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Role of Judiciary in Expanding the Horizons of Secularism in India

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Introduction

Constitution of India embodies unique kind of secularism; it is not similar to Western concept of separation of Church and State or American model of wall of separation. It's *Sui Generis*, because it guarantees the freedom of religion to its citizens and at the same time establishes secular State by enshrining strands of secularism in various provisions of the Constitution. It is case of freedom of religion and freedom from religion. Since concept of secularism and religion is not defined in the Constitution, in catena of cases Supreme Court while deciding the constitutional validity of executive and legislative actions of the State, concerning freedom of religion of the individual, group and denominations has attempted to define them. Such definitions were necessary to decide whether the action of the State in question is affecting the practices which are part of the religion or secular sphere. In certain cases court indulged into understanding Hinduism or Hindutva to determine cases relating to election related offences and also to decide whether particular denomination is part of Hindu or separate religion in itself. In this exercise over a period of 66 years courts expanded the scope of secular power of the State.

In the absence of any rigid positivist demarcation of the spheres of the sacred and secular, the court has remarkable autonomy in the interpretation of secularism. It decides what is secular and what is not, what is religious and what is not, thereby regulating their meaning and thus the personal realm.[1]

Scope of Secular Power of the State

Art.25 guarantees to every person the freedom of conscience and the freedom to profess, practice and propagate his own religion. However the rights under this Article are not absolute rather they are subjected to restrictions enumerated under Art.25 (2).

Article 25 (2) (a) recognizes State's power of making laws for regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. Moreover, as per Article 25(2) (b), State has the power of making laws

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[1] Sanghamitra Padhy, "Secularism and Justice: A Review of Indian Supreme Court Judgments" Economic and Political Weekly, Vol. 39, No. 46/47 (Nov. 20-26, 2004), p. 5027.

providing for social welfare and reform or the throwing open of Hindu religious institutions of public character to all classes and section of Hindus. Because of these reformist role of the State, the relation between religion and State has obtained a distinct character instead of confining to mere non-establishment and State's reformist role comes to the open surface. This dichotomy moulds the relation amidst the strands of State – Religion relations.[2]American courts have usually tried to avoid sitting in judgment on 'religious error' or 'religious truth'. The Indian Supreme Court has travelled an opposite path, seeking to cleanse Hinduism of what it reads as superstition and providing it with a modernist and rationalist definition of religious error and religious truth.[3]

One major area where series of cases came before the court was, challenge to laws relating to regulation of Hindu Religious Endowment and Charitable institutions. Beginning with the Madras Hindu Religious and Charitable Endowment Acts in 1951, where a new department headed by a commissioner was created to supervise temples and *maths*, several other states have followed suit. In 1960, the central government appointed a Hindu Religious Endowments Commission to report on the administration of Hindu religious endowments. In its report submitted in 1962, the panel recommended enactment of legislation for state supervision of temples in states that did not already have such laws. Legal challenges to these legislations have meant that the courts are frequently asked upon to decide what constitutes an 'essential part of religion', thereby being off limits for state intervention, and what is 'extraneous or unessential', thereby permissible for the state to interfere.[4]

In identifying essential and integral parts of 'religion' under Art 25 (1) and matters of religion under Article 26(b) court analyze the matter in the light of the conscientious expressions of the founder, leader and followers of religion. Determination of the boundary of religion is such a significant threshold issue for invoking Arts 25 and 26 that claim for specific religious practice or ritual and permissibility of social reforms can be decided only after finding that a specific practice or ritual is, or is not, an essential part of religion. There is some controversy over the issue, whose conscientious expression shall be the basis for such identification.[5]

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[2] P. Ishwara Bhat, " Fundamental Rights", 1st Ed.(Eastern Book Publishers,Calcutta,2009),p.420

[3] Ronojoy Sen, "The Indian Supreme Court and the quest for a 'rational' Hinduism", South Asian History and Culture, Vol. 1, No. 1, January 2010, p. 86.
Available on- http://dx.doi.org/10.1080/19472490903387258

[4] Ibid.

[5] P. Ishwara Bhat, *Op.,Cit*.,421.

Judicial Approach in Determining Essential Practice of Religion

Broadly, there are three varying judicial approaches in this regard. First, the approach that regards the religious tenet as finally determining the essential part of religion. Secondly, the approach that looks to communitarian practice that receives or accepts some beliefs or ritual as an essential part of religion. Thirdly, the holistic approach that looks not only to the text and the content but also to the spirit of the constitution in this regard.[6]

The most striking aspect of the essential practices doctrine is the attempt by the Court to fashion religion in the way a modern state would like it to be rather than accept religion as represented by its practitioners.[7]

Although the Constitution does not define what is meant by the word "religion," the Supreme Court of India has expressed divergent views on the meaning of religion.

In *Commissioner of Hindu Religious Endowments v. Sri Lakshimdra Thirtha Swamiar*[8]*(Shirur Mutt Case),* the petitioner, the superior or *mathadhipati* (also referred to as *mahant*) of Shirur Mutt, challenged the Madras Hindu Religious and Charitable Endowments(HRCE) Act, 1951,18 on the principal ground that it infringed Article 26 of the Constitution. Before dealing with the provisions of the Act the Court asked a central question: 'Where is the line to be drawn between what are matters of religion and what are not?'

Justice B.K. Mukherjeacame up with a working definition of religion and took an inclusive approach to religion and defined it as:

> *"Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic… A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might ex-tend even to matters of food and dress."*[9]

The first approach to determine what constitutes essential part of religion was initiated in this Case, where Mukherjea J, observed, "what constitutes the essential part of a religion is

[6] Ibid
[7] Ronojoy Sen, *Op.,Cit.*,p.87.
[8] AIR 1954 SC 1005, at 1023-24
[9] Ibid

primarily to be ascertained with reference to the doctrines of the religion itself". According to the learned judge, for becoming essential part of religion, the practices and rituals relating to offering of food, conducting of periodical ceremonies and recital of sacred tenets should be ordained by religious texts; but will not be correct to say that the religion is nothing else but a doctrine or belief."

Next in *Ratilal Pannachand Gandhi vs. State of Bombay*[10] in the same year Court held that, 'Religious practices or performances of acts in pursuance of religious beliefs are as much a part of religion as faith or belief in particular doctrines...No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate.'

In the Temple Entry case, *Sri Venkataramana Devaru v. State of Mysore*,[11]the issue before the Court was the applicability of the Madras Temple Entry Authorisation Act, which was intended to remove the bar on Harijans (untouchables) from entering the Shri Venkatramana temple founded by the Gowda Saraswath Brahmins. Court brought into play the essential practices doctrine to determine 'whether exclusion of a person from entering into a temple for worship is a matter of religion according to the Hindu Ceremonial Law'.

After referring to ancient Hindu *Upanishads, Vedas, Puranas* and *Agamas*, Aiyar J, concluded "Thus, under the ceremonial law pertaining to temples, who are entitled to enter them for worship and where they are entitled to stand and worship and how the worship is to be conducted are all matters of religion."

According to the Court, the right of the Gowda Saraswaths to excludepersons from worshipping in the temple guaranteed by Article 26(b) clashed with the power of the state to open public temples to all Hindus under Article 25(2)(b). The Court gave Article 25(2)(b) precedence over Article 26 by pointing out that the language of Article 25(2)(b) implied that the limitations were applicable to all Hindu religious institutions, including denominational ones. Hence state legislation allowing all Hindus, including low caste Hindus, right to enter

[10] AIR 1954 SC 548

[11]AIR 1958 SC 895. Although the Court acknowledged that the meaning of religion includes practices as well as beliefs, it relied on Article 25(2)(b) in upholding the law. That is, the Court was persuaded that the Temple Entry legislation was within the State's constitutional power to provide social welfare and reform in Hindu religious institutions.

temples did not violate the rights of religious institutions under Article 26(b) of the Constitution.

The second approach to determine whether practice is essential part of religion or not, relies on communitarian conscience. It was emphasized by Aiyer, J in *Venkatarama Devaru* case and observed that "the matters of religion in Art 26(b) include even practices which are regarded by the community as a part of its religion.

In *Durgah Committee v. Hussain Ali*.[12], the *khadims* of the shrine of Moinuddin Chishtiin Ajmer challenged the Durgah Khawaja Saheb Act of 1955. Among other things the *khadims* contended that the Act abridged their rights as Muslims belonging to the Sufi Chishtia order. The *khadims* maintained that their fundamental rights guaranteed by several constitutional provisions, including Articles 25 and 26, had been violated.

Justice P.B. Gajendragadkar to decide the matter did not follow Devaru case to refer any scriptures to answer the question. Instead, he skillfully constructed a 'secular' history of the Ajmer shrine to 'ascertain broadly the genesis of the shrine, its growth, the nature of the endowments made to it, the management of the properties thus endowed, the rights of the Khadims. After surveying the history of the shrine from the pre-mughal to the contemporary period, the Court concluded that the administration of the shrine 'had always been in the hands of the official appointed by the State'. The Court, however, conceded that the *Chishtia* sect could be regarded as religious denomination. But this did not ultimately have any impact on the Court's decision which upheld the validity of the Durgah Khawaja Saheb Act and dismissed the constitutional challenges to the Act.[13]

After Durgha Committee case Justice Gajendragadkar decided two more cases, viz, *Shri Govindlalji v. State of Rajasthan*[14]and *Sastri Yagnapuruslidasji* v. *Muidas Bhundardas Vaishya.*[15] In Govindlalji case, Tilkayat Govindlalji, the traditional spiritual head of the Nathdwara temple in Rajasthan, challenged the constitutionality of the Nathdwara Temple Act. One of the grounds for challenging the Act was infringement of Articles 25, 26(b) and 26(c) since it was claimed that the temple was a private one owned and managed by the Tilkayatas head of the Vallabh denomination. The Court endorsed the Act laying special emphasis on a *firman* (order) issued by the ruler of Udaipur in 1934, which declared that the

[12] AIR 1961 SC 1402.
[13] Ibid.,pp.1406,1410.
[14] AIR 1963 SC 1638
[15] AIR. 1966 SC 1119

royal court had absolute rights to supervise the temple and its property and even depose the Tilkayat if necessary.

Justice Gajendragadkar observed:

> *"In cases where conflicting evidence is produced in respect of rival contentions as to competing religious practices the Court may not be able to resolve the dispute by a blind application of the formula that the community decides which practice is an integral part of its religion, because the community may speak with more than one voice and the formula would therefore break down. The question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of religion, and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion"*[16]

Shastri Yagnapurushdasji was another case involving a religious group known as 'Satsangis. They sought protection from the Bombay Harijan Temple Entry Act. The Satsangis claimed the status of a separate religion as followers of Swaminarayan. In response, Gajendragadkar in his judgment said, "It may be conceded that the genesis of the suit is the genuine apprehension entertained by the appellants, but as often happens in these matters, said apprehension is founded on superstition, ignorance and complete misunderstanding of the true teachings of Hindu religion and of the real significance of the tenets and philosophy taught by Swaminarayan himself"[17]

While Justice Gajendragadkar had developed the essential practice test and in Durgah Committee case, Govindlalji case and Satasnghi's case, in between there was deviation by the court which declared an enactment as violative of rights of denomination under Art.26 in *Saifuddin Saheb v. State of Bombay.*[18]In this case there was no disagreement on the essential practices doctrine but there was disagreement on the extent to which it should be applied. The Bombay Prevention of Excommunication Act of 1949 had been challenged by the Dai-ul-Mutlaq, the religious head of the Dawoodi Bohra community. The majority judgment

[16] AIR 1963 SC 1638
[17] AIR 1966 SC 1119
[18] AIR 1962 SC 853

delivered by Justice K.C. Dasgupta declared the Act unconstitutional by holding that 'excommunication cannot but be held to be for the purpose of maintaining the strength of the religion'. In a concurring judgment, Justice N.R. Ayyangar wrote, 'The power of excommunication for the purpose of ensuring the preservation of the community, has therefore prime significance in the religious life of every member of the group.[19]

The most prominent effect of doctrine of Essential Practices has been the widening net of state regulation over temples. Another significant effect has been the disinclination of the Court to accept more recent religious groups as a 'proper' religion or even religious denomination. Consequently, the religious practices of these groups have not been able topazes the essential practices test.

In *S.P. Mittal v.Union of India,*[20] the legitimacy of the Auroville (Emergency Provisions Act) Act of1980 was challenged. One of the questions before the Court was whether the Aurobindo Society qualified as a religious denomination and hence came under the protection of Article26. After discussing the meaning of religion and quoting extensively from Aurobindo's writings as well as secondary sources, Justice R.B. Misra, writing for the majority, ruled 'there is no room for doubt that neither the Society nor Auroville constitutes a religious denomination and the teachings of Sri Aurobindo only his philosophy and not a religion.

In *Jagadishwaranand v. Police Commissioner, Calcutta*[21], the Court refused to accept the tandava dance as an essential practice of the Ananda Margis. Justice Ranganath Misra reasoned, 'Ananda Marga as a religious order is of recent origin and tandava dance as a part of religious rites of that order is still more recent. It is doubtful as to whether in such circumstances tandava dance can be taken as an essential religious rite of the Ananda Margis. Arrival of such conclusion by the Court was influenced by the absence of adequate textual support for the ritual and it overlooked the widely prevalent practice amidst the followers of Anandamargis.

"The claim of Ananda Marga as a separate religion was not acceptable in view of the clear assertion that it was not an institutionalized religion but a religious denomination. Ananda Margis belong to the *Shaivite* order and as such they belong to the Hindu religion.

[19] Ibid., 876.
[20] AIR 1983 SC 1
[21] AIR 1984 SC 51

Accordingly, they were not entitled to get the protection of Article 25 of the Constitution of India."[22]

In March 2004, the Supreme Court again took up the issue[23] and further narrowed the scope of essential practices to mean the foundational 'core' of a religion. The majority judgment said, 'Essential part of a religion means the core belief upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief. It is upon the cornerstone of essential parts of practices that the superstructure of religion is built, without which a religion will be no religion.

Justice A.R. Lakshmanan observed that "If these practices are accepted by the followers of such spiritual Head as a method of achieving their spiritual upliftment, the fact that such practice was recently introduced cannot make it any theless a matter of religion."[24]

Accordingly court permitted Anand Margis to do Tandava Nrutya by prescribing certain conditions in the interest of public peace.

Mohd. Hanif Quareshi & Ors. v. The State of Bihar,[25], case involved a legal challenge by Muslim butchers to state legislation prohibiting the slaughter of cows. The state legislation was partly motivated by the strong religious sentiment of Hindus against the slaughter of cows because the cow is a sacred animal in Hinduism. The Muslim butchers, on the other hand, argued that their inability to continue their practice of sacrificing a cow on *Bakr Id* Day interfered with their religious beliefs. The Supreme Court held that the state law banning cow slaughter did not violate the religious rights of Muslims. The Court reasoned that the Quran did not mandate the sacrificing of cows and that there were economic (and therefore, secular) reasons for the legislation.

In Stainislaus v. State of Madhya Pradesh & Orissa[26] the Supreme Court delineated the boundaries of the right to propagate in the context of state legislation prohibiting forcible conversions. The Supreme Court held that the right to propagate means the right to "transmit and spread one's religion by an exposition of its tenets." But, the Court was clear that there is no constitutional right to convert a person from one religion to another, because this would impinge on the 'freedom of conscience' guaranteed to all the citizens of the country alike." As to whether the State has the right to pass legislation restricting conversions, the Court held

[22] Ibid.
[23]The Commissioner of Police v. Acharya Jagdishwarananda Avadhuta, 2004 (12) SCC 782.
[24] Ibid.
[25]M.H. Quareshi v. State of Bihar, AIR 1958 SC 731.
[26]2 S.C.R. 616 (1977).

that the "public order" provision of Article 25(1) has a "wide connotation" and that the State could legislate conversions if they "created public disorder".[27]

In *M Ismail Faruqui case*[28] the majority of the Supreme Court while holding that " A Mosque is not an essential part of the practice of the religion of Islam and Namaz (prayer) by muslims can be offered anywhere, even in open" referred to books and cases on Mohammadan Law in this regard. It appears, the Court was looking t conscience of the community when it observed, "while offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not essential or internal part thereof.

It is submitted in the back ground of sensitivity issues challenging communal harmony and peace, sole reliance on community's conscience will not be conductive for a secular atmosphere. Whether a "place of worship has a particular significance for that religion" is to be assessed from broader perspective of overwhelming considerations of religious tenets and conscience of the community and the spirit of tolerance".

J.D.M. Derrett has written about the paradox of the Court playing the role of religious interpreter: The courts can discard as non-essentials anything which is not proved to their satisfaction and they are not religious leaders or in any relevant fashion qualified in such matters to be essential, with the result that it would have no constitutional protection.[29]

Rajeev Dhavan and FaliNariman also have criticized the role played by courts in cases involving what is essential part of the religion:

"With a power greater than that of a high priest, *maulvi* or *dharmashastri*, judges have virtually assumed the theological authority to determine which tenets of a faith are 'essential' to any faith and emphatically underscored their constitutional power to strike down those essential tenets of a faith that conflict with the dispensation of the Constitution. Few religious pontiffs possess this kind of power and authority."[30]

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[27] Ibid.,at 618.
[28] AIR 1995 SC 605
[29] J D M Derrett, *Religion, Law and the State in India*, (Oxford University Press, Bombay,1999),p. 447.
[30] Dhavan and Nariman, 'The Supreme Court and Group Life: Religious Freedom, Minority Groups, and Disadvantaged Communities' In Supreme but not Infallible: Essays in Honour of the Supreme Court of India, ed. B.N. Kirpal. (New Delhi: Oxford University Press, 2000.), 259

Temple Takeover Cases

After the Court gave its approval to the greater part of the Madras HRCE Act, 1951 in *Shirur Mutt case*, most states in India enacted laws for taking over Hindu religious institutions. Though many of these state legislations were challenged, they were usually approved by the Court with minor alterations. One of the consequences of this has been the bureaucratization of religion with state-appointed officers taking over the running of temples as opposed to the traditional authorities. The saga of secularism started with withdrawing religion from interfering in administration of State and now it has reached the stage where religious institutions are being compelled to withdraw from its own administration. Then religion was complained to interfere in State affairs now State interfering al almost all affairs of the religion.[31]

There was a series of litigation in the 1990s centered on major Hindu temples like Tirupathi, Vaishno Devi, Jagannath temple (Puri) and the Kashi Vishwanath temple (Varanasi). The majority of the judgments, where challenges to the extensive state regulation of these temples were dismissed, were handed down by Justice K. Ramaswamy.This has led Dhavan and Nariman to observe, 'If the regulatory impetus provided by Justice B.K. Mukherjea in the fifties was enlarged by Justice Gajendragadkar in the sixties, the latest judgments of Justice K. Ramaswamy have enthusiastically supported the "nationalization" of some of India's greatest shrines'[32]

In *A.S. Narayana Deekshitulu v. State of A.P.*[33] the petitioner was a chief priest (*archaka*) of Thirumala Tirupathi, one of the richest temples in India. The petitioner contended that the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act of 1987, by abolishing hereditary succession among *archakas*, prescribing regulations for appointment of *archakas* and taking away their right to a share of offerings made to the deity infringed Articles 25 and 26 of the Constitution. The Court dismissed the petition and upheld the Act with a few minor qualifications. However, in the course of the judgment Ramaswamy went in for an elaborate discussion on the nature of religion in the

[31] Ronojoy Sen, "The Indian Supreme Court and the quest for a 'rational' Hinduism" South Asian History and Culture, 1:1, 86-104,at p.97.
[32] Rajeev Dhavan and Fali Nariman, 'The Supreme Court and Group Life: Religious Freedom, Minority Groups, and Disadvantaged Communities', 263. Quoted in Ronojoy Sen, "The Indian Supreme Court and the quest for a 'rational' Hinduism" South Asian History and Culture, 1:1, 86-104,at p.97.
[33] AIR 1996 SC 1765

Indian context. Quoting from texts such as the *Vedas, Upanishads* and the *Gita* and using modern thinkers and writers such as Aurobindo, Vivekananda, Radhakrishnan, Shankar Dayal Sharma and even Richard Dawkins, Ramaswamy attempted to construct a notion of religion significantly different from *Shirur Mutt*.

Justice Ramaswamy drew a parallel between a 'higher' or 'core' religion and the concept of *dharma*. According to him, it is *dharma* rather than conventional religion that is protected by the Constitution. How then is *dharma* to be understood in terms of the Constitution?'*Dharma* is that which approves oneself or good consciousness or springs from due deliberation for one's own happiness and also for welfare of all beings free from fear, desire, cherishing good feelings and sense of brotherhood, unity and friendship for integration of Bharat. This is the core religion which the Constitution accords protection'.

The idea of a higher religion, according to Ramaswamy, was fundamental to the essential practices doctrine and the secular Constitution. He stated:

> *"In secularizing the matters of religion which are not essentially and integral parts of religion, secularism, therefore, consciously denounces all forms of super-naturalism or superstitious beliefs or actions and acts which are not essentially or integrally matters of religion or religious belief or faith or religious practices. In other words, non-religious or anti-religious practices are anti-thesis to secularism which seeks to contribute to some degree to the process of secularization of the matters of religion or religious practices"*

With the adoption of the essential practices doctrine, the Supreme Court seems to have taken up this project in right earnest. Though appropriation of the role of interpreter of religious doctrine is most unusual for courts in secular constitutional polities, in the Indian context this role has been facilitated by the lack of a unitary ecclesiastical organization for Hinduism. This has given the opportunity, as Galanter points out, to the judiciary to embark on an 'active reformulation of Hinduism under government auspices in the name of secularism and progress'.[34]

[34] Ronojoy Sen, "The Indian Supreme Court and the Quest for a 'Rational' Hinduism", South Asian History and Culture, Vol:1 Issue: 1, p.99.

Interpretation of ‘ Hindutva’ or ‘Hinduism’

In Prabhoo v. Prabhakar Kasinathe Kunte[35] the Court found that an appeal to Hindutva does not violate Section 123 of the Representation of People Act. The Court based its decision on a definition of Hindutva that rejected the notion that Hindutva was a religious fundamentalist ideology by ostensibly relying on its prior decisions. It found that

> *“[T]he term 'Hindutva' is related more to the way of life of the people in the subcontinent. It is difficult to appreciate how in the face of these decisions the term 'Hindutva' or 'Hindu-ism' per se, in the abstract, can be assumed to mean and be equated with narrow fundamentalist Hindu religious bigotry..”*[36]

Thus, the use of the word Hindutva was not a per se violation. Furthermore, the Court found that the term Hindutva could even be used to promote secularism where it refers to a uniform Indian culture. The Court held that only the "misuse" of these terms or the use of these terms in a certain context may be a violation.

In *Sastri Yagnapuruslidasji* v. *Muidas Bhundardas Vaishya,*[37] the Supreme Court of India attempted to define the nature and boundaries of Hinduism. In it we find the interplay of these various themes—secularism and Hinduism, traditional groupings and Westernized elite, parochial concerns and national aspirations, legal doctrine and religious learning—presented dramatically and not without a measure of ironic reversal and comic byplay.

In the course of this inquiry, the court propounded three different views of Hinduism; or, more accurately, it considered Hinduism from three quite different standpoints. Without acknowledgment it shifted from one to the other in the course of its opinion.

The first standpoint is a descriptive one, which sees Hinduism as a complex, indefinable inclusive aggregation of ways of life. We find it difficult, if not impossible, to define Hindu religion or even adequately describe it. Unlike other religions in the world, the Hindu religion does not claim any one prophet; it does not worship any one God; it does not subscribe to any one dogma ; it does not believe in any one philosophic ' concept ; it does not follow any one set of religious rites or performances ; in fact, it does not appear to satisfy the

[35]AIR 1996 SC 1113.
[36] Ibid.
[37] AIR.1966 SC 1119

narrow traditional [for traditional, read Western] features of any religion or creed. It may broadly be described as a way of life and nothing more.[38]

There is much more of the same: ". . . under Hindu philosophy, there is no scope of excommunicating any notion or principle as heretical and rejecting it as such." "Unlike other religions and religious creeds, Hindu religion is not tied to any definite set of philosophic concepts as such.[39]

However Court held that the sect comes under Hindu and is amenable to the jurisdiction Temple entry law and Act is not violative of right of denomination under Article.26.

Marc Galanter asks whether the Constitution has given the Court a mandate to 'participate actively in the internal reinterpretation of Hinduism[40]

D.Smith makes a distinction between a 'positive' and a 'negative' role of the state in 'socio-religious' reform. "Religious reform *per se* is not a valid function of the secular state," he says. There can be no question of official promotion of any religion or interference with religious liberty. But reform may be effected on other grounds (economic, social or even humanitarian grounds) which may incidentally affect religion. But how far can the Temple Entry Bill be interpreted as incidental interference? True the basic idea is to assure equality, but it does constitute 'positive' interference. This is not to question the desirability of the reform, but just to show that interference can be justified on humanitarian grounds. [41]

In the case of Hindu Temples, the D. Smith points to the unhealthy trend in Madras legislation pertaining to the administration of temples and religious endowments. He does, however, commend the approach of the Bombay Public Trusts Act of 1950 as being more in consonance with the declared principle of secularism. Strangely, Smith concludes his argument about religious reform by reverting to his original premise that "religious reform need not proceed by legislation and state interference, as is so often presupposed in present day India". This is dogmatic, considering his understanding and acceptance of the need for state interference in the Indian situation.[42]

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[38]Ibid, at 1128.
[39] Ibid., at 1129-30.
[40] Mark Galanter and Rajeev Dhavan, " *Law and Society in Modern India"*, (Oxford University Press, New Delhi, 1993) , p.251.
[41] Smith P.233.
[42]Vijay Nambiar, *Book Review of D Smith's* India: How Secular? The Economic Weekly June 6, 1964.

Conclusion:

Thus from the forgoing analysis of decisions of courts in India, it can be said that the Court's approach, at least in its early days, was shaped by the desire to reform and reshape certain religious practices. It, therefore, consciously gave itself the power to judge what an essential practice of a religion is; those that were not essential practices could not avail of the protection of Article 25. This led the Court to adopt an extremely interventionist approach often even resorting to scriptural interpretation.

Apart from the reformist explanation, one may also attribute the interventionist position of Courts to the fact that in a country like India, it is easier to say something is not essentially religious than to say that religion is against public order. This may be another reason why Courts have generally preferred the essential practices test as compared to subjecting religious freedoms to secular public order restrictions.

Whatever may be the approach of the court in deciding matters relating to religious freedom under Art.25 and 26 in totality it has resulted in strengthening the stand taken by the Secular State in India. Consequently it has widened the horizons of the secularism in India.