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Introduction

The development of secularism in India has followed a unique trajectory, distinct from the American or European models. The debates during the drafting of the Indian Constitution in the Constituent Assembly reveal the divergent views on the direction of Indian secularism. While some members advocated for the inclusion of the term 'secular State' or the invocation of God in the preamble, these proposals were met with resistance and did not succeed.

It wasn't until the period of Emergency in 1976 that the terms 'secular' and 'socialist' were inserted into the preamble of the Constitution through the Forty-second Amendment. This indicates the evolving nature of secularism in the Indian context and the gradual acceptance of secular principles in the constitutional framework.

The tensions surrounding freedom of religion in India are primarily addressed through constitutional provisions such as Articles 25, 26, and 28. Article 25 guarantees the right to profess, practice, and propagate religion while allowing the State to regulate secular activities associated with religious practice. Article 26 grants religious denominations the freedom to manage their religious affairs.

Litigation around these articles often revolves around defining the boundary between the religious and secular spheres, especially concerning Hinduism. The Supreme Court has employed an 'essential practices' test to distinguish between the sacred and secular aspects of Hinduism. However, this intervention has led to debates about the Court's role in shaping religious practices and definitions.

Furthermore, issues related to self-identification and the status of religious denominations have been contentious, with various groups seeking legal recognition and privileges. The Court has had to adjudicate on which denominations qualify as Hindu and has been tasked with defining Hinduism itself, leading to complex outcomes.

Other contentious issues, such as the right to propagate religion and the right to teach religion in educational institutions, have also been subject to controversial interpretations by the Court. Overall, the Indian judiciary plays a significant role in shaping the discourse around religious freedom and secularism in the country.

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Evolution of Essential Practices Doctrine

In the post-independence era, Indian religious law has witnessed significant legal developments, particularly regarding the essential practices doctrine. This doctrine, which delineates what constitutes an integral part of religion, has become a pivotal aspect of judicial deliberations, especially in cases involving State intervention in religious affairs.

Beginning with the Madras Hindu Religious and Charitable Endowment Act in 1951, various State legislations aimed at regulating temples and religious institutions have sparked legal challenges, prompting courts to define the boundary between religious and secular realms.

The essential practices doctrine has emerged as the cornerstone of judicial scrutiny in determining the eligibility of religious practices for constitutional protection. Courts have utilised this doctrine to adjudicate the legitimacy of legislative measures governing religious institutions and to ascertain the degree of autonomy accorded to religious denominations.

The genesis of this doctrine can be traced back to the landmark case of Commissioner, Hindu Religious Endowments, Madras v Sri Lakshimindra Thirtha Swamiar of Sri Shirur Mutt, where the Supreme Court articulated an understanding of religion and its essential components.

In Shirur Mutt, the Court deliberated on the fundamental question of delineating religious practices from secular activities. Rejecting narrow definitions of religion, the Court underscored the inclusive nature of religious doctrine, encompassing rituals, ceremonies, and observances. The judgement provided legal validation for State regulation of Hindu religious institutions while safeguarding the autonomy of religious denominations in determining essential religious practices.

Subsequent rulings by the Supreme Court, particularly those delivered by Justice PB Gajendragadkar, further refined the essential practices doctrine. These rulings emphasised the Court's role in discerning authentic religious practices and distinguishing them from superstitious beliefs. Notably, the Court assumed the responsibility of rationalising religion and scrutinising practices deemed irrational or extraneous.

The essential practices doctrine has also influenced the bureaucratic restructuring of religious institutions, with State-appointed bodies assuming administrative control, often at the expense of traditional authorities. While the Court has upheld the regulatory measures for Hindu temples, it has faced criticism for marginalising certain religious groups and practices, particularly those of recent origin.

Despite occasional deviations from the dominant line of judicial reasoning, the essential practices doctrine remains a pivotal tool for adjudicating religious disputes and shaping the contours of religious freedom in India. As courts continue to navigate the complex terrain of religion and secularism, the evolution of this doctrine reflects broader shifts in legal interpretations and societal norms.



Unveiling Self-Identification: The Evolution of Hinduism's Definition

In the annals of independent India, a pivotal case emerged, casting a spotlight on the issue of self-identification within religious groups. Known as Sastri Yagnapurushdasji v Muldas Bhudardas Vaishya, or more commonly the Satsangi case, this legal saga unfolded in 1966. It revolved around the Satsangis, followers of Swaminarayan (1780–1830), who contended that their temples were not subject to the Bombay Harijan Temple Entry Act 1948, which mandated access for Harijans or untouchables to Hindu temples.

As the case traversed from trial court to Bombay High Court and finally to the Supreme Court, the Central Untouchability (Offences) Act of 1955 had already been enacted. The crux of the Satsangis' argument rested on their assertion that the Swaminarayan sect constituted a distinct religious entity separate from Hinduism, thus exempting their temples from the aforementioned Act.

The Satsangis delineated their separate status along four lines of reasoning. Firstly, they emphasised Swaminarayan's self-identification as the Supreme God. Secondly, they posited that their temples, dedicated to Swaminarayan worship, differed from traditional Hindu temples. Thirdly, they underscored their belief that deviating from Swaminarayan worship constituted a breach of faith. Lastly, they highlighted a formal initiation ritual (diksha) into the Swaminarayan sect, symbolising a unique religious identity.

Nevertheless, the Court dismissed the Satsangis' claims, primarily referencing Monier-Williams' portrayal of their religious practices. Relying on Monier-Williams' analysis and Gazetteer reports, the Court refuted the notion of Satsangis constituting a distinct religious community outside Hinduism's purview. Yet, the broader significance of Yagnapurushdasji lay in the Supreme Court's delineation of Hinduism's construct, which has since shaped judicial discourse.

Chief Justice PB Gajendragadkar, a prominent voice on religious freedom matters, delved into the essence of Hinduism, acknowledging the challenge of defining it within judicial confines. Drawing from English language sources, the Court depicted Hinduism as elusive to define—a faith devoid of singular deity, dogma, or philosophical doctrine, characterised more as a "way of life." This portrayal paved the way for an all-encompassing interpretation of Hinduism, encompassing diverse creeds and sects.

The Court's narrative portrayed Hinduism as an inclusive faith, embracing tolerance, universality, and a quest for unity, echoing the sentiments of Sarvepalli Radhakrishnan. Subsequent judgments reinforced this inclusive perspective, rejecting claims by various Hindu sects to be recognized as separate religions. Notable among these was the denial of separate religion status to the Arya Samaj and Ramakrishna Mission.

The ruling's political ramifications were evident in the 'Hindutva' verdict of the mid-1990s, wherein the Court intertwined the inclusive Hinduism delineated in Yagnapurushdasji with the exclusivist narrative of Hindu nationalists. This conflation empowered Hindu nationalist groups, who cited the ruling to assert the inclusiveness of Hindutva, shaping political discourse in India.

Through Yagnapurushdasji and its subsequent interpretations, the Supreme Court not only defined Hinduism but also delineated its contours as an inclusive faith, intertwining cultural ethos with religious identity.

Complexities of Religious Conversion in India

The constitutional guarantee of the right to propagate religion, enshrined in Article 25, has been a recurring theme in courtroom deliberations. It intertwines with the contentious issue of religious

conversions and the legal status of converts, forming the crux of numerous court rulings in independent India.

These rulings can be broadly categorised into three groups: challenges against legislation regulating conversions, disputes concerning benefits sought by converts, particularly to Christianity, and cases involving reconversion to Hinduism and the subsequent restoration of reservation benefits.

In one of the early cases grappling with conversion, Chatturbhuj Vithaldas Jasani v Moreshwar Parashram, the Supreme Court tackled the disqualification of Gangaram Thaware, a Mahar caste member contesting a reserved seat, who had converted to the Mahanubhava Panth. While the Court affirmed Thaware's Scheduled Caste status despite his conversion, it acknowledged the multifaceted nature of conversion, involving religious beliefs, spiritual experiences, social ties, and customs.

A pivotal moment in clarifying the right to propagate religion arose in the landmark Rev Stanislaus v State of Madhya Pradesh case. Here, challenges were mounted against state legislation aimed at regulating conversions by force, allurement, or fraudulent means.

The Court upheld the constitutionality of such laws, asserting the state's prerogative to maintain public order. However, its interpretation of Article 25's guarantee of freedom of conscience sparked controversy. Chief Justice AN Ray's distinction between benign propagation and proselytization, wherein attempts to convert were deemed to infringe on freedom of conscience, has been subject to criticism for its narrow understanding of propagation and conversion.

Despite criticisms, the Stanislaus judgement remains unchallenged, serving as the definitive interpretation of the right to propagate religion. Its implications reverberate in contemporary legal and social discourse, underscoring the complexities inherent in navigating the delicate balance between religious freedom and societal order.

Religious Instruction in Education: Insights from the Aruna Roy Case

The interpretation of Article 28 by the Supreme Court, which prohibits religious instruction in state-run educational institutions, has been a subject of scrutiny and debate. A pivotal ruling in this domain is Aruna Roy v Union of India, where public interest litigation challenged the National Council of Educational Research and Training's (NCERT) National Curriculum Framework for School Education (NCFSE) on grounds of violating constitutional principles of secularism, among other concerns. In this case, the Court delineated the distinction between 'religious instruction' and 'religious education', permitting the latter in educational curricula.

The Aruna Roy judgement represents the most comprehensive discussion to date on the permissible scope of religious education in educational institutions. The contested NCFSE proposals, particularly regarding 'Education for Value Development', ignited the legal debate. The proposal suggested that while religion was not the sole source of essential values, it played a significant role in value generation. However, the Court emphasised the importance of 'education

about religions', advocating for a comparative study of various religious philosophies while treating all religions with equal respect.

In delivering the judgement, MB Shah J dismissed claims that the NCFSE violated Article 28, citing three primary reasons. Firstly, he referenced government-appointed commissions endorsing value-based education and advocating for the study of religions. Secondly, he invoked Article 51-A of the Constitution, emphasising the duty to promote harmony and brotherhood transcending religious diversities. Lastly, he drew upon the precedent set by the DAV College v State of Punjab case, which distinguished between religious instruction and the academic study of religions.

In a concurring judgement, Dharmadhikari J highlighted the distinction between religious education and religious instruction, emphasising the Indian concept of dharma as distinct from Western notions of religion. He argued that the study of religions fosters understanding in India's multi-religious society.

The Aruna Roy judgement elicited varied responses, with some critics expressing concerns about potential threats to secularism, while others welcomed the Court's stance. However, the judgement underscores the complexities inherent in interpreting constitutional secularism in India. By distinguishing between religious instruction and education about religions, the Court sought to uphold constitutional principles while acknowledging India's diverse religious landscape.

Indian Secularism: From Nehruvian Ideals to Judicial Realities

Indian secularism, initially rooted in the concept of ‘equal respect’, reflects the Nehruvian paradigm where the State extends respect and tolerance to all religions.

Nehru's vision oscillated between sarvadharma samabhava (goodwill towards all religions) and dharma nirpekshata (religious neutrality), emphasising the State's role in honouring religious diversity while maintaining neutrality.

Despite Nehru's personal views on religion as a conservative force, he championed the idea of a secular State that respects and accommodates all faiths, allowing them to function freely without interference.

This Nehruvian conception aligns with Rajeev Bhargava's notion of ‘principled distance’, wherein the State neither excludes nor is merely neutral towards religions but maintains a balanced distance. Similarly, Rajeev Dhavan delineates Indian secularism into components of religious freedom, celebratory neutrality, and reformatory justice, highlighting its dynamic and open-ended nature.

However, the interpretation of secularism in India presents challenges due to its constitutional provisions, which leave room for internal tensions and complexities.

The Court, often opting for uniformity over sensitivity to religious and legal pluralism, has utilised doctrines like the essential practices doctrine to regulate religious practices deemed unruly or

backward. This approach, while aiming to discipline religion, has marginalised popular faith and encroached upon the personal space of belief.

The Court's definition of Hinduism, lacking a centralised authority or text, has further complicated matters by limiting exit options for sects and promoting a homogeneous understanding of religion.

Despite aspirations for tolerance and neutrality, Indian secularism, as construed by the judiciary, has fallen short of the ideals envisioned by the framers of the Constitution.

The intricate interplay between religion and the State in India underscores the ongoing evolution and challenges of secularism in a diverse and pluralistic society.