AN ANALYTICAL STUDY OF THE SCOPE OF ARTICLE 25 IN SPECIAL REFERENCE TO THE ESSENTIAL RELIGIOUS PRACTICE TEST

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ABSTRACT

Article 25 of the Constitution of India provides to all persons equally entitled to freedom of Conscience and guaranteeing to freely profess, practise and propagate religion. Recently the striking example on the scope of Article 25 decided by the Karnataka High Court in the case of Smt. Resham versus State of Karnataka (W.P. no. 2347 of 2022). While deciding the petition seeking to lay a challenge to the insistence of certain educational institutions that no girl should wear the hijab (Headscarf) whilst in the classroom. The Hon'ble High Court framed the issue on the same and relied upon the Shirur Mutt Case whereby the apex court propounded the essential practice test. The high court decided in negative in her ratio decidendi stated the fact that restriction on the hijab was a reasonable and constitutionally permissible one that student could not object to. This test has been criticized on various ground as arbitrary, illegal, irrelevant etc and questioning the role of apex court on what factor determining the essential and non-essential religious practice. This article aims to explain the scope of article 25 and the essential religious practice test through various judgments. This study will also explore the other secular test such as reasonable restriction would have been adhered to evolve test.

Keywords**:** Constitution, Article 25, Religion, Fundamental Right.

INTRODUCTION

"The sovereignty of scriptures of all religions must come to an end if we want to have a united integrated Modern India."

-Dr. B. R. Ambedkar

Indian population is composed of various groups with different ethnic, racial, religious, and socio-cultural background. Indeed, these groups move here to there and scattered in different areas with different times for the sake of betterment of lives. During the long period of their associations spread at all places over thousands of years and thus a veritable mixture in the common habitat observed in India. The orientalist notion India become a home of number of communities defined by 'religion' dominance during the late nineteenth century.[i]

Before the Independence, many movements have been led by social reformer immobilise the communal award started by the britishers. Initially the britishers firmly believer ruling upon Indian sub-continent could only be possible through 'Divide and Rule' Policy and further taken this policy as for granted keeping her rule sine die. Consequently, divisive element held forever into the mind of people that living together can never be possible. Finally, two nations theory come into the picture and created state into the name of religion for the very first time in modern politics.

By 1949, the Constituent Assembly meeting in New Delhi devised the blueprint for post-colonial governance, simultaneously and paradoxically, circumscribed the power of the state to act and mapped out a strongly interventionist role for the state in society. Promulgated on 26th day of January 1950, Henceforth Republic Day, the new Constitution limited the despotism of the state by adumbrating a raft of fundamental right possessed by the citizenry. Parliamentary democracy flourished, putting power into the hands of ordinary people. Still so many theoretical hurdles such as the stout endorsement by the Constitution of the principle of religious freedom. Indeed so many clauses i.e., Article 25(1) guarantees the Indian citizens the right 'to profess, practise and propagate religion'. Article 26(a) provides that citizens may 'establish and maintain' religious institution. Under Article 28(1) barred state-sponsored school from giving religious instruction; while Article 28(3) forbids school operated by

religious sects from forcing their student to attend religious school offer extensive protection to religious liberty. Article 25, note, avoids mention of 'worship' but speaks, instead, of 'practise', which theoretically extends the guarantee of the state to collective rituals such as processions and festivals, but also concedes the right to 'propagate', which the courts have construed as extending to conversion.[ii]

The Constituent framers after a very detailed deliberate discussion articulates these inalienable rights on the principles sagely quoted 'Sarva Dharma Sambhava'[iii]. Dr. Sarvepalli Radhakrishnan[iv] praised the Constitution as 'a document entirely in accordance with the ancient religious tradition of India'.

India as per the Constitution is a "Secular State" that is to say., state which observe an attitude of neutrality and impartiality towards all religions. A Secular State is founded on the ideas that the state is concerned with the relation between man and man and not with the relation between man and god which is a matter of individual conscience. The state shall treat all religions and religious groups equally and with equal respects without in any manner interfering in someone's religious belief by any means.[v] The attitude of impartiality towards all religions is secured by the Article 25 to 28 of the Constitution of India. This has been explicitly made it clear that there shall be no "State religion", the state will neither establish a religion of its own nor confer any special patronage upon any particular religion.[vi] This is the fundamental reason Indian Constitution has been called secular in character even specifically the term "secular" has been added by the 42nd Constitution Amendment.[vii]

Constitutional Secularism is marked by two features. First, Critical respect for all religions. Unlike some secularism, ours is not blindly anti-religious but respect religion. Unlike the secularism of pre-dominantly single religious societies, it respects not one but all religions. However, given the virtual impossibility of distinguishing the religious from the social, as Dr. Bhim Rao Ambedkar famously observed, every aspect of religious doctrine or practice cannot be respected. Respect for Religion must be Critique.

It follows that our state must respectfully leave religion alone but also intervene whenever religious groups promote communal disharmony and discrimination on grounds of religion that

is to say., an inter-religious matter or are unable to protect their own members from the oppressions they perpetuate that is to say., an intra- religious issue. Therefore, and this is second features, the Indian state abandons strict separation but keeps a principled distance from all religions. For instance, it cannot tolerate untouchability or leave all personal laws as they are. Equally it may non-preferentially subsidise schools run by religious communities. Thus, it has to constantly decide when to engage or disengage, help or hinder religion depending entirely on which of these enhances our constitutional commitment to freedom, equality and fraternity. This constitutional secularism cannot be sustained by governments alone but requires collective commitment from and impartial judiciary, a scrupulous media, civil society activists, and an alert citizenry.

The Supreme Court of India in a celebrated case Ayodhya Case, summarised The true concept of secularism in a very detailed discussion under the contour of the Constitution. There is no religion of the state. The preamble of the constitution read in particular with Article 25 to 28 emphasises this aspect. The concept of Secularism is one facet of the right to equality and is woven as the central government thread in the fabric depicting the pattern of the scheme in our constitution.[viii]

CONSTITUENT ASSEMBLY DEBATE RELATING TO THE FREEDOM OF RELIGION

"The religious conceptions in this country are so vast that they cover every aspect of life from birth to death…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 it 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."[ix]

The religious freedom contained in The Constitution of India was originally formulated by the K. M. Munshi and Dr. B. R. Ambedkar. Initially the draft article was provided that all citizens would be equally entitled to freedom of conscience and the right to freely profess and practise

religion. The right was not unrestricted for it had to be exercised in a ,manner compatible with public order, morality and Health. Economic, Financial or political activities associated with religious worship would not be deemed to included in the right to profess, and practise religion. Two other safeguards are that no person compelled to pay tax for the religious requirement of any community, and religious instruction was not compulsory for a member belonging to other community.[x]

The Fundamental Rights Sub-Committee first discussed freedom of religion on March 26,1947, and adopted the right to practise and profess the religion with the significant modification that instead confined to citizens extended to all persons; at the instance of Sikh Member, Harnam Singh, "the right to wear and carry *kripans*[xi]" to be recognised as part of Sikh religion. The recommendation of sub-committee was set out in the clause 16,17,18,19 and 20 of its draft report of April 3,1947.

Clause 16 :- All persons are equally entitled to freedom of conscience and the right freely to profess and practise religion subject to public order, morality or health and to the other provisions of this chapter.

Explanation I: the wearing and carrying of *kripans* shall be deemed to be included in the practise of Sikh religion.

Explanation II: the right to profess and practise religion shall not included any economic, financial, political or other secular activities that may be associated with religious worship.

Explanation III: No person shall refuse the performance of civil obligation or duties on the ground that his religion so requires.

Clause 17 :- Every religious denomination shall have the right to manage its own affairs in matter of religion and to own, acquire and administer property, movable and immovable, and to establish and maintain institution for religious or charitable purposes consistently with the provision of this chapter.

The right to build places of worship in any place shall not be denied except for reasonable cause.

Clause 18 :- No person may be compelled to pay taxes the proceeds of which are specifically appropriated to religious purposes.

Clause 19 :- The state shall not recognise any religion as the state religion.

Clause 20 :- No person attending any school maintaining or receiving aid out of public funds shall compelled to take part in the religious instruction that may be given in the school.[xii]

Some of the members especially Alladi Krishnaswamy Iyer in his letter to B. N. Rau of April 4,1947 said that in view of giving wide import to the term "religion" will invalidate all existing social reform legislation as well as prohibiting such legislation for the future. The similar apprehension was also raised by the Rajkumari Amrita Kaur and Mrs. Hansha Mehta felt that the wording of clause 16 would not only render the enactment for future legislation for eradicating several customs practised in the name of religion e.g., child marriage, polygamy, unequal laws of inheritance but also in conflict with the provision relating to the abolition of untouchability.

After some further debate it was decided to refer the matter to a committee consisting of Mohan Sinha Mehta, Hriday Nath Kunzu, Hussain Imam, S. Radhakrishnan, Mrs. Renuka Roy, and K.M. Munshi. This committee was reporting to the drafting committee.

This committee recommended to the drafting committee that a specific provision should be included to the effect that religious instruction should not be permitted in schools run by the state.

With a few minor changes and drafting adjustments these provisions were reproduced in the Constituent Advisor's Draft Constitution as clauses 20 to 23. Of these clauses 20 to 22 were , with a few further modifications of a drafting nature, reproduced by the Drafting Committee in its Draft Constitution as Articles 19 to 21.

Clause 19(1):- "All persons are equally entitled to freedom of conscience, to freedom of religious worship and to freedom to profess religion subject to public order, morality or health and the other provisions of this chapter.

Explanation- The wearing and carrying of Kirpans shall be deemed to be included in the profession of Sikh Religion.

(2). Nothing in this article shall affect the operation of any existing laws or preclude the State from making any law-

(a) regulating or restricting any economical, financial, political or other secular activity which may be associated with the religious practice.

(b) for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus.

Clause 20:- Every religious denomination or any section thereof shall have the right-

(a) To establish and maintain institution for religious and charitable purposes;

(b) To manage its own affair in matters of religion;

(c) To own and acquire movable and immovable property; and

(d) To administer such property in accordance with the law.

Clause 21:- No person may be compelled to pay any tax, the proceeds of which are specifically appropriated in payment of expenses for the promotion of or maintenance of any particular religion or religious denomination.

Clause 22:- (1) No religious instruction shall be provided by the state in any educational institution wholly maintained out of state funds.

Provided that nothing in this clause shall apply to an educational institution which is administered by the state but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(2) No person attending any educational institution recognised by the state or or receiving aid out of the state funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or is such person is a minor, his guardian has given his consent thereto.

(3) Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours.[xiii]

Much of the controversy around the word "propagate religion". Tajamul Hussain urged that the religion was a private affair between oneself and one's creator and it had nothing to do with others and therefor the right to propagate religion was wholly unnecessary, all that the individual needed was the right to profess and practise religion privately. He felt that propagation of religion had proved a "nuisance" in the country. An amendment suggesting the deletion of the word "propagate" has been moved and the demand was forcefully presses by the Loknath Mishra who held that the aim of propagation of religion was political, that religious propagation had been responsible for the unfortunate division of the country into India and Pakistan and that its acceptance as a fundamental right would not therefore be right. In no constitution of the world ,he remarked, was the right to propagate religion was recognised as a fundamental and justiciable right. He added that while people might propagate their religion if they wanted to, there was no justification for putting into the constitution as fundamental right.

Many members further opposed with the common point that the right to propagate religion as formulated in the clause was not absolute and so it was circumscribed by the state would be free to impose in the interest of public order, morality and health. The inclusion of the "propagate" , as per T. T. Krishnamachari, do not have any dangerous implication especially since under the secular set up envisaged in the Constitution there would be not particular advantage to a member of one community over another one nor would there be "any political advantage by increasing one's fold" .he further stressed the point that the right was not given to any particular community and could be exercised by everyone so long as the conditions laid

down were respected. Munshi asserted the fact the even if the word "propagate" was not included it would still be open to a religious community to persuade other people to join its faith.[xiv] Among other articles there was nothing like controversial and non disputable except with a few minor changes and drafting adjustment of these provisions were presented before the assembly and further accepted the same.

These freedom of religion , we can summarise, is the result of collective efforts of the Constituent framers pour endeavour came after a long due discussion. Thus the role of judiciary is very crucial in order to maintain, interpret the determined objective and strive to maintain dignity of the individual religious without affecting the nation endeavours to accomplish her goals.

CONSTITUTIONAL INTERPREATATION OF THE ARTICLE 25

Article 25 and 26 embody the principles of religious tolerance that has been the characteristic feature of Indian Civilisation form the start of history. Besides they serve to emphasize the secular nature of Indian Democracy that is to say., equal respect to all religion.

Religion is essentially a matter of personal faith and belief. Freedom of conscience connotes a person's right to entertain beliefs and doctrines concerning matters which are regarded by him to be conducive to his spiritual well-being. To 'profess' a religion means to declare freely and openly one's faith and belief by practical expression in any manner one likes. To 'practice' religion is to perform the prescribed religious duties, rites and rituals. To 'propagate' means to spread and publicise his religious views for the edification of others. The right to propagate one's religion does not give a right to convert another persons to one's own religion as that would impinge on the "freedom of conscience" guaranteed to all persons.[xv]

A secular state does not mean an irreligious state , it only means that in matters of religion it is neutral, the state can have no religion of its own, and the state protects all religions but interferes with none. In a secular state, the state is only concerned with the relation between man and man. It is not concerned with the relation of man with god. It is left to the individual

conscience. The word 'secularism' however is vague as it might be used as an instrument of unrestrained communalism or bigotry or anti- religionism.

State tolerance of religion does not make it either a religious or a Theocratic State. Secularism is neither an ante-God nor pro-God as it treats a like the devout, antagonistic and the atheist.

The concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in Constitution. Moreover, any step taken to arrest escalation of communal tension and to achieve communal accord and harmony can, by no stretch of argumentation, be termed non-secular or anti-secular. Secularism is a creed of the Indian people embedded in the ethos.[xvi]

An interesting case is whether a particular religious belief or practice appeal to reasons or sentiment but the genuine and conscientiously belief be held as part of the profession or practice of religion and the same be enough guaranteed and protected under Article 25(1) of the Indian Constitution. This question is particularly framed in the case of Bijoe Emmanuel[xvii] popularly known as the National Anthem Case. The fact of the case is that the children belonging to the Jehovah's witnesses of the Christian Community were expelled from the school for refusing to sung the National Anthem. In the finding of court it appears that these children attend school daily and stand respectfully in the respect of National Anthem but do not sing as it is against the tenets of their religious faith not the words or thoughts of the National Anthem but the singing.

The key finding of the Hon'ble **O.P. Chinnappa Reddy J.**, The freedom of speech and expression under Article 19(1) (a) also includes the 'freedom of silence'. The court said that by standing up while the anthem and had thus not violated the fundamental duty under Article 51A. It relied heavily on the decisions of Australian and American Supreme Courts cases.[xviii]

The court further observed that article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under Constitution. The question is not whether a particular religious belief is genuinely and conscientiously held as part of the profession or

practice of the religion. Thus held that no person can be compelled to sing the national anthem if he has genuine conscientious religious objection.

The countenance of the Article 25 heavily protects and recognised the inner circle of the individual religious beliefs and practices by whatsoever method cherish ,utter and mark his respect towards the almighty but under with the implication of public order, morality and health and to the other provisions of the fundamental rights of the Constitution of India. This explicit restrictions only come into picture, if we get into analyse the each term specifically used as in reasonable restrictions appears that try only to mitigate the societal interests between state and individual, religious conflict between the communities, and avoid dogmas practice endangered for the constitutional ends.

Here the peripheral version of restrictions enumerated under the clause (1) of Article 25 is not clearly defined in the Indian Constitution. And thus the judicial role become very pivotal to elucidate, give it a dimension onto which these terminology be rummage sale and aid to understand whenever the substantial question of fact required to be construe. Besides the important question is what are the responsible key factor to be examined by the court, how the possible outcome be drawn if the conflict is in between **individual conscience v. state conscience or individual faith v. societal faith or religious interest v. state interest.**

After the enactment of the Indian Constitution, number of cases appeared on many occasion raising the issue of individual faith and conscience ought to be protected as guaranteed under the Article 25 of the Indian Constitution. The noteworthy point that these guaranteed rights are not absolute rights. The reason for the same our constitution adopt the mechanism of looking over only upon such outer interests in actually benefits the people interest at large scale required to be recognised, guaranteed and hence protected the same. Now the next question will be what if any religious community claim any practices as integral part of their religion, the answer lies while considering into what will be the actual practices covered under the religious practice, what will be the parameter or test to determine these practices and how will it not be deteriorate the religious tolerance among such community people.

JUDICIAL INTERPRETATION AND THE ESSENTIAL RELIGIOUS PRACTICE TEST

The ambit of the freedom of religion guaranteed by Articles 25-26 has been widened by the judicial interpretation that what is guaranteed by Article 25 and 26 is the right of the individual to practise and propagate not only matters of faith or belief but also all those rituals and observances which are regarded as integral parts of a religion by the followers of its doctrine.[xix]

With the help of judicial precedent we hereby explore the journey of secular interpretation touching the line of individual interests in terms of faith, custom and traditions.

1. **The Commissioner, Hindu Religious Endowments, Madras v Shri Lakshmindar Tirtha Swamiyar of Shri Shirur Mutt (1954):--**

   In 1954, a seven-Judge Bench of the Supreme Court held that "what article 25(2)(a) contemplates is not regulation by the State of religious practices as such, the freedom of which is guaranteed by the Constitution except when they run counter to public order, health and morality, but regulation of activities which are economic, commercial or political in their character though they are associated with religious practices." The Court rejected a suggestion by the Advocate General of Madras which proposed that only "essential" practices of a religion be given constitutional protection, pointing out that "what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself."[xx]

2. **Sardar Sarup Singh v. State of Punjab (1959):---**

   The Supreme Court heard a challenge against section 148-B of the Sikh Gurudwaras Act, 1925, which provided for the setting up of a Gurudwara Board and introduced new members. The petitioners argued that s. 148-B infringes Article 26(b) of the Constitution, which grants every religious denomination the right to manage its own affairs in matters of religion, for it does not allow for direct elections of members of the Board by the Sikh Community. The argument advanced by the State of Punjab was that matters of religion in the sense of essential beliefs and practices of the Sikh faith are left untouched by

section 148-B, and even other relevant sections of the principal Act do not interfere with Sikh religion. Applying what is now known as the 'essential religious practices test', the Supreme Court upheld the constitutionality of section 148-B. It was observed that no authoritative text had been placed before the Court to show that direct election by the entire Sikh Community to the Gurudwara Committees in charge of the management was essential to the religion itself.[xxi]

3. Dargah Committee, Ajmer v. Syed Hussain Ali (1961):

The Supreme Court decided on a challenge to the Dargah Khwaja Saheb Act, 1955 which claimed that it violated the fundamental rights of Muslims belonging to the Soofi Chistia Order. They members of the order claimed it was they who were the sole custodians of the shrine at Ajmer. The Act, however, permitted all Hanafi Muslims to partake in the maintenance and affairs of the Dargah. The Court rejected the challenge to the Dargah Act observing that the tomb had never been confined to members of the Soofi Chistia Order. The Court further 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; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Article 26. Similarly, even practices though religious may have sprung from merely superstitious beliefs and may in that sense be extraneous and unessential accretions to religion itself. The protection must be confined to such religious practices as are an essential and an integral part of it and no other.[xxii]

4. Sardar Syedna Taher Saiffuddin Sahib v. State of Bombay (1962):

The Supreme Court applied the ERP test to determine whether the Bombay Prevention of Excommunication Act, 1949 violated the fundamental rights under Articles 25 and 26 of the Dawoodi Bohra Community. The Head Priest of this community was vested with certain powers, one of which included the power of excommunication, which was to be exercised in accordance with the tenets of the community. Such power, it was argued,

was integral to the religious faith and beliefs of the Dawoodi Bohra Community which was a religious denomination under Article 26 of the Constitution. With a 4:1 majority, the 5 Judge Bench of the Supreme Court upheld the right and power of excommunication bestowed upon the Head Priest of the Dawoodi Bohra Community. It was further observed that what constitutes an essential practice is to be gathered from the texts and tenets of the religion. The legislature, the Court added, was not permitted to reform a religion out of existence or identity.[xxiii]

5. Tilkayat Shri Govindlaji Maharj v State of Rajasthan (1963):-

In a challenge to the Nathdwara Temple Act, 1959 enacted by the State of Rajasthan by the Tilkayat, the question before the Court was whether the tenets of the Vallabh denomination and its religious practices restricted worship to private temples managed by the Tilkayat alone. If so, would an Act enacted for the management of the Temple would be ultra vires the Constitution in view of Article 25. It was held that a practice is considered essential to a religion if it is essential to the community following the religion. Furthermore, Article 25(1) and 26(b) offers protection to *religious* practices. Affairs which are purely secular may be regulated by statute without infringing the aforesaid articles. 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; otherwise even purely secular practices which are not an essential or an integral part of religion are apt to be clothed with a religious form and may make a claim for being treated as religious practices within the meaning of Article 26.[xxiv]

6. Seshammal & ors. v. State of Tamil Nadu (1972):

Questioning the validity of the Tamil Nadu Hindu Religious and Charitable Endowments (Amendment) Act, 1970, the petitioners claimed a violation of Articles 25 and 26 of the Constitution. The Court disagreed. It was held that the purpose of the Act was to regulate secular functions like management and administration, which included the appointment of the Archaka. It did not however aim to regulate or change the rituals and ceremonies followed in the temples. The Court however clarified that while the appointment of

Archakas was a secular function, the sect or denomination from which they were to be appointed was to be in accordance with the Agamas as that was essential to and firmly embedded in the religion.

7. Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi & Ors. v State of U.P. & Ors. (1997):

Upholding the validity of the U.P. Sri Kashi Vishwanath Temple Act, 1983, the court drew a distinction between the religious and secular functions of the Temple. The impugned Act, it was held, only pertained to the latter, i.e. the secular functions of administration and management of the Temple. These were not essential or intrinsic elements to the practice of the religion and the Legislature was thus competent to enact a law that did not entrust the Government with the power to interfere with the day-to-day religious practices.

8. Commissioner of Police v Acharya Jagadisharananda Avadhuta (2004):

The Court applied the test of essential religious practices in deciding whether the Tandava Dance was an essential rite of the Ananda Marga Faith as held by the High Court. Though the Ananda Marga faith was founded in 1955, the Tandava dance was introduced to its followers in 1966 and was prescribed as an essential religious practice in the Carya Carya in 1986. Despite this scriptural injunction, the Court in its majority opinion held that the Tandava Dance was not an essential practice of the Ananda Marga faith. The Court observed that in order to determine whether or not a particular practice is an essential part of religion, the test must be whether the absence of the practice itself fundamentally alters the religion.[xxv]

9. Adi Saiva Sivachariyargal Nala Sangam v Government of Tamil Nadu (2016):

The two Judges Bench Hon'ble Ranjan Gogoi and N.V. Ramanna J., An amendment to the Tamil Nadu Hindu Religious and Charitable Endowments in 1970 abolished the

practice of appointing religious office holders on a hereditary basis. The Court upheld the amendment's constitutionality in 1972 in the *Seshammal* Case. However, in 2006, a government order was issued directing that Archakas of the temples were to be appointed without any discrimination stemming from customs on the basis of caste or creed. This Government order was for interfering in essential matters of the denomination of Archakas. Relying on the decision in *Seshammal*, the Court reiterated that though appointment was a secular function, the denomination of the Archakas must be in accordance with the Agamas. The Agamas restricted the appointment of Archakas to particular religious denominations. However, the Court did go on to hold that religious treatises like the Agamas must conform to the constitutional mandate and not practice exclusion on the basis of constitutionally prohibited criterion like Caste.[xxvi]

10. Shayara Bano. V. Union of India (2017):

Rejecting the argument that the practice of Triple Talaq was an essential practice under Islam, the Supreme Court held that it was not an essential practice and could not be offered constitutional protection under Article 25. The Court held that it was against the basic tenets of the Quran and thus violative of the Shariat. A practice that is merely permitted or not prohibited by a religion cannot be considered an essential or positive tenet sanctioned by that particular religion. Triple Talaq is only a form of talaq which is permissible in law, but at the same time, stated to be sinful by the very Hanafi School which tolerates it. Therefore, this would not form part of any essential religious practice as the fundamental nature of the Islamic religion, as seen through an Indian Sunni Muslim's eyes, will not change without this practice.[xxvii]

Here the present circumstances arising on the sides of administration objects to covering their heads with a scarf in educational institutions. The aggrieved invoked the protection of the Indian Constitution whose preceptor Dr B.R. Ambedkar once wrote, "the world owes much to rebels who would dare to argue in the face of pontiff and insist that he is not infallible". For instance., Udupi region is a proud tradition of religion who have challenged established norms that have not stood the test of reason. In the 16th century, priests at the Krishna Temple in Udupi prevented a lower caste devotee, Kanakadasa from entering it. He refused to go away and began composing and singing kirtans from the courtyard outside, while waiting to secure a sight of

the deity. Even after many days, the priests did not relent but a miracle intervened. The idol of the deity which until then faced eastwards, miraculously turned 180 degrees to face west, and the broke open a real wall to create a window through which kanakadsa could have his darshan. Even today all devotees have their fest sight of the lord through kanakadasa window.[xxviii]

Since it was first propounded the "essential religious practice" test propounded in Shirur Math in 1957 the core issue is the exclusion of a person from entering into a temple for worship is a matter of religion according to Hindu ceremonial law. The court held that ".. that the right of a denomination to wholly exclude members of the public from worshipping in the temple though compromised in the Article 26(b) must yield to the overriding right declared by Article 25(2)(b) in favour of the public to enter into a temple for worship. But where the right claimed is not one general and total exclusions of the public from worship. But of exclusion from certain religious services, they being limited by the rules of the foundation to the members of denomination, then the question is not whether Article 25(2)(b) overrides that right so as to extinguish it, but whether it is possible – so to regulate the rights of the persons protected by Article 25(2)(b) as to give effect to both the rights Venkataramana Devaru point to the court endeavour to harmonise the competing rights in a way that both were given effect to.

Since this doctrine was introduced, the fundamental questions is persistently raised with so many occasions. How is the court to determine what an essential practice is? Should it rely on religious leaders? Should it call for evidence? Should the court pursue these questions with their own research?

Hon'ble Chief Justice, the then, Dr. D. Y. Chandrachud in the Sabarimala Case, bemoaned, **"compulsions nonetheless have led the court to don a theological mantle. The enquiry has moved from deciding what is essentially religious to what is an essential religious practice. Donning such a role is not an easy task when the court is called upon to decide whether a practice does nor does not form an essential part of a religious belief. Scriptures and customs merge with bewildering complexity into superstition and dogma. Separating the grain from the chaff involves a complex adjudicatory function. Decisions of the court have attempted to bring in a measure of objectivity by holding that the court has been called upon to decide on the basis of the tenets of the religion itself. But even that is not a consistent norm."**

Today there is no one uniform code which is mandated throughout the state. Individual colleges do decree uniforms but not necessarily the manner of wearing them. And unfortunate side effect of the current controversy may well be a state administrative order decreeing uniform for all college students throughout the state of Karnataka.

In the absence of a statutory uniform code, the court may well ask whether a head covering mandated by some religions when worn in addition to the uniform, violates and legal tenet. Would the same standards that banish a female hijab apply to a turban worn by a male Sikh student? Can government college deny education to students who are seen to be violating a uniform code. Is the hijab or even a full covering in any manner violative of the process of imparting education. Can a government committed to female education deny education to those it deems improperly dressed. should implementation of a dress code be priortitised over imparting education to all that seek it. These and other like questions will probably soon engage the attention of a constitutional court. The court may do well to heed Hon'ble Justice (retd.) R. F. Nariman dictum in the Sabarimala review which says, "**after all, In India tryst with destiny, we have chosen to be wedded to the rule of law as laid down by the Constitution of India. Let every person remember that the 'Holy Book is the Constitution of India'…".**

CONCLUSION: COMPETING INTERESTS AND BALANCING OF RIGHTS

Being a secular State, it does not identify itself with any religion as its own. Every citizen has the right to profess & practise any faith of choice, is true. However, such a right not being absolute is susceptible to reasonable restrictions as provided by the Constitution of India. Whether wearing of hijab in the classroom is a part of essential religious practice of Islam in the light of constitutional guarantees, needs a deeper examination. The secularism dispelled all values form the core idea and replaced them with opportunism. Opportunistic distance (engagement or disengagement) but mainly opportunistic alliance with religious communities, particularly for the sake of immediate electoral benefit.

The Constitution of India hereby undertaking to transform the society consisting of various sects, traits, ethnicity, cultural and religious followers under one umbrella. Thus, it requires to

imparting the common notion universally applicable to all citizens of India in order to embrace the idea envisaged under the preamble viz., FRATERNITY assuring the dignity of the individual and the unity and the integrity of the nation. The earlier expression '**unity of the nation**' is substituted by the new version '**unity and integrity of the nation**' by the Constitution (forty-second) Amendment Act, 1976 with effect from 03-01-1977. One should look into the object behind inclusion "integrity of the nation". It indeed someone will argue the imposition of nation ruling over the caste, creed, religion and while the other my argue it is in the nation interest. Thoughts are welcome. But the fundamental question remains same and the answer also lies in the preambular notion of reading important phrase together. The freedom fighter through the various movements, conferences and meetings one thing very amply clear that is high time to relinquish the self-motive goals in order to secure the citizenry unity to the formation of oneness. This is the major root cause of keeping nation under the imperialist hand over 200 years. Our forefathers learnt their mistakes and tried to accommodate through various pacts like., one of the glaring example is the Poona Pact between Gandhi and Ambedkar signed at Poona resulted from the communal award of August 4, 1932 a proposal by the British government which allot seats in the various legislatures of India to the different communities in an effort to resolve the various tensions between communal interest. Our forefather ,nodoubt, is to create a balancing and harmonious society whereby everyone have their place, achieve the standard quality of life and education and also equal footing with the others. This ordainment shall be achieve only if the legislative body manifest their enactment towards the attainment of constitutional goals. Here the slight chances of clashing between two orders, one order declare by the legislative assembly authorised by the will of people to prefer, maintain the common interests first and while the other one is customs, tradition followed by the groups or religion or clans or tribes. What ought to be uphold first and how ,if affected, to secure and protect the interest of the affected groups or religion or clans. The same inferences ought to be drawn here also as well the constituent maker wishes the nation to be.

Under the present circumstance the two competing interest lies. One claiming the hijab is an integral part of the their religion and it complies with the essential religious practice test and thus protected as a fundamental right guaranteed under Article 25 of the Constitution of India and on the other hand the government claimed their constitutional duty bound to maintain religious instruction in any certain educational institution wholly maintained out of the state funds while imparting the free and compulsory education for all for the purpose of Article 28.

One key point is to hereby remember it is the settled principles that no fundamental right is absolute right. The same lies with the Right to freedom of Religion is under the subjection of **public order, morality and health and to the other provisions of this part.** All of these reasonable subjection have its own peculiar sense and meaning but last one subjection causing the big impact over this guaranteed right. What we can conclude that Article 25 will never become ,in any circumstances, a top of the cheery of the cake. These expression ought to be study in a subjective manner with in line of the constitutional principles. Though there is a chance of conflict between the societal morality and the constitutional morality. This will lead to us the very next question as to whom shall prevail. Obviously , once again we will look up to forefather wishes, ideas, inspiration and dream to in what way or what manner the Indian society being very distinct, unique, healthy, friendly and brotherhoodly nation ought to be develop. Then ,therefore, we shall require to draw, adopt and inculcate all the principles envisaged in the very first and last auspicious documents.

ENDNOTES

[i] Ian Copland, Ian Mabbett, Asim Roy, Kate Brittlebank and Adam Bowles, A history of State and Religion in India 189 (Routledge Publication,1st edition,2012).
[ii] *Id.* at 229.
[iii] Let all religions propser.
[iv] The prominent Indian philosopher and politician who served as the 1st Vice President of India from 1952 to 1962 and 2nd President of India from 1962 to 1967.
[v] Dara Singh v. Republic of India (2011) 2 SCC 490.
[vi] Dr. Durga Das Basu, Introduction to the Constitution of India 124 (Lexis Nexis,21st edition, 2013).
[vii] The Constitution (Forty – Second Amendment) Act, 1976 (w.e.f. 03-01-1977).
[viii] M. Ismail Faruqui v. Union of India (1994 SC).
[ix] On 2nd December 1948, Dr. Bhim Rao Ambedkar famous statement in the Constitutent Assembly during the debate on the codification of Hindu Law.
Excerpts from the https://theprint.in/theprint-essential/what-is-an-essential-religious-practice-and-why-hijab-didnt-make-the-cut-for-karnataka-hc/880827/
[x] B. Shiva Rao, The Framing of Indian Constitution 257 (The Indian Institute of Public Administration, 1st edition,1968).
[xi] Kirpans: The Sikh were enjoined by their religion to abjure tobacco and wear the five Ks- Kesh (Long Hair), Kangha (Comb), Kuchha (Shorts), Kara (a steel or Iron Bangles) and Kirpan (a small steel dagger).
[xii] Select Documents II, 4(iv) at page no. 140.
[xiii] Select Document III, 1(i) and 6 at page no. 10-11, 524-525 .
[xiv] Constitutent Assembly Debate, Volume VIII, page 838-838: speeches of Lakshmikanth Maitra, Santhanam, Krishnamachari and Munshi.
[xv] Stainlaus v. State of M.P. AIR 1977 SC 908.
[xvi] M. Ismail Faruqui v. Union of India ("Ayodhya Case") AIR 1995 SC 605.
[xvii] Bijoe Emmanuel v. State of Kerala (1986) 3 SCC 615.
[xviii] Minerville School v. Gobitis and West Virginia Board of Education v. Barnette.

[xix] Dr. Durga Das Basu, Constitutional Law of India, 1-3 (Prentice Hall of India, 6th edition,1991).
[xx] 1954 AIR 282.
[xxi] 1959 SCR Supl. (2) 499.
[xxii] 1962 SCR (1) 383.
[xxiii] 1962 AIR 853.
[xxiv] 1963 AIR 1638.
[xxv] Civil Appeal No. 6230 of 1990.
[xxvi] Writ Petition (CIVIL) NO. 354 OF 2006.
[xxvii] Writ Petition (Civil) No. 118 of 2016.
[xxviii] The Hindu (Editorial , page no. 6, 07th February 2022)