or abuse the legitimate justifications. The Indian Constitution protects all religions without favouring any particular religious practise, with the qualification that this protection is also subject to appropriate restrictions. The legality of the activity is therefore determined by the essential religious practise's standard, which is the main impediment to the principle of religious autonomy and a departure from the spirit of the Constitution. The courts must continue to uphold the Constitution's principles and refrain from attempting to redefine religion in accordance with their notions of what comprises a religion's core beliefs. This underlines the constitutionally protected principle of secularism.

The crucial component of the religion test is not mentioned in the Indian Constitution. The test really adopts a pretty restrictive attitude, only keeping practises that are central to the religion. The Supreme Court has long recognised that everyone has the intrinsic right to accept religion in accordance with his conscience, within the bounds set forth in Article 25 of the Indian Constitution. The test thus reveals that it is at odds with and goes against the notion of the right to religious freedom that our Constitution envisioned. In addition, there were other choices that had their origins in the constitutional text itself in each of the circumstances where it was applied. There is no definitive answer to the question of what constitutes an essential element of religion because it depends on a variety of variables, many of which are subjective. The Supreme Court created unclear criteria for classifying the essential religious practises in the case of Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[4]. While paying lip respect to the notion that religion should have the authority to define what is religious, once more. In the aforementioned case, the Court effectively assumed that authority, relied on questionable sources, never explained why it chose those sources over others, and most importantly, raised the essential religious practises test to the first position and frequently

[4] Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.

 [ISSN 2581-5369]

the final enquiry that it conducts. The essential component of religion test's constitutional legitimacy and necessity are examined in this article, along with a possible replacement.

II. ESSENTIAL RELIGIOUS PRACTICE

In accordance with the Indian Constitution, Articles 25 and 26 guarantee religious freedom. According to Article 25, everyone has the right to religious freedom, including the freedom to practise, profess, and spread their faith. There are certain limitations on this right, though. The right may be curtailed in the sake of morality, public order, and health. By tying this right to the other essential rights, the article further restricts it. Article 25(2)(a) gives the State the authority to control and impose limitations on any commercial, financial, political, or other secular activity that might be connected to a particular religion. Hence, it is evident what the Constitution's creators intended. They only intended to defend religious practises, not those that were connected to religion on a secular level. Religious denominations have the right to create and operate religious organisations under Article 26. The Article's subclause (b) makes it clear that religious denominations are free to handle their own business as long as it relates to concerns of religion. The religious groups lack authority to control secular matters. Subsection (d), which states that the religious group is subject to laws imposed by the government in regards to administering property, serves as an example of this. An examination of Articles 25 and 26 reveals that the Constitution's authors intended to distinguish between religious practises and potentially religious secular practises. Only religious behaviours should have protection, while secular conduct connected to religion should be governed by the Parliament. The same can be viewed in light of B.R. Ambedkar's comments during the constitutional assembly debates, which read as follows:

"The *religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved; I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession should be governed by religion*".

The aforementioned excerpt unequivocally demonstrates the concerns of our Constitution's architects. In our nation, there is a strong connection between religious practises and those that are essentially secular but have a religious undertone. As religion controls practically every

element of society, it was thought that there was a pressing need to distinguish between what is fundamentally religious and what is fundamentally secular. The only practises guaranteed constitutional protection were those that are fundamentally religious, and secular rituals were subject to government interference. Thus, the essential part of religion test used here was formulated in the context of drawing a line between religious and secular.

The environment in which the crucial component of the religion test is used has radically altered over time. The decision in Ram Prasad Seth v. State of U.P.[5] demonstrates the main change. In this instance, the U.P. government implemented laws against bigamy. They were contested under Article 25's protection of religious freedom. The petitioners maintained that having a son from a first marriage was mandatory for a Hindu because bigamy was the only other option in the Shastric text that stated a son could perform burial rituals for a deceased person. After examining the Shastric text, the Supreme Court concluded that "[bigamy] cannot be regarded as an intrinsic element of a Hindu faith." The court in this case applied the essential part of religion test to evaluate if the practise was an important part of and integral to the religion. From defining the nature of practise to defining its relevance, this proved to be a radical leap. The court did not give any explanation for this significant change, which over time has changed the way constitutional law has been interpreted in connection to the right to freedom of religion and has significantly reduced a person's ability to practise their faith independently. The change from fundamentally religious to an essential component of religion may seem unimportant, but it has fairly profound ramifications. In fact, despite what the framers of our Constitution intended, judges now have the right to define religion itself. This authority was granted as a result of permitting the judiciary to determine what qualifies as an essential component of religion without providing rigid standards on which the court is expected to base this determination. Judges now have the authority to define religion itself, which is contrary to what the founders of our Constitution intended. This power was granted as a result of allowing the judiciary to decide what counts as a fundamental element of religion without imposing strict criteria on which the court is supposed to base this decision.

In the case of Durgah Committee v. Syed Hussain Ali [6], the test was once more applied. In this instance, the Durgah Khwaja Saheb Act was contested because it permitted the State to manage the business of the Ajmer Durgah. Here justice Gajendragadkar held that, “in order that the practices in question should be treated as a part of religion they must be regarded by the said religion as its essential and integral part.” In this case also there was no need for the application

[5]Ram Prasad Seth v. State of U.P. 1960 SCC OnLine All 128.
[6] Durgah Committee v. Syed Hussain Ali, AIR 1961 SC 1402.

 [ISSN 2581-5369]

of the given test. The observations were purely obiter and not required. The case was in fact decided on the fact that since historically, the Durgah was never granted the right to control its own property, there was no case under Articles 26(c) and 26(d). In the same case another horrendous mistake was committed on part of the Supreme Court when it tried to draw a line between religion and superstition "practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself." Here, the Court, in addition to determining what constituted essential part of religion, also endowed itself with the power to "sift superstition from real religion". By exercising this authority, the Court may violate a person's right to freedom of religion because determining what practises are religious and what are merely superstitious is a subjective process that can produce ludicrous outcomes depending only on an individual judge's personal beliefs. Syedna Taher Saifuddin Saheb v. State of Bombay[7] was another case where the test was used. The legality of the Bombay Excommunication Act, 1949, in this instance was contested. Excommunication was forbidden by the contested Act in religious communities. Not learning that the court had applied the criteria to distinguish between religion and secular acts in the case of Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt[8], the court decided that excommunication was a "essential religious activity." So, although if excommunication was only a religious practise and not a necessary part of religion, it was nonetheless protected by law under Article 25 in the absence of any constraints. In order to clarify the court's authority to define what defines religion, Judge Das Gupta stated that "what constitutes an essential aspect of a religion or religious practise has to be decided by the courts with regard to the doctrine of a particular religion."

Article 25(2)(b) could not be used in this case to "reform a religion out of existence," it was further held. According to Justice Ayyangar, Article 25(1) safeguarded the fundamental and integral religious activities, and Article 25(2)'s provision for social welfare did not apply to these rituals (b). The court made another absurd error with this decision, closing the door to changing regressive religious practises that, in the court's perspective, are an integral part of the religion. To establish whether the "tandava dance was an essential feature of the religion," the court once more used the essential aspect of religion test. According to the court's decision, it is up to it to determine whether a portion or practise is an integral part or practise of a particular. If the church is permitted to change its theology in order to get around the Court's ruling, it will lead to difficult scenarios. This demonstrates unequivocally that the Court has acquired the

[7] Syedna Taher Saifuddin Saheb v. State of Bombay, AIR 1962 SC 853.
[8] *Supra* note 3.

 [ISSN 2581-5369]

authority to determine what constitutes an important component of religion based on the holy scriptures, albeit only paying lip respect to the notion.

Hence, it has often been seen that what constitutes essential part of religious practice is can be considered by the courts under its jurisdiction with respect several theories and doctrines.

III. ALTERNATIVES OF ESSENTIAL RELIGIOUS PRACTICE

The fundamental issue in the basic practises test's foundation is the incorrect use of the term "primarily religious" during constitutional assembly discussions and an incorrect interpretation of past Supreme Court rulings. This alone, along with the institutional issues it raises, ought to be cause for a thorough re-evaluation of this test in the context of Indian constitutional law. The Constitution itself lays out criteria for limiting this freedom as well as a system to preserve each person's right to practise their religion. The essential religious practises test, which is by itself an extra constitutional method, is unnecessary in the face of such an extensive machinery. The Constitution guarantees that both individuals' right to freedom of religion and the right of religious denominations to conduct their matters are protected. Determining whether the practise in question is fundamentally religious or just a secular practise with a hint of religion should be the first consideration when handling conflicts involving religious customs. There are circumstances under Article 25 where a practise is deemed to be secular. They include potentially political, financial, and economic acts that pass for religious. Given the close connection between the two, this appears to be a challenging task. Keep in mind the following statements made by the Supreme Court in A.S. Narayana Deekshitulu v. State of A.P.[9] when deciding how to distinguish between the two:

"Secular activities and aspects do not constitute religion which brings under its own cloak every human activity. There is nothing which a man can do, whether in the way of wearing clothes or food or drink, which is not considered a religious activity. Every mundane or human activity was not intended to be protected by the Constitution under the guise of religion. The approach to construe the protection of religion or matters of religion or religious practices guaranteed by Articles 25 and 26 must be viewed with pragmatism since by the very nature of things, it would be extremely difficult, if not impossible, to define the expression religion or matters of religion or religious belief or practice."

The court can only provide the practise constitutional protection if, after considering the nature of the practise, it determines that the activity in question is, in reality, a religious activity. Some

[9] A.S. Narayana Deekshitulu v. State of A.P, (1996) 9 SCC 548.

 [ISSN 2581-5369]

grounds for restriction are mentioned in the Constitution, however they are not defined. So, it is necessary to define these concepts before discussing whether or not reformatory laws should be protected on these grounds.

Another thing that is kept into mind before according legal protection to the said practice is whether the law interfering with such practice can be protected on the grounds of public order, morality and health.

(A) Religious Freedom: Subject To Public Order, Morality And Public Health

a. Public Order

No freedom can thrive in a chaotic environment; hence it is the state's responsibility to keep things calm and orderly so that citizens can exercise the constitutionally guaranteed rights. If someone's exercise of a right endangers public safety and order, then the state must intervene. The constitution then gives the state the authority to restrict the exercise of these rights to the extent that doing so compromises peace and order.

Restricting it on this reason indicates that lawmakers can establish legislation to control religious gatherings and processions in open spaces like parks, streets, and other public places. If there is any threat to the peace or social harmony, even a complete ban on religious procession may be enacted.

b. Morality

In addition to being undesirable, no state can permit immorality in the name of religious freedom. Religion aims to promote a person's moral well-being, but occasionally, certain religious practises have led to immoral conduct. It is the responsibility of the state to ensure that such immoral practises are not permitted to grow in society under the guise of religious freedom. For this reason, the constitution gives the state the authority to forbid such immoral behaviour or to impose morality-based regulations on it. These immoral religious activities included the sati system, deepavli gambling, and the Divadasi system, among others. For the sake of maintaining public peace and order, the State of India has imposed stringent restrictions on the practise of religion. These actions are required for three reasons related to the specific nature of religious rituals in the nation.

First of all, neither Hinduism nor Islam, which have the greatest number of adherents in the nation, has the centralised organisation and power required to ensure the orderly practise of religion in the public sphere. Second, public displays of religious festivities in the shape of festivals and processions that last for several days are highly valued by the majority of Indian religions. Lastly, because India is a multireligious nation, different religious communities with

 [ISSN 2581-5369]

radically different belief systems and practises coexist side by side across the entire nation. Hence, it is not possible to permit them all to exercise their different religious beliefs to the fullest possible measure.[10] Thus, the State has imposed legal limits to guard against peace disturbances and to shield citizens from potential violence resulting from religious fervour linked with practising religion in public spaces. As a result, certain religious practises are prohibited under Chapter XV of the Indian Criminal Code if they have the potential to disturb the quiet. It is interesting to note that the 1860 Code's authors made the remark that "there may be no country in which the government has so much to fear from religious fervour among the people."[11] The Indian Penal Code's Sections 295 to 298 are more focused on maintaining the status quo and safeguarding citizens from violence than they are on protecting religion per se. These sections address situations in which someone does an act that offends the religious sentiments of any group of citizens. By making it illegal to offend the religious sentiments of any class of citizens by actions that are incompatible with a civilised way of acting, Section 295 A specifically restricts the freedom to propagate religion. The section reads as "Whoever, with deliberate and malicious intentions of outraging the religious feelings of any class of citizens of India, by word either spoken or written, by signs or by visible representations or otherwise insults or attempts to insult the religion or the religious belief of that class, shall be punished with imprisonment of either description for a term which may extend to two years, or with a fine, or with both."[12] The Courts in India have been often faced with cases challenging the constitutional propriety of banning processions in some religiously sensitive areas The statutes and court rulings mentioned above show that whenever the State forbids immoral behaviour, religion must acquiesce because, according to the secular provisions of the Indian Constitution, the State has the authority to uphold moral standards on the basis of reasonable justifications and in the interest of the greater good.

(B) Religious Freedom: Subject To Public Health

A welfare state has a responsibility to offer legal protections to preserve communal health and individual lives. Nonetheless, some religious practises and beliefs may conflict with the State's goal of preserving lives. Suicide is a felony in India, and those who support or help someone commit suicide are also guilty of the same offence. The same Code also makes it illegal to kill someone by starvation or self-inflicted suffering in order to achieve spiritual goals.[13] Hence,

[10] Donald E. Smith, op.cit. pp. 220-221.
[11] As quoted in R. Rachoddas and D.K. Thakore, The Law of Crimes (Bombay, Bombay Law Office, 1948), p. 671.
[12] Section 295 A of the Indian Penal Code as amended by the Indian Penal Code (Amendment) Act, 1961 (Act 41 of 1961).
[13] Sections 306, 309 of the Indian Penal Code, 1860.

 [ISSN 2581-5369]

suicide is prohibited by law, regardless of the reason for the act's motivation. As a result, although though sati is practised by some Hindu groups in some parts of India and is a component of Hindu religious belief, it is now illegal under Indian law. In a sati case that was brought before the Rajasthan High Court, the Sessions Judge handed down a lenient sentence of six months of hard labour to all those who were found guilty of aiding the crime on the justification that the locals in the area where the crime was committed thought it was their religious duty to encourage the act. But, Chief Judge Mr. Wanchoo of the Rajasthan High Court noted in the present instance that[14] "The reasons he (the Sessions Judge) has given for this ridiculously lenient sentence are rather strange in the middle of the 20th century. He is still not sure whether the people are wrong or right in their adoration of Sati…He seems to sympathise with the view of the people that it is their religious duty to help a woman who wants to become a Sati."[15]

The State must take action to stop contagious diseases if it wants to maintain the general public's excellent health. In this case, religious views cannot go against state law. For instance, Sections 269 and 270 of the Indian Criminal Code give the State the authority to punish someone who is likely to transmit such viruses illegally and carelessly. In a similar vein, the Epidemic Diseases Act establishes guidelines for the adoption of unique measures to combat epidemic diseases.

Various judgement and direction of courts or preceding judicial rulings and state laws significantly reinforce one point, namely that the free exercise of religion cannot conflict with constitutional goals to defend institutions and principles meant to advance human welfare and uphold human dignity.

IV. CONCLUSION

The largest obstacle to the right to freedom of religion has been the essential religious practises test, which has been codified via legal rulings over the past 60 years. The exam actually deviates from the Constitution's guiding principles. In addition to being unconstitutional, it is based on faulty logic. It presumes that some religious acts are essential to religion and that others are merely incidental, however this is erroneous because religion is comprised of all of these practises viewed collectively. Without any other specified criteria, such a conclusion is entirely arbitrary, and it is made based only on the Such beliefs have shown to be arbitrary, according to its adherents. The judges have repeatedly attempted to increase their authority

[14] Tejsingh v. The State, AIR 1958 Raj 169 (DB).
[15] Id. 172.

 [ISSN 2581-5369]

over the determination of fundamental religious practises, but they have failed to do so by basing their judgement on the beliefs of the religion in question. They have added further requirements over time, such as the need that the practise remain everlasting and impervious to change, which effectively eliminates the possibility of any progressive internal reform in the religion. Also, judges now have the authority to determine which behaviours qualify as "true religion" and which are purely superstitious beliefs**.** Thus , there is a need to sharpen or modify the meaning of essential religious practice as there is no specific terms and mentions of it in the Indian constitution. This will be step towards solving questions and conflict in the respect of religious freedom and discourse of its limitation.

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 [ISSN 2581-5369]