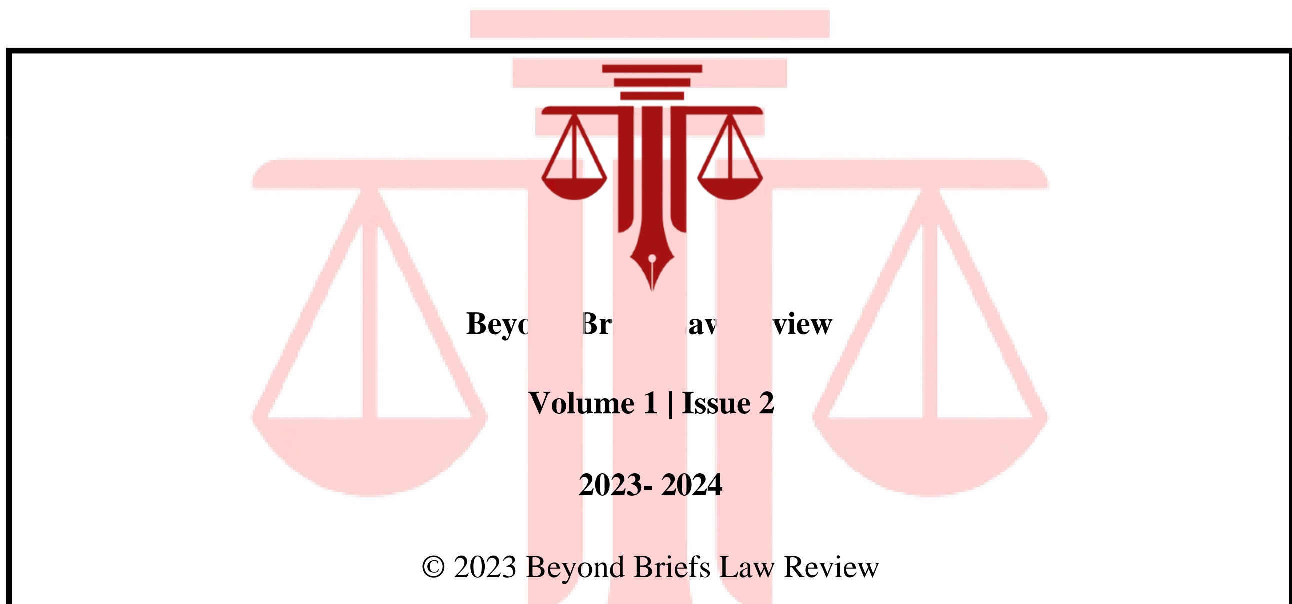

Beyond Briefs Law Review

Volume 1 | Issue 2

2023- 2024

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SABARIMALA TO HIJAB DEBATE: LIMITS OF ESSENTIAL RELIGIOUS PRACTICES TEST AND ARTICLE 25

~ Riddhiman Chandra Agarwal & Ram Makarand Sumant [1]

Abstract

The Essential Religious Practices Test, developed in the Shirur Mutt matter, has been a topic of public debate. The test restricts constitutional protection for personal law practices and religious denominations freedom to administer their institutions. This raises questions about the feasibility of allowing absolute freedom of religion in a secular state. The test has also prompted theological scrutiny of religious practices and their connection to religion, raising questions about judge's competence. This paper explores this question and suggests an alternative approach, while also addressing the fallout of the test on religious institution administration.

Keywords

Essential Religious Practice, Religious Freedom, Competence of Judiciary, Judges as Theologians, Cultural Exceptionalism.

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INTRODUCTION: ESSENTIAL RELIGIOUS PRACTICES TEST

The Constitution guarantees the Right to Freedom of Religion through Articles 25 [2] and 26 [3]. Article 25 endows people with the privilege to freely practice, profess, and propagate their religion. Article 26 allows religious denominations to institute and administer religious and charitable institutions and acquire and maintain immovable property for those institutions. The exercise of this particular freedom in India has been qualified by the restrictions of public order, morality, and health. The objective of imposing specific restrictions was to subordinate religion to social reform and prevent the persistence of archaic and anachronistic practices associated with religion in the name of freedom of religion. The impetus for social reform was derived from the experience in colonized India when various discriminatory, superstitious, odd, and prodigious activities associated with religion like caste discrimination, sati, purdah, etc. became widely prevalent in society and it was desired to bring reform in religion by weeding out such anomalies, and at the same time, guaranteeing the inalienable freedom of faith to people.

The Supreme Court of India devised the Essential Religious Practice Test (hereafter the "ERP Test") to mold the flow of religion according to the impulses of a modernist state rather than adhering only to the beliefs of its practitioners. The Court employed this test for three purposes, to extend constitutional protection to religious practices, to determine the vires of State legislation overseeing the functioning of religious establishments, and to ascertain the extent of freedom exercisable by religious denominations. [4]

The test was devised in the case of Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshimindra Thirtha Swamiar of Sri Shirur Mutt [5] (hereafter "Shirur Mutt case"). The constitutionality of Madras Hindu Religious and Charitable Endowments Act, 1951 [6], which regulated the functioning of Hindu temples and Mutts was challenged by the Mathadhipati of

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[2] INDIA CONST. art. 25.

[3] INDIA CONST. art. 26.

[4] RONOJOY SEN, ARTICLES OF FAITH: RELIGION, SECULARISM, AND THE INDIAN SUPREME COURT (Oxford University Press 2019).

[54] The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshimindra Thirtha Swamiar of Sri Shirur Mutt, 1954 SCR 1005.

[6] Madras Hindu Religious and Charitable Endowments Act, 1951, No. 19, Acts of Madras State Legislature, 1951 (India).

Shirur Mutt claiming violation of the Fundamental Right to manage religious institutions by the religious denomination. The court elucidated that the limitations mentioned therein embodied, in spirit, the need to discern what (practice) comprises religion and what does not. The court while emphasizing the sanctity of the religious institutions' autonomy to conduct its affairs and manage its property also underscored the competence of the state to oversee and manage the financial, secular, and patently non-religious aspects of the functioning of religious and charitable institutions.

The court has held that the legal protection to be enjoyed by the religious practices, rituals, and observances has to be decided by the court concerning the scriptures and notions of the religion in question [7].

The court has delved into theology and ascertained the intensity of the grounding of practices in it. While determining whether Tandava Dance of the Ananda Margi religious denomination, [8] the court held that Tandava cannot be taken as an essential religious practice as the same has not been practiced in the denomination since its inception. The court remarked, "There cannot be additions or subtractions to integral parts of a religion because it is the very essence of that religion and alterations will change its fundamental character. It is such a permanent essential part, that is protected by the Constitution."

The court has affirmed the requirement of production of evidence to substantiate the claim of the ritual being an integral part of religion, as the Constitution extended protection only to the "integral part of religion". [9]

The Apex Court rejected the argument that keeping women out of the sanctum sanctorum of the Haji Ali Dargah [10] constituted a necessary religious practice, and it provided the following definition of an "essential religious practice" in its decision.

"Essential part of a religion means the core beliefs upon which a religion is founded and essential practice means those practices that are fundamental to follow a religious belief. According to the

[7] N. Adithayan v. Travancore Devaswom Board, (2002) 8 SCC 106.

[8] Acharya Jagdishwaranand Avadhuta v. Commissioner of Police, (1983) 4 SCC 522.

[9] C.N. Eswara Iyer v. Commissioner, Hindu Religious and Charitable Endowment Board, (2011) SCC OnLine Mad 157.

[10] Haji Ali Dargah Trust v. Noorjehan Safia Niaz, AIR 1984 SC 512.

'essential functions test', the test to determine whether a part or a practice is essential to the religion, in this case, Islam, to find out whether the nature of religion will change, without that part or practice; and whether the alteration will change the very essence of Islam and its fundamental character. As is noted in the judgments referred hereinabove, what is protected by the Constitution are only such permanent essential parts, where the very essence of the religion is altered."

The case of Indian Young Lawyers Association v. The State of Kerala [11] , (hereafter "Sabarimala case") related to the prohibition of entry of women between the ages of ten and fifty years in the Sabarimala Ayyappa Temple of Kerala, is a landmark case in this regard. The deity of this temple Ayyappan is considered to be a Naishthika Brahmachari who has vowed to observe celibacy and has prohibited the entry of women fitting the ages of ten and fifty. The Constitution bench led by Dipak Misra, C.J., delivered the verdict by a 4:1 majority and held the restriction as unconstitutional. Dipak Misra, C.J. and R.F. Nariman and D.Y. Chandrachud, JJ., wrote disparate concurring opinions for the majority. Indu Malhotra J. wrote the lone dissenting opinion.

Misra C.J.'s opinion has two underlying findings that the pilgrims and temple of Sabarimala Ayyappa cannot be deemed a religious denomination as they do not share "common religious tenets peculiar to themselves, which they regard as conducive to their spiritual well-being, other than those which are common to the Hindu religion." Also, the practice of excluding the entry of women is held inessential concerning the Hindu religion.

Nariman J. does not rule anything vis-à-vis the question of ERP(s). He presumes the essentiality of the practice to the religion but proceeds to deny denominational rights relying on the Shirur Mutt definition of denomination. He holds that there is no "common faith" among the devotees as they span faiths across Hinduism and that a "distinct name" is absent for consideration as a denomination.

Chandrachud J.'s opinion harbors mainly on the premise that the practice is offensive to constitutional morality. He invokes the "anti-exclusion principle" and regards Fundamental rights as a "cluster of rights" that are the conscience of the Constitution. He equates the prohibition of women's entry with caste-based exclusion prohibited by Article 17 [12] , that any determination of

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[11] Indian Young Lawyers Association v. The State of Kerala, (2018) SCC OnLine SC 1690.

[12] INDIA CONST. art. 17.

the denominational rights and the essentiality of the religious practice is impertinent as it does not affect the barrier imposed by constitutional morality.

Indu Malhotra J.'s dissenting judgment underscores the premise that self-definitional subjectivity for religious groups is an essential component of constitutional morality [13]. It holds that the determination of a religious denomination is a flexible exercise involving the application of a judicial explanation instead of a straightjacket formula imposed by statutory definition. Therefore, denominational rights can be claimed by Sabarimala Ayyappa Temple and devotees. While examining the issue of the integral nature of the religious ritual or practice, she concluded that the practice is essentially religious (and not secular), as it has been in vogue continuously and is doctrinally a part of the beliefs of the denomination. She also advocates for judicial deference to religious freedom vis-à-vis the question of constitutional morality, which is inclusive of freedom of religion. That Article 25(2)(b) [14] enables the legislature, to "throw open" religious establishments to all sections of people in the interest of social justice, and not the judiciary, is also highlighted by her.

In the case of Shayara Bano v. Union of India [15] , the Apex Court adjudicated the constitutionality of the practice of Talaq-e-biddat (instant triple talaq). The constitution bench via a 3:2 ratio invalidated the occurrence of instant triple talaq. Nariman and Kurien JJ.. wrote concurring but separate opinions for the majority. Khehar C.J. wrote the minority dissenting opinion. Nariman J. applied the test adopted in the Avadhuta [16] case and held that the practice is not essential to religion in the way that it alters the fundamental nature of Islam as a religion. He held that positive permission for an action does not make it integral to religion. Its magnitude should be high enough that the fundamental character of the religion itself would be altered by any modification or subtraction to that practice. Joseph J. held that, simply because a practice has been continuing for a large period and is widely prevalent in a section of society, it cannot be accorded the status of essential religious practice.

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[13] Aparajito Sen, *Interpreting Group-Based Religious Freedoms: Sabarimala and the Movement from Definitions to Limitations* 15 NALSAR Stud. L. Rev. 2023 (2021).

[14] INDIA CONST. art. 25(2)(b).

[15] Shayara Bano v. Union of India, (2017) 9 SCC 1.

[16] Acharya Jagdishwaranand Avadhuta v. Commissioner of Police, (1983) 4 SCC 522.

Khehar C.J., on the other hand, held the practice to be an ERP since it was sanctioned by the faith. In doing so, he elevated the status of the practice of personal law to that of a fundamental right. [17] Another issue that involves ERP tests has come up in the form of the claimed right to wear a Hijab by Muslim girls in educational institutions. The incident of Udupi Girls College's prohibition of hijab and defiance of it was the subject of heated debate inside and outside courts.

The Karnataka High Court [18] examined Islamic religious literature including the Qur'an to hold that the prohibition of hijab was valid as wearing it is not an intrinsic element of the Islamic religion and hence it is not an ERP. In the appeal in the Supreme Court, a split verdict was delivered wherein Hemant Gupta J. considered secularism as paramount and held that wearing hijab may be a religious practice or an ERP but the same cannot be permitted inside a secular and state-controlled educational institution as the badge of separate religious identity in the interest of discipline. Sudhanshu Dhulia J., on the other hand, while setting aside the Karnataka High Court judgment, observed that the question of determination of an ERP should not arise; as the moot point is the freedom of expression of an individual coupled with the freedom to practice religion under Article 25(1) [19] . He held the importance of girls' education to be paramount and believed that any impediment to education must be removed.

The case remains referred to a bigger bench for determination.

CRITIQUE OF THE ERP TEST

The Essential Religious Practices Test (hereinafter, ERP test) has been a subject of substantial scrutiny and for good reason. In seeking non-interference in religious practices by blatantly passing them through the sieve of Part III, the court sought to construe practices in a way that would exclude them from within the ambit of Articles 25 and 26. In doing so, the court has instead given rise to a test alarmingly susceptible to misuse to the detriment of the cultural heterogeneity of the nation and the secular character of India.

[17] Akhilesh Menezes, Priyanshi Vakharia, To Practice What is Preached: Constitutional Protection of Religious Practices vis-a-vis Reformative Secularism, 7.1 NLUJ L. Rev. 211 (2020).

[18] Aishat Shifa v. State of Karnataka, (2022) SCCOnline SC 1394.

[19] India Const. art. 25(1).

Following are some of the discrepancies of the ERP Test: -

I. THE ERP TEST DENIES CULTURAL EXCEPTIONALISM IN INDIA.

The Indian subcontinent is a landmass housing a population of varying faiths, religions, and belief systems. This diversity includes but is not limited to the innumerable religions but also the various sects and societies within religions. Religion is a notion that defines people both in an individual and communal capacity. Just within Hinduism are hundreds if not thousands of sects and sub-belief systems that have major differences from the mainstream idea of Hinduism. For example: - The Brahmo Samaj denies the practice of idol worship which forms one of the fundamental tenets of mainstream Hinduism. Some sects deny various thought streams within the religion and this antiquity between and within religions is at a heavy detriment due to the blanket use of the ERP test.

This unique notion of every community and individual that may deviate from the norms of that community has been recognized in the case of A.S Narayan Deekshithulu v. State of Andhra Pradesh, wherein it was held, "*The religious freedom guaranteed by Articles 25 and 26 is intended to be a guide to community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. These articles, therefore, strike a balance between the rigidity of a person's right to belief and faith and their intrinsic restrictions in matters of religious beliefs, and practices and their guaranteed freedom of conscience to commune with the cosmos, and creator and realize their spiritual self.*" [20] Indeed, an attempt is perhaps to balance the right to freedom of religion and the interests of society that the Court feels are being infringed by the contentious practice. This, in itself, is an erroneous approach as it necessarily requires the prevalence of one over the other. The determinism to treat religion as superior or inferior to other interests has resulted in undoubtedly inequitable results while also creating intractable problems for the judiciary. [21] Furthermore, the ERP test assumes that certain religiously aimed actions are

[20] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, (1996) 9 SCC 196.

[21] CHRISTOPHER L. EISGRUBER & LAWRENCE G. SAGER, RELIGIOUS FREEDOM AND THE CONSTITUTION 29 (Harvard University Press 2010).

core to the religion while others are merely incidental. This is an erroneous assumption and a flawed outlook towards religion as religion consists of all these practices put together.[22]

II. THE TEST ASSUMES RELIGION TO BE AN INERT NORMATIVE ORDER.

By making itself the discretionary authority in deciding the practices that would or would not be considered a religion, the Court assumes the role of a theologian. The reason behind the same is that if a particular practice is declared as 'non-essential' by the Court, it is excluded from the protection received from Articles 25 and 26 and thus, for all intents and purposes ceases to be part of that religion in the eyes of the Constitution. Therefore, a secular entity, having no connection to the religion becomes the decider of what is and isn't to be followed. In doing so, the Court presumes that the religion itself is incapable of reforming itself and ridding itself of the discriminatory practices that it is plagued by; which, is not the case. The example of Raja Rammohan Roy, a devout Hindu (and a Brahmin), tirelessly campaigned for the eradication of *Sati pratha.* He knew that many Hindus had shown large-scale abstention from that specific ritual. Furthermore, the inherently evolving nature of religions is evident in the ability and doctrinal freedom of religions to alter, in principle or interpretation, their doctrines and beliefs. Instead of being an inactive normative order, Hinduism has had several substantive interactions with modern benchmarks of morality. Undoubtedly, it has gradually evolved today to encompass the advocacy of women and critiques of Brahminical scriptures that were virtually impossible during Roy's time. [23] Regarding another case where the ERP test was used, i.e., the *Shayara Bano case,* there exist numerous religious pronouncements that pre-emptively deem the practice of Triple Talaq to be 'sinful' and 'alien' to Islam. [24] The above examples show that the interpretation of religious doctrines is a process that evolves according to changing times, respective of religions. The ERP test denies the capability of modern communities to adapt to the evolving ideas of morality and introduces them to pervasive and ambiguous control.

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[22] Vipula Bhatt, *Rise of Religious Unfreedom in India: inception and Exigency of the Essential Religious Practice Test,* 3 RGNUL Stud. Res. Rev. 126 (2016).

[23] Mary Kavita Dominic, *Essential Religious Practices' Doctrine as a Cautionary Tale: Adopting Efficient Modalities of Socio-Cultural Fact-Finding,* 16 Soc. Leg. Rev. 46 (2020).

[24] Anees Ul Islam Asmi and Shaheela Khurshid, *The Position of Triple Talaq in Islam: A Critical Analysis of the Triple Talaq Bill*, 4 J. of Leg. Stud. & Res. 37 (2018); *see also* Moin Qazi *Tracing the History of the Triple Talaq to look to the Future,* QRIUS Oct. 3, 2023 <https: //qrius.com/history-triple-talaq-future/>

III. THE TEST DENIES THE RIGHT TO SELF-IDENTIFICATION

The key notion that forms the basis of religion is faith. This faith only arises after the philosophies, practices, rituals, and rules of the religions have been duly and completely accepted by the individual. On the same lines, the individual also reserves the right to selectively accept or reject any ideas of a particular religion. Here arises the dilemma of whether to construe religion as a purely personal or communal concept. The reason is that if a practice considered 'essential' is declared as 'non-essential' by the Court, it would be a discriminatory and arbitrary violation of their right to religion. Similarly, what gives the notion that a practice is any less legitimate merely because it is followed by a sect within a religion but not by the majority of people by that religion? That practice also constitutes as essential no matter if it is followed by one or by all. *Firstly,* take the example of the *Sabarimala case*, where it was recorded that women of multiple demographic standing used to visit the temple, especially for the first rice-feeding ritual of their offspring. Furthermore, the injunction regarding the prohibition of entry of women has been historically restricted to some festivals, definitely not all year round. [25] This lays down the presumption that only practices that have continued unerringly through time can be considered essential which is inherently false. Religious practices and institutions undergo substantial and dynamic change as previously established and thus using the lack of perpetuity to justify the disregard of the practice is without basis. Furthermore, by laying down the requirement of time, this application may be biased towards relatively new faiths and even threaten their marginalization. *Secondly,* Justices Mishra and Khanwilkar noted that there was no basis for the exclusionary practice within scripture. [26] The same was also to be a contributory factor in the practice to be held as 'non-essential'. However, it is noteworthy, that the majority of indigenous religion has been preserved through the oral tradition which was erroneously disregarded in this case.

This characteristic of textual interpretation is predominant mainly in Abrahamic religions and the Court's opinion can be seen as the reflection of the foreign definitions of religion that were accepted by the Court. Foreign religion is irrefutably different from Indic religions in as much as its incorporation within everyday life not to mention its fundamental tenets. The above-mentioned

[25] Indian Young Lawyers Association v. The State of Kerala, (2018) SCC OnLine SC 1690.

[26] *Id.*

criteria were not only insufficient in justifying the court's judgment but also deprived the devotees of Ayyappa, of the right of self-determination of their very beliefs.

IV. DEFINITION OF 'RELIGIOUS DENOMINATION'

The Apex Court has applied verbatim the Oxford dictionary definition of the term 'denomination', in the Shirur Mutt case, i.e, "*a collection of individuals classed together under the same name: a religious sect or body having a common faith and organization and designated by a distinctive name.*" [27] The same has continued to be a binding precedent thereafter. The said definition is problematic in the Indian context as it is based on the Christian conception of religious denomination. The Indic conception of denomination is incorporated in the words *"dharmic sampradaya"* in the Hindi text of the Constitution. The implication of the expression "dharmic sampradaya" is greatly dissimilar to the European definition of denomination. The followers of a denomination (in the European-Christian context) are completely aloof sub-groups within the same religion. Intercourse among them is very limited. They have separate churches, different clerical orders, and separate cemeteries, and one person cannot and shall not pray or partake in any activity of the institution of a different denomination. Their denominational identity is crystallized under a definite name and registered organization, which is common and invariable for all members. Take the example of catholic, Protestant, Pentecostal, or Morman denominations of Christianity. All have separate churches, sacred texts, and practices that are rigidly followed by all members.

Contrarily, the concept of Dharmic sampradaya is fluid, flexible, and dynamic. The differentiation is not restrictive in the sense that members of different sampradayas are free to worship and participate in any religious activity of different *sampradayas* institutions. The identity of the sampradaya is also not crystallized to a defined name and organization and is individualistic and subject to change. A Kashmiri Shaivite can wholeheartedly worship in a Tamil Shaivite temple, or for that matter even in a Vaishnavite, or Shakta can; a non-member can easily conduct marriage in the Arya Samaj method, etc.

Therefore, the *Oxford Dictionary* definition of religious denomination is unsuitable for the Indian context as it imposes the requirements of a common and distinctive name, common faith, and single organization.

[27] *Supra* note 4.

ERP TEST: EVALUATION AND WAY FORWARD

It is not sufficiently clear whether the concept of religion is a purely individual one or has a definite element of community. The tenets and practices paint a picture containing justifications for both of these causes. Interpretation of religion as either of the two raises some pertinent questions. If it were to be considered as a purely individual concept, exercise of the same would come under the aegis of personal liberty. This would not only curtail possible restrictions but would make the court hard-pressed to justify the illegitimacy of any seemingly discriminatory practices as that would be the violation of the personal liberty of the individual, either victim or perpetrator. The other side of the coin is a far broader and more practical standpoint, which is the exercise of religion by a community unit. The exercise of religion by a community as a whole provides for a larger scope for governmentally sponsored reforms, executive or judiciary. Another reason for the same is the primacy of public order, health, and morality as plausible grounds for the restriction of religious freedom. [28]

A reading of Articles 25 and 26 tells us that 25 uses the word 'all persons' whereas Article 26 uses 'religious denominations. The former and the latter are both subject to public order, health, and morality. The court seems to have adopted a stance more focused on the latter as evidenced by BK Mukharjea's J disregard of the definition of religion propounded by the U.S Supreme Court in the case of *Davis v. Beason.* 'The religion has reference to one's view of his relation to the creator, and to the obligations they impose on His Being and character and obedience to his will. It is often confounded to the cultus or form of worship to a particular sect but is distinguishable from the latter.' [29] Instead, a broader definition in the Australian case of *Adelaide Company v. Commonwealth* [30] The former definition has a more personal character than the one offered by Mukherjea J, '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 or belief. A religion may not only lay down a code of ethical rules for its followers to accept, but it might also prescribe rituals and

[28] MARC GALANTER, LAW AND SOCIETY IN MODERN INDIA 247 (Oxford University Press 1991).

[29] Davis v Beason, 133 US 333 (1890) cited in The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshimindra Thirtha Swamiar of Sri Shirur Mutt, (1954) SCR 1005.

[30] Adelaide Company v. Commonwealth, (1943) 67 CLR [116], [127].

observances, ceremonies and modes of worship which are regarded as integral parts of religion.' [31]

An attempt was made to adapt this definition to the Indian scenario. Yet an argument can be made regarding the tenability of foreign definitions' prima facie applicability to the Indian scenario. The reason for this stems from the difference between Hinduism and Abrahamic religions like Islam and Christianity that is prevalent in Australia and the U.S.A. The religion native to the land of India is so ingrained within society that it has become part of life itself and not something that is done separately or purposefully. For example, the simple act of watering a Tulsi sapling is a 'vrata' in several rural households. Thus, in an ancient society such as India, a foreign definition cannot apply by any stretch of the imagination. The same has been acknowledged by Mukherjea J, who opined that the Indian Constitution was a step above other Constitutions since its clear demarcation of what could and could not be classified as 'religion'. [32]

The EEP Test is an instrumentality to juxtapose the often-conflicting notions of, wider social interest with the personal religious liberty of the individual. It is an extension of the colonial doctrine of "justice, equity, and good conscience" [33] . The ERP test is a way to reconcile the worldview of a religion, in isolation, demonstrated in its practices, to the real world where people of different faiths cohabit and mingle with each other. It inhibits the practice of what is not considered the core of religion to simultaneously salvage the negative liberty of other people to be unaffected by such practice of religion. The perception of constitutional morality acts as the fulcrum for examination of the practice and extending protection to it. [34] The exercise of freedom of religion is required to yield to the larger public interest in a case where the inalienability of religion is refuted. Constitutional morality dictates the unbridled exercise of the freedom of religion.

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[31] *Supra* note 4.

[32] Ronojoy Sen, *Secularism and Religious Freedom* in SUJIT CHOUDHRY, MADHAV KHOSLA & PRATAP BHANU MEHTA, THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION 914 (Oxford University Press 2017).

[33] Ronojoy Sen, *The Indian Supreme Court and The Quest for a 'Rational' Hinduism*, 1 S. As. Hist. & Cult. 86, 88 (2009).

[34] Kanika Sharma, *Essential* Religious Practices in Light of the Sabarimala Judgment, 8.2 NLIU L. Rev. 298 (2019).

Yet, by denying the people the right to self-identification the Court runs the risk of forming an adversarial nature between religion and Constitution. This adversarial nature is the root of the problem. Though the court strives to balance the two, the image lent to the common populace is that of pervasive influence and warping of their ideals by the Court as evidenced by the public outcry after both the *Sabarimala case* and the *Triple Talaq case.* The authority to define the practices of a religion cannot be a judge having no religious expertise and yet, neither is there an institutional apex within the religion itself which could decide the same. Therefore, the Court has had no choice but to step in and make sense of a discordant situation. Always in history, religion has had a presiding authority that has been accepted by the majority if not all, and the same has been true for both Hinduism and Islam, with the regional centers all over the country. In today's society, with innumerable sects within the religion having major differences in their beliefs, an authority of this nature is not possible, though necessary. The solution to the discordance between religions and the judiciary lies not within the Constitution but within the society itself. The key necessity lies within religious leaders with a Constitutional conscience, or at least, the willingness to entreat with constitutional envoys, i.e., judges. The limits to the doctrine of 'Essential Religious Practices' is not an issue that can be determined solely through the constitutional sieve as the practice itself, though born out of a constitutional desire, has alarming potential for misuse and is restrictive of religious freedom according to the will of the judge wielding it. Yet, it is the only true solution for curtailing violations of Part III through the justification of Art. 25 and 26. This test is akin to a wooden support wedged under a column rapidly collapsing, it's necessity cannot be denied, and yet, neither can its ephemerality. This doctrine will result in the estrangement of the religious community from the Courts in a critical time when their collaboration is necessary, perhaps now more than ever. The ideal situation is where religious scriptures are interpreted with constitutional balance in mind. Where there exists no conflict between the Constitution and religion, rather they work hand in hand for the people that follow them and not to incite conflict between them. This proposition may sound juvenile or impractical and yet, the gravest of problems can be solved through dialogue, compromise, and empathy. The best way forward is reform, also facilitated through judicial involvement for constitutional consonance. For in matters of religion, if it is not accepted by the people, a judgment will neither be accepted nor serve its intended purpose of the establishment of an egalitarian and Constitutional society.

CONCLUSION

The Essential Religious Practices Test is a method to foster secularism and modernity while attempting to secure religious freedom for all people. In doing so, the judges have donned the robes of theologians while interpreting and scrutinizing religious doctrines for their indispensability to the religion and have also tested them from the cornerstone of constitutional morality. This has led to a debate about the competence of the judiciary to act as interpreters and definers of religion.

This paper has been, in a fair measure, successful in delineating the trajectory of the Essential Religious Practices Test while analyzing its impact on the right to practice religion, of various sects of people; and the possible way forward to resolve the conundrum.