ESSENTIAL RELIGIOUS PRACTICES

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INTRODUCTION

India is a secular country with no official religion. It is a country where practically all of the world's main religions are practiced by their respective adherents. Nonetheless, the country's religious plurality has been a major cause of dissension and discord. This is because religious connection tends to be exaggerated in India. Articles 25 to 28 of the Indian Constitution allow for the 'Right to Freedom of Religion,' which says that the state shall be impartial toward all religious practices and affiliations. The 42nd Amendment to the Constitution, which introduced the term "secular" to the Preamble of the Indian Constitution, reinforced this. As a result, the Constitution establishes a distinction between a state-regulated secular sphere and a religious area that should not be tampered with by the state. In several instances, there has been a clash between religious activities that are not to be interfered with by the state and the constitutionally granted fundamental rights of the person. Courts are expected to resolve these disputes by taking into account civil and basic rights, as well as religious beliefs and customs. For this, the Supreme Court has established the concept of the 'essential religious practice test'.

ESSENTIAL RELIGIOUS PRACTICE TEST

Articles 25 and 26 of the constitution are consistent with the constitution's equal aspect principle of secularism. Article 25 states that everyone has the right to freedom of conscience and religion, subject to public order, health, morality, and basic rights contained in the constitution. Article 26 provides the freedom to freely govern their religion's religious affairs. Article 26 is, nevertheless, constrained by public order, health, and morals. The notion of essential religious practices arose from the interpretation of the scope of these two articles. The court states that an essential part of religion means the core principles upon which a religion is formed." Essential practices are those that are required to follow a religious belief. The superstructure of religion is constructed on the foundation of important portions or practices. Religion will be nothing if it lacks this. Further, the court stated that the test to see whether a part of the practice is fundamental to the religion is to see if the character of religion would

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alter if that part or practice is removed. If removing that part or practice would result in a fundamental shift in the religion's character or beliefs, that part might be considered an essential or crucial aspect.

ORIGIN OF ESSENTIAL RELIGIOUS PRACTICE TEST

The Supreme Court initially established the doctrine of "essential religious practice" in the case of The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt. The disputed Act, namely the Madras Hindu Religious and Charitable Endowments Act, 1951, was challenged in Shirur Mutt's case (1954). Before addressing the challenges raised by the Act's provisions, the court addressed and answered a basic question: where does one distinguish between "religion" and "secular"? Religion, according to Mukherjea J., includes not only a system of beliefs or ideas but also many rites. "What comprises the essential portion of a religion is largely to be established concerning the beliefs of that religion itself," the court said in this decision. It was also pointed out that if any religion mandates a specific manner of conducting any religious exercise, such as the gift of food or the recitation of the holy text, then it is to be regarded as religious activity regardless of whether a marketable item or money is involved. As can be seen, not just beliefs but also connected behaviors must be protected even if they happen to entail some secular activity. Under the Constitution, this fundamental aspect of religion is protected.

JUDGEMENT REGARDING ESSENTIAL RELIGIOUS PRACTICE TEST

The Commissioner, Hindu Religious Endowments, Madras v Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt (1954) In 1954, a 7-bench judge bench of the supreme court held that Article 25(2)(a) considers state intervention of actions that are economic, commercial, or political but are associated with religious practices, rather than regulation of religious practices as such, which are guaranteed by the Constitution except when they run counter to public order, health, and morality." The Court rejected a proposal by the Advocate General of Madras that only "essential" religious rituals be granted constitutional protection, stating that "what constitutes the essential portion of religion is essential to be determined concerning that religion's principles.

Sardar Sarup Singh v State of Punjab (1959): The Supreme Court heard a case challenging section 148-B of the Sikh Gurudwaras Act, 1925, which established a Gurudwara Board and

added additional members. The petitioners stated that section 148-B violates Article 26(b) of the Constitution, which provides every religious group the freedom to administer its affairs in areas of religion because it prohibits the Sikh Community from directly electing members of the Board. The State of Punjab argued that section 148-B does not apply to questions of religion in the sense of basic Sikh beliefs and practices and that other relevant parts of the main Act do not interfere with Sikh religion. The Supreme Court affirmed the validity of section 148-B by applying what is now known as the 'essential religious practices test.' No authentic document had been presented before the Court to indicate that direct election by the whole Sikh Community to the Gurudwara Committees in charge of management was essential to the religion itself.

Durgah Committee, Ajmer v Syed Hussain Ali (1961): The Supreme Court dismissed a challenge to the Dargah Khwaja Saheb Act, 1955, because it infringed on the basic rights of Muslims of the Soofi Christian Order. The members of the order claimed that they were the only guardians of the Ajmer shrine. The Act, on the other hand, allowed all Hanafi Muslims to participate in the Dargah's upkeep and operations. The appeal to the Dargah Act was dismissed by the Court, which stated that the tomb could never be restricted to members of the Soofi Christian Order. The Court went on to say that for the practices in question to be addressed as religious practices, they must be considered essential and integral parts of the religion in question; otherwise, even purely secular practices that are not essential or integral parts of religion are likely to be clothed with a religious form and may make a claim to be treated as religious practices within the meaning of Article 26. Similarly, even religious behaviors may have arisen from just irrational ideas, and hence may be unnecessary and unimportant accretions to religion. The protection must be limited to those religious acts that are necessary and important to it, and nothing else.

Tilkayat Shri Govindlaji Maharaj v State of Rajasthan (1963): The matter before the Court in a challenge to the Nathdwara Temple Act, 1959 passed by the State of Rajasthan by the Tilkayat was whether the Vallabh denomination's doctrines and religious practices limited worship to private temples operated by the Tilkayat alone. If this is the case, would an Act established for the Temple's management violate the Constitution according to Article 25? It was decided that practice is deemed vital to a religion if it is important to the religious community. Furthermore, religious practices are protected by Articles 25(1) and 26(b). Without infringing on the aforementioned provisions, purely secular matters may be governed by

legislation. To be regarded as a part of religion, the practices in question must be considered as such by the religion; or else, even completely secular practices that are not an essential or integral part of religion are likely to be clothed with a religious form and may make a claim to be treated as religious practices within the scope of Article 26.

Sabarimala vs state of Kerala (2016): The practice of excluding women between the ages of 10 and 50 years at the Sabarimala Temple was proclaimed not to be an essential part of the Hindu religion in the Sabarimala case; it was stated that the "exclusionary" practice was not such that its non-observance would change or alter the nature of Hindu religion. It was also claimed that it had not been seen consistently. J. Chandrachud used the "anti-exclusionary principle", stating that, even though this practice is rooted in religious scriptures, it is secondary to the constitutional ideals of liberty, dignity, and equality, and is thus immoral.

Shayara Bano v Union of India (2017): The Supreme Court rejected the notion that Triple Talaq was an important practice under Islam, ruling that it was not an essential activity that could be protected under Article 25 of the Constitution. The Court stated that it went against the Quran's essential precepts and hence violated the Shariat. A religious behavior that is just authorized or not allowed cannot be deemed an important or positive principle sanctioned by that faith. Triple Talaq is a type of talaq that is legal but is considered wicked by the Hanafi School that tolerates it. As a result, this would not be considered an important religious practice because the fundamental character of Islam, as perceived through the views of an Indian Sunni Muslim, would not alter without it.

Resham v. State of Karnataka (2022): The Karnataka High Court concluded that wearing the hijab is not an "essential religious practice" in Islam in its ruling maintaining bans on Muslim women wearing hijabs in educational institutions. This was the court's first inquiry, and its response served as the foundation for the rest of the decision. The court rejected the petitions contesting a ban on the hijab in school uniforms issued by the Government Pre-University (PU) College for Girls in Udupi, as well as the Karnataka government's backing for the restriction. The bench then stated that the hijab ban was a "reasonable" and legally permitted one that students could not object to after ruling that wearing the hijab isn't an important religious practice.

LIMITATION OF ESSENTIAL RELIGIOUS PRACTICE TEST

Both in theory and reality, the concept of the essential religious practice test is flawed. The test's first and most serious flaw is that it is not required under the Constitution. It is subjective and arbitrary in its use, and there are no set standards for determining what constitutes an "essential religious practice." The court may make decisions without hearing from the parties involved. It has also happened in circumstances when the court has said that whether a practice is an important component would be evaluated based on the information presented to it but has proceeded to rule the matter without conducting such a factual investigation. By prioritizing a specific set of sources, there is also a risk of marginalizing minority traditions within a religion, resulting in a religion devoid of internal variety. Minorities are concerned that their rights and freedoms would be jeopardized since judges, particularly those from majority groups, will be assessing their fundamental rights and judging their religious views.

CONCLUSION

The essential religious practice test has its advantages and disadvantages. It is important to develop this test in the right direction as many vital religious matters depend on it. In such a circumstance, the essential obligation for the Courts is to take an alternative approach wherever feasible by putting the practices to the test of fundamental rights or fundamental constitutional principles that derive their validity from the Constitution itself.

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