Essential Religious Practices Test and Freedom of Religion in India

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Abstract: Indian Constitution Guarantees the freedom to practice, profess and propagate any religion as a fundamental right, however, the State is also empowered by the Constitution to intervene in religious matters to control regressive social practices, but without infringing the principle of State neutrality in religious affairs. As in India, the social-cultural conditions are unique; therefore, ‘Freedom of Religion’ can be understood as a right of group or an individual as a fundamental right. However, injustice or unequal treatment towards an individual or group/class/ caste creates tough situation for the State to stay distant in religious matter. On the other side, overreach of State in religious matters/practices might damage the religion’s capacity for internal reform or its growth. Therefore, it is imperative to protect personal autonomy in matter of religion. The Supreme Court of India tried to draw the line between religious freedom and state intervention by the doctrine of ‘Essential Religious Practices Test’ to ascertain which elements are fundamental for religious practices and which may be purged, considered as mere superstition. In this context, the paper seeks to explore impact of ‘Essential Religious Practices Test’ and its role to control discriminatory and/or irrational religious practices.

Key words: Essential Religious Practices Test, Freedom of Religion, Right to Equality and Secularism.

I. INTRODUCTION

Preamble of Indian Constitution amended in 1976 to state that India is a secular State. Every citizen of India has a right to practice and promote their religion because the ‘Freedom of Religion’ is guaranteed by Article 25 of the Indian constitution. However, this freedom of religion is subject to certain restrictions as stated in Article 25(1) of the Indian Constitution.

In India due to social structure and political interest in religious matters, numerous incidents of religious intolerance between different religious communities had happened that caused unrest in people and resulted in riots and violence.¹ In fact religion, religious practices and belief were staggering issues even for founding fathers because there were so many religions in India which were practicing by individuals or group, diversely. Religion and religious practices pertaining to any religion were suffered from inequalities in many ways even those days. Therefore, for an establishment of a secular nation; it was imperative to overcome these inequalities or irrational religious practices that had been practiced by religious communities in India. Therefore, in Indian Constitution provisions are provided for ‘Freedom of Religion’ as a fundamental right but with certain restriction with aim to control irrational or discriminatory religious practices. For a country like India, such restriction on freedom of religion as per provisions of Article 25(1) of Indian Constitution can play an effective role to overcome inequalities and/or irrational religious practices.

II. ESSENTIAL RELIGIOUS PRACTICES TEST

The doctrine of Essential Religious Practices Test was introduced by the Supreme Court to restrict or legitimize the religious practices by determining whether the religious practice in question is essential religious practice or not? Therefore, the Essential Religious Practices Test is actually a way to declare appropriation of a religious function and/or practice by the court.

In India many cases came before the court to determine, what religious practice is essential religious practice for any religion and what is not? In all such cases main issue/ problem that involved was regarding the status of religious practices. It is well understood that these religious practices are community or group practices; and matter
regarding such practices had come before court, in order to control irrational religious practices and discriminatory act among the religious groups or minorities.

Indian courts have succeeded to resolve many issues regarding religious practices and their essentiality by the doctrine of ‘Essential Religious Practice Test. In process of determining the essentiality of such practices; it is well understandable that the court look for authoritative sources to ascertain essential status of religious practices within particular religion.

III. INDIVIDUAL COMMUNITY, AND STATE: MAPPING OF RELIGIOUS FREEDOM AND NON-DISCRIMINATION IN INDIA

In Indian democracy the principle of liberty, equality and fraternity are the pillars on which Indian Constitution rest. The principle of equality under Article 14, 15 and 17 of the Constitution is strictly prohibiting discriminatory treatment towards any individual or group/ class/ caste. Whereas Article 25 guarantees the freedom of conscience; and freedom to profess, practice and propagate religion. More specifically, Indian Constitution is neutral toward any religion or religious belief, as Indian is a secular State. However, in India the State has ability to intervene in secular matters or religious matters that associated with any religion, to test essentiality of their religious practices and its integral nature with that particular religion. Where any discrimination or biased treatment on the bases of religion is found towards any individual or group, then it can be restricted by the State.

Article 25 (1) provides that “to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion”. Article 25(2) (a) allows the State to make law for “regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice.” The scheme of Article 25 (1) and Article 25(2)(a) revels that the Constitution is separating religious and secular practices, and protecting existence of both of them, so that it can be managed in more logical and rightful manner.

IV. ESSENTIAL RELIGIOUS PRACTICES TEST AND NON-DISCRIMINATION IN INDIA

In India many cases regarding religious freedom and essentiality of particular religious practices were bought before Indian courts for discussion/ judgement. The cases which were discussed in Indian courts regarding any religion or religious practices can be understood by separating them in two types:

- **Firstly**, cases that involving or relating to State intervention in management of temples, Gurudwaras, Dargah or other religious place.
- **Secondly**, cases that based on religious freedom jurisprudence, involving issues or relationship between the members of religious communities or religious practices of particular community and/or religion.

It is well understood that issues regarding second category are more complicated and judiciary is not succeeded to lay down a set of principle by which essentiality of any religious practice can be ascertain. Therefore, the courts deciding religious matters regarding essentiality of particular religious practices, on case to cases bases. Thus, any issue regarding essentially of religious practices, puts judges in extreme complex situation, because it is not easy to determine, what is essential religious practice in particular religion and what is not?

Existence of various religion and their peculiar religious practices that are integral part of religion; are the main reason and because of it, there remains always uncertainty about essentiality of such religious practice.

Dr. Ambedkar during the Constituent Assembly debates commented that, “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.” 2
In Indian tradition and culture, there is a nexus between social and religious life, but in relation to religion based practices, our constitutional mandate favours the State to make or introduce necessary reforms/ changes. Therefore, essential reforms can be done in religion and/or religious practices that are discriminatory in nature or against public order, morality and health.

V. ROLE OF ESSENTIAL RELIGIOUS PRACTICES TEST IN INDIA

In India under a constitutional obligation ‘Right to Equality’ is also extended to religious matters. As a result the essential religious practices test has emerged, which is reflecting the jurisprudence of religious practices and secular practices in particular context. In the case of ‘The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Svamiyar of Sri Shirur Mutt’ the apex court extended the protection to freedom of religion by including religious practices within meaning of religion. In this case the Supreme Court made following observation- “Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine of belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.” In this case the Supreme Court throw out the assertion test by saying that religious practices that are ‘integral to the faith’ can be accepted as valid religious practices, therefore it can be followed by religious communities without any interference by the State. In accordance to the test, all religious practices that are essential and “integral to the faith” are exempted from state intervention. In case of Ratilal v. State of Bombay, these observations were repeated, the Court held that “no outside authorities has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate”.

In case of Shri A.S. Narayana Deekshitultu v. State of Andhra Pradesh & Others the court observed that “What are essential parts of religion and religious practice is essentially a question of fact to be considered in the context in which the question has arisen are the evidence - factual or legislative or historic - presented in that context is required to be considered and a decision reached.” Therefore, the Court strike balance between the part of religion that is essential and integral to the religion with those that is not essential or not integral. The Court further held that State need to regulate or control religious matter in favour/ interest to the religious community. In this case the court while determining what can be essential or integral part of religion held that “Religion includes worship, faith and extends to even rituals. Belief in religion is belief of practice a particular faith, to preach and to profess it. Mode of worship is integral part of religion. Forms and observances of religion may extend to matters of Food and Dress. An act done in furtherance to religion is protected.”

On various occasion Indian courts decided matters that were associated with region, and in their judgments court bought positive changes towards an establishment of secular society which favours equal treatment with all sections and class of the society. In case of Sastri Yagnapurushdasji v. Muldas Bombay Hindu Places of Worship Act was passed which permitted untouchables to enter and worship in the temples. The Act was challenges on its constitutional validity. The Supreme Court relying on several Hindu texts came to the conclusion that Satsangis were Hindus and the Act might prescribe rituals a religious practice that is essential and integral to religion. In the case of Madras v. Sri Lakshmindra Thirtha Svamiyar of Sri Shirur Mutt, the apex court extended the protection to freedom of religion by including religious practices within meaning of religion. In this case the Supreme Court made following observation- “Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine of belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.” In this case the Supreme Court throw out the assertion test by saying that religious practices that are ‘integral to the faith’ can be accepted as valid religious practices, therefore it can be followed by religious communities without any interference by the State. In accordance to the test, all religious practices that are essential and “integral to the faith” are exempted from state intervention. In case of Ratilal v. State of Bombay, these observations were repeated, the Court held that “no outside authorities has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate”.

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The Essential Religious Practices Test has been used by Indian Court to bring social justice in Indian societies. Here are few other cases that were cited to prove that the test is used to bring social justice in India. In case of State of Bombay v. Narasu Appa Mali 12 where the Hindu Bigamous Marriages Act was challenged. It was held by Bombay High Court that: "A sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole. It is rather difficult to accept the proposition that polygamy is an integral part of Hindu religion."

The Apex Court in the case of Seshammal v. State of T.N. 14 held that the hereditary principle of temple priests is void; stated clearly that “the archakas and priests are temple servants and that matters concerning their appointment, emoluments and the benefits fall within the ambit of secular activities susceptible to interference by the state.” 15 In case of Nikhil Soni v. Union of India & Ors 16 Rajasthan High Court passed a judgment by which State authorities were directed to stop the practice of 'Santhara' or 'Sallekhana' which is practiced in Jain community. The State authorities were directed to treat it as suicide, punishable under section 309 of the Indian Penal Code and its abetment by persons under section 306 of the Indian Penal Code. It was further directed to the State to stop and abolish the practice of 'Santhara' and 'Sallekhana' in the Jain religion in any form. Any complaint made in this regard shall be registered as a criminal case and investigated by the police, in the light of the recognition of law in the Constitution of India and in accordance with Section 309 or Section 306 IPC, in accordance with law.”

In case of Anuj Garg and others v. Hotel Association of India and others 18 and Charu Khurana and others v. Union of India and others 19, the Court upheld that gender biasness in any form, is against the Indian Constitutional norms. However, in India, gender based biasness is common in religious practices. This dualistic approach to understand and worship divinity is common practice in religion, where men are free to worship god; on other side, rigorous sanctions are imposed on women on path to worship or approach to understand the divinity. The said approach is degrading women status in Indian society. Therefore, recently in Sabarimala temple case, this approach was challenged.

As in Sabarimala temple, where women (a class of) were excluded to enter and worship Lord Iyappa, on bases of ancient customs, therefore, to challenge its validity of this religious practice, PIL was filed. Young Lawyers Associations & others v. The State of Kerala and others 20 (known as Sabarimala Judgment), the Court upheld that “devotion can’t be subject to gender discrimination”. In the said case Constitutional Bench of the Supreme Court held, by 4-1 Majority, that practice of barring entry to women between the ages of ten and fifty in Sabarimala temple, was unconstitutional.

In case of Appa Rao, M.S. v. Government of Tamil Nadu & Another 21 certain guidelines were laid down by Madras High court, for controlling noise pollution. 22 Similarly in the case of Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association and Others 23 and Forum, Prevention of Environment v. Union of India 24 the court held that the right to live in noise pollution free atmosphere is also included in ‘Right to Life’. It is made clear through various judgments that essential practices of any religion do not state that religious prayers are to be conducted using loudspeakers or by beating of drums therefore it can be restricted by the State.

In view of the role played by Essential Religious Practices Test, it is clear that if religious practices are not based on constitutional norms of equality; and/or discriminatory in nature, then it can be restricted. However, in spite of the role that Essential Religious Practices Test has played for religious reforms in India; there are ample criticisms on the applicability of the said test. In case of Nikhil Soni v. Union Of India & Ors., Acharya Jagdishwaranand Avadhuta v. Commissioner of Police 26 and Commissioner of Police v. Acharya Jagdishwaranand Avadhuta 27 the applicability of the said test was criticized because religious practices which were integral to the faith were restricted by the Court. In few other cases, this test was criticized because people and religious institutions couldn’t enjoy their right to religious freedom due to wrong interpretation/use of the said test. Therefore, Essential Religious Practices Test should not be interpreted in wrong way because it can create institutional problems in India.
VI. CONCLUSION

In Indian context, it would be right to state that ‘Essential Religious Practices Test’ has played a positive role to buildup religious freedom jurisprudence in more sensible and progressive direction. However, for freedom of religion the Essential Religious Practices Test should certainly be interpreted within scheme of Indian constitutional jurisprudence, so that judiciary would not become sole decision maker on question regarding essentiality of religious practices.

NOTES AND REFERENCES

2. An excerpt from Ambedkar’s speech at the Constituent Assembly on 2 December 1948
4. Id.
8. Sastri Yagnapurushdasji v. Muldas AIR 1966 SC 1119; Available at: https://indiankanoon.org/doc/145565/ (last visited on Sept 12, 2018)
11. Id.
14. Nikhil Soni v. Union Of India & Ors. 2015 Rajasthan High Court (10 Oct 2015); Available at: https://indiankanoon.org/doc/173301527/(last visited on Oct 14, 2018)
15. Id.
18. Young Lawyers Associations & others v. The State of Kerala and others; Available at: https://indiankanoon.org/doc/163639357/ (last visited on Aug 3, 2018)
20. Id.
23. Supra note 16.
26. In Nikil Soni case practice of ‘Santhra’ was restricted, therefore the judgment was criticized. In case of Acharya Jagdishwaranand, the Court was of the opinion that Tandawa dance was not a part of AnandMargis essential religious function, so it can be restricted.