LEGAL RECOGNITION OF DOCTRINE OF REASONABLE ACCOMMODATION UNDER PARASOL OF RELIGIOUS FREEDOM IN INDIA

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Abstract

The relation between religion and law is very complex, Religion throughout the centuries has been a guiding source for the molding of rules, principles and institutions for governing the society. The Indian model of granting religious freedom as a matter of Fundamental right is based on the 'secular principles' and the concept of secularism is implicit in the Preamble of the Constitution which declares the resolve of the people to secure to all its citizens "Liberty to thought, belief, faith and worship". The general law is secular, yet a degree of jurisdictional autonomy is granted to religious communities, primarily in the matters of personal status and education. Accommodation measures are meant to address barriers to participation that particular (groups of) persons are confronted with due to an interaction between an individual's religious characteristics, and the physical or social environment. When persons with a particular type of religious dress are not allowed to do a particular job or get access to a particular location, or to receive a particular service, this arguably amounts to numerous barriers to participation which invades his/her constitutional rights. Hence it is important to focus on how the Constitution of India seeks to protect religious freedom and the manner in which the Supreme Court has interpreted these protections. The researcher is interested in understanding the evolving concept of 'religious freedom', which is worth a thorough discussion since it involves a clear interplay between individual rights, group rights and governmental interests. The objective of conducting this research is to understand the concept of doctrine of reasonable accommodation and how reasonable accommodations can legally get accommodated under the sanctioned religious practices in India.

Key words: *religious, freedoms, reasonable, accommodations, rights*

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Introduction

In the world, today mostly believes in the existence of God, though, a few may be agnostic, few may be atheist, but remaining have various religious affiliation. The relation between religion and law is very complex. Religion throughout the centuries has been a guiding source for the molding of rules, principles and institutions for governing the society. Religion and Law has always been debated and discussed as dualistic antinomies in many flourishing democratic countries.

In present day, society recognizes dichotomy viz., "Rule of Law" and "Rule of God", which are diametrically opposed in many respects, with some similarities, like sacred texts, their own mandates and sanctions to control human behavior which, again indicates their inevitable collision[1]. Religion and Law are inseparable; therefore they intersect each other very often.

Also, it is essential to draw a balance between the conceptual triangle of individual rights, group rights and governmental interests in varying measures. In some cases the rights of individuals need to be safeguarded against arbitrary governmental action, while in some other instances an individual needs protections from the actions of groups. There are of course scenarios where the constitutionally recognized 'group rights' also need to be reevaluated and interpreted. It would be nearly impossible to present a reasonable understanding of individual rights in all spheres of public law[2].

Hence it is important to focus on how the Constitution of India seeks to protect religious freedom and the manner in which the Supreme Court has interpreted these protections. The researcher is interested in understanding the evolving concept of 'religious freedom', which is worth a thorough discussion since it involves a clear interplay between individual rights, group rights and governmental interests. The objective of conducting this research is to understand the concept of doctrine of reasonable accommodation and how reasonable accommodations can legally get accommodated under the sanctioned religious practices in India.

Concept of religious freedom

Freedom of religion or Religious freedom is a principle that supports the freedom of an individual or community, in public or private, to

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1 Gad Barzilai, *Law and Religion*, 17 The International Library of Essays in Law and Society; (Aug. 2007) 556.

2 William H Swatos, *Encyclopedia of Religion and Society*, HARTFORD INSTITUTE FOR RELIGION RESEARCH, HARTFORD SEMINARY, (Mar. 23, 2017, 10:53AM), http://hirr.hartsem.edu/ency/Marx.htm.

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manifest religion or belief in teaching, practice, worship, and observance. It also includes the freedom to change one's religion or belief. Freedom of religion is considered by many people and most of the nations to be a fundamental human right[3]. In a country with a state religion, freedom of religion is generally considered to mean that the government permits religious practices of other sects besides the state religion, and does not persecute believers in other faiths.

In an undeniably religious society such as India where manifestations of religious beliefs are prominently visible in public life, it is exceedingly difficult to precisely define what is meant by 'religious freedom'. The contemporary understanding of the same draws both from the cultural beliefs and practices of the various religious groups on one hand and the rights enumerated by the Constitution of India on the other hand. An acceptable idea of 'religious freedom' can neither be entirely rooted in the unquestioned continuance of all of the practices of India's numerous religious denominations nor exclusively in the language of constitutionally recognized rights.

However, as the large volume of scholarship on the interaction between law and religion in India amply demonstrates, unlike most civil-political rights, 'religious liberty' cannot be understood squarely in the individual-state framework. These interventions open up questions about the inter-relationship between law and social change. Furthermore, the language of the Constitution itself encourages questions about the proper scope of 'religious freedom' by enumerating rights relating to the preservation of minorities' identity and leaving personal laws outside the scope of constitutional scrutiny. Very often these questions are cast not in the context of individual or group rights enforceable against the State but in the domain of relations between the religious majority and the various minority communities. Such a framing of questions in political terms highlights the possibilities of divergence between the idea of 'religious liberty' and several core ideals of the Constitutional scheme.

Another connotation of Religious Freedom is that no man in religious matters is to be subjected to the censorship of the state or of any public authority; and the state is not to enquire into or take notice of religious belief, when the citizen performs his duty to the state and his fellows[4]. The researcher finds the concept of religious freedom an elusive concept, which is too broad and is capable of assimilating the doctrine of reasonable accommodation in itself.

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3 Freedom of religion, *available at* https://en.wikipedia.org/wiki/Freedom_of_religion.

4 William H Swatos, *Encyclopedia of Religion and Society*, HARTFORD INSTITUTE FOR RELIGION RESEARCH, HARTFORD SEMINARY, (Mar 23, 2017, 10:53AM), http://hirr.hartsem.edu/ency/Marx.htm.

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Nature and scope of religious freedom

Religion is one's personal faith for self-attainment of eternal bliss. Right to believe in one's religion in particular does not affect anyone else. It is only when the belief is practiced through outward acts that its exercise starts to affect the others around. Constitutions of many countries guarantee freedom of religion and the laws of most of these countries also circumscribe the scope of the exercise of such right. These rights are mostly restricted on the grounds of 'general welfare', 'morality', 'health', 'public order', 'rights of others', etc.[5] The terms used thus, are general terms and are subject to various interpretations, making it difficult for one to arrive at a uniform understanding of the limitation of right to freedom of religion. The Indian Constitution recognizes the 'Right to Freedom of Religion'[6] as a fundamental right which is enforceable in the Supreme Court of India.

The 'religious freedom' guarantees have been laid down in Articles 25-30 of the Indian Constitution. A seemingly existential question about the same is whether the scheme of these guarantees veers towards a notion of 'No concern secularism' (a strict wall of separation between religion and statist functions) or that of 'Equal respect secularism' (Due recognition and tolerance of religious practices and differences). The third strand of privileging 'Religious autonomy' over statist practices is perhaps more suited for examination from the standpoint of cultural studies rather than constitutional theory[7].

The Indian model of granting religious freedom as a matter of Fundamental right is based on the 'secular principles' and the concept of secularism is implicit in the Preamble of the Constitution which declares the resolve of the people to secure to all its citizens "Liberty to thought, belief, faith and worship"[8]. The 42nd Amendment Act, 1976 has inserted the word 'secular' in the Preamble. In India, a secular state was never considered to be irreligious or atheistic state.

It only means that in the matters of religion it is neutral. Explaining the secular character of Indian Constitution the Supreme Court said,

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5 Legal Services India article- Ambit of right to freedom of religion, http://www.legalservicesindia.com/article/1048/Ambit-of-Right-to-Freedom-of-Religion.html.

6 Swatos, *supra* note 4.

7 Freedom of religion and constitutional jurisprudence, Singhania University, Jhunjhunu; available at *108.166.94.65/manager/synopsisdata/512.pdf accessed on 24-04-2018.*

8 BhanuPratap Singh, "Comparative study of freedom of religion under various constitutional frameworks" National Monthly Refereed Journal of Research In Arts & Education; *available at* https://abhinavjournal.com/journal/index.php/ISSN-2277-1182/article/viewFile/4/pdf.

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there is no mysticism in secular character of the state. Secularism is neither anti-God nor pro-God, it treats alike the devout, the antagonistic and atheist. It eliminates God from the matter of the state and ensures that no one shall be discriminated against the ground of the religion. Further in *S.R. Bommai Case*[9] the Supreme Court has held that "secularism is the basic feature of the Constitution" and State treats equally all religions and religious denominations. Religion is a matter of the individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the state by enacting the laws. Justice Ramaswami observed that secularism is not anti-God. In the Indian context Secularism has positive content[10]. However, the quest of the researcher is whether the mutual respect for another's religion would mean accommodating another's religion in the society.

Article 25[11] of the Constitution of India guarantees to every person the freedom of conscience and right to profess, practice and propagate religion. The right guaranteed under Article 25 is not absolute and it is subject to the public morality health and to other provisions. Thus under Article 25 a person has two fold freedoms:

- Freedom of the conscience;
- Freedom to profess practices and propagate religion.

To 'practice' religion is to perform the prescribed religious order in which he believes. To 'propagate' means to spread and publicized his religious views for the edification of others. But the word 'propagation' only indicates persuasion and exposition without any element of coercion. The right to propagate one's religion does not give a right to convert any person's own religion[12].

In *Mohd Hanif Quareshi v. State of Bihar*[13] the petitioner claimed that the sacrifice of cows on the occasion of Bakra-eid were essential part of his religion and therefore the state law forbidding the slaughter of cows was violative of his right to practice religion. The Court rejected this argument and held that the sacrifice of cow on the Bakra-eid was not an essential part of Mohammedan religion and hence could be prohibited by state under clause (2) (a) of Article 25. Now, here the view of the SC is based on the 'essential religious practice'. Whether the more consideration to essential religious practice would amount to reasonable accommodation. The doctrine of reasonable

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9 S.R. Bommai v. Union of India, A.I.R 1994 SC 1918 (India).
10 Legal Services India, Freedom of Religion *available at* http://www.legalservicesindia.com/article/1881/Freedom-of-Religion.html
11 INDIA CONST. art. 25.
12 J.N. PANDEY, THE CONSTITUTIONAL LAW OF INDIA, 310-311 (46th Ed, 2009).
13 Mohd. Hanif Quareshi v. State of Bihar, A.I.R. 1958 SC 731 (India).

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accommodation cannot be based on 'essential religious practice', because it would amount to absurdity of the whole concept.

Similarly the right of Sikhs to wear and carry Kripans is recognized as a religious practice in Explanation 1 of Article 25. This does not mean that he can keep any number of kripans. He is entitled to keep one sword. He cannot possess more than one kripan without a licence.

In *Stainislaus v. Madhya Pradesh & Ors*[14], considering the constitutional validity of the anti-conversion laws of Orissa and Madhya Pradesh[15], the Supreme Court held that the right to propagate religion, guaranteed by Article 25[16] of the Constitution, should be interpreted as "not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets."

Thus in the recent Supreme Court case which upheld the right of a Muslim prisoner to grow a longish beard, the judges could evaluate the prison's claims that the beard might be a security risk, but they could not pronounce on the validity of the convict's belief that using a razor or scissors would offend his conscience.

In several cases, the courts have assumed and exercised the power to ascertain if a religious practice followed by any community is indeed an "essential practice" of its religion, holding that only such "essential" practices are entitled to protection under Article 25 of the Constitution that guarantees freedom of both belief and practice of religion. In *Ismail Faruqui v. Union of India*, the Supreme Court held that offering prayers in a mosque is not necessarily an "essential practice" in Islam[17]. The ruling was given in a case in which the Muslims had challenged, on religious grounds, the validity of a law enacted for state acquisition of the land on which had stood the mosque in Ayodhya that had been demolished in a communal frenzy[18].

In *Acharya Jagdishwaran and Avadhuta v. Comm'r of Police*, the Supreme Court held that the so-called "tandav" dance (worshippers dancing with human skulls in their hands) is not an essential

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14 Stainislaus v. Madhya Pradesh &Ors, (1977) 2 S.C.R. 611 (India).

15 Orissa Local Act, No. 2 of 1968 (came into force on January 9, 1968) and Madhya Pradesh Freedom of Religion Act, No. 27 of 1968, (Jan. 03 2017) http://persecutionindia.tripod.com/Resources.html.

16 Swatos, *supra* note 4.

17 Ismail Faruqui v. Union of India, A.I.R. 1995 S.C. 605 (India).

18 Acquisition of Certain Area at Ayodhya Act, No. 33 of 1993.

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practice of the Anandmargi Hindu faith, notwithstanding the contrary claim of religious leaders of the community[19].

Doctrine of reasonable accommodation

A reasonable accommodation is an adjustment made in a system to accommodate or make fair the same system for an individual based on a proven need. Accommodations can be religious, academic, or employment related and are often mandated by law. Each country has its own system of reasonable accommodations.

The United Nations uses this term in the Convention on the Rights of Persons with Disabilities, saying refusal to make accommodation results in discrimination. It defines a 'reasonable accommodation' as: "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;[20]

The doctrine of reasonable accommodation is a fairly new concept in India, but it is used explicitly in the legislation and jurisprudence of U.S.A. The underlying ratio for reasonable accommodation is related to the quest for equality, in particular substantive equality. It is all about realizing equal opportunities, leveling out the playing field by evening out barriers to full participation[21], such as (*de facto*) unequal access to employment, to public services, to religion and, more broadly, to social services.

In other words, accommodation measures are meant to address barriers to participation that particular (groups of) persons are confronted with due to an interaction between an individual's inherent characteristics, and the physical or social environment.[22]When persons with a particular type of religious dress

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19 Acharya Jagdishwaranand Avadhuta v. Comm'r of Police, A.I.R. 1984 S.C. 51 (India).

20 *Convention on the Rights of Persons with Disabilities,* 13 Dec. 2006, UNTS 61/106.

21 *See also* G. Bouchard and C. Taylor, Building the Future. A Time for Reconciliation (abridged report) (2008), at 68, where it is emphasised that accommodations are, above all, intended to protect minorities against shortcomings in the laws of the majority, not the opposite. The related forms of different treatment do not amount to granting a privilege, but are meant to engage in a reasonable adaptation to counteract the rigidity of certain rules or their uniform application, regardless of the specific traits of individuals.

22 *See inter alia* P. Bosset, Reflections on the Scope and Limits of the Duty of Reasonable Accommodation in the Field of Religion (2005), at 1; M. Jézéquel, 'The Reasonable Accommodation Requirement: Potential and Limits', in Council of Europe (ed.), Institutional Accommodation and the Citizen: Legal and Political Interaction in a Pluralist Society (2010), at 4-27. Bosset and Foblets add to this

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are not allowed to do a particular job or get access to a particular location, or to receive a particular service, this arguably amounts to numerous barriers to participation. Similarly, when the rigid use of working schedules or periods in which one can take a day off inhibits persons to comply with their religious prescripts pertaining to prayer, visits to places of worship and the like, this similarly complicates their effective participation in the societal fields concerned.

The ideology of reasonable accommodation is based on adopting or accepting certain practices, rituals, beliefs, faiths pertaining to a particular religion by the society as well as state. Reasonable accommodation is essential to give a proper space and environment for exercising the religious freedom by an individual or indigenous group.

The doctrine of reasonable accommodation in religious practices means that certain religious practices, belief shall be allowed or accepted as it is. But in India, this reasonable accommodation is confused with the 'essential religious practice'. The researcher if takes the classical example of the temple of Shanishingnapur, wherein earlier women devotees were not allowed to enter the inner sanctum. The Bombay High Court allowed the women to enter the inner sanctum to worship the idol. Now, here the question for consideration is whether allowing the entry in the inner sanctum of the temple amounts to reasonable accommodation or not. But the researcher is of the view that allowing women to enter the inner sanctum is not reasonable accommodation, but rather it is a classic example of free exercise of religious freedom.

While interpreting the doctrine of reasonable accommodation, care should be taken not to confuse it with the recognition of diversity. No person has the right to deny us the freedom of exercise of religion, then the question of allowing any religious practice would certainly not mean reasonable accommodation.

Further understanding what reasonable accommodation means in practicality, the researcher would like to take several examples. First of all, it is a practice in India that married woman shall apply bindi on their forehead. Similarly married women shall wear mangalsutra in their neck. But can we say that all such practices even if accepted by society as proof of being married can be a proof in eyes of law.

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line of reasoning that, as far as possible, democratic states must allow everyone to participate fully in society on an equal footing. This would be the main underlying idea of reasonable accommodation: *see* P. Bosset and M.C. Foblets, 'Accommodating Diversity in Québec and Europe: Different Legal Concepts, Similar Results?', in Council of Europe (ed.), Institutional Accommodation and the Citizen: Legal and Political Interaction in a Pluralist Society (2010), at 37.

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Rather in eyes of law, can it be reasonably accommodated as proof of marriage?

Under Hindu Law, the process of 'saptapadi' which is also a religious practice and belief, whether can be said to be reasonably accommodated? The 'saptapadi' is a sacred ritual in marriage, now acceptance of this ritual can be termed as reasonable accommodation is the question for discussion. The researcher for achieving the objective of understanding the meaning of reasonable accommodation has further tried to focus on its several aspects in forthcoming sections.

What is 'reasonable', and what is 'accommodation'?

The term 'accommodation' in its literal sense means accepting any religious practice as it is. If any religious practice is reasonable, then it can be accommodated easily in the mainstream. But if it is not reasonable, then it will be either modified or strucked down, for example the *case of jallikatupratha.*

If a certain religious practice which is essential to a religion is allowed than it is not 'accommodation', it is recognition of diversity. Allowing Sikh players to play basketball wearing turban is not reasonable accommodation, it is recognition of an essential practice. The term accommodation is also an illusion sometime, because something which shall be granted as a right is getting accommodated. The religious freedom means complete freedom to profess and practice religion. But if we include accommodation in religious freedom, it somewhere restricts its scope. The term accommodation itself reflects that the accommodated practice is recognized but recognized late. The courts after analyzing the practice as an essential practice try to accommodate it.

The researcher after going through several judgments of court comes to a conclusion that there is no strait- jacket formula to decide parameters of "reasonable' and 'accommodation'. But if a religious practice of a religion is essential practice of a religion then it will be accommodated automatically.

Doctrine of reasonable accommodation and paradigm of equality

In India, the concept of reasonable accommodation first emerged in equality law as a means of handling religious diversity. The doctrine of reasonable accommodation with special reference to religious freedom in paradigm of equality is developed by the judiciary. In India, the principle of secularism does not allow to give preference to any religion, or to differentiate between any religions.

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The Indian Constitution's religious freedom clauses (Articles 25 and 26) constitute an extremely complex web of relationships between individual, community and State. To navigate this web, the Courts have developed two broad doctrinal tools: (1) a distinction between the religious and the secular, and (2) the "essential religious practices" test. To achieve clarity on what is certainly a very confused aspect of Indian constitutional jurisprudence, it is important to map out the factual background within which these tools have been employed, the methodology used by the Court, and the manner in which the conclusion has been reached.

A look at the text of Articles 25 and 26[23] reveals that in order to effectively interpret what the Constitution requires, the Courts are required to at least to some extent ask and answer substantive questions about religion.

Article 25(1) guarantees the right to freedom of conscience, and the freedom to profess, practice and propagate religion. This right is made subject to a prefatory sub-clause, in the interests of "public order, morality, and health." Article 25(1) is similar to the religious freedom clauses in other liberal commonwealth jurisdictions, and standing by itself, would present no unique interpretive difficulties. However, Article 25(2)(a) allows the State to make laws "regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice." In some ways, the relationship between Article 25(1) and 25(2)(a) mirrors the relationship between Articles 26(b) and 26(d), which deal with the rights of religious denominations. Article 26(b) guarantees the right of religious denominations to manage their own affairs in matters of religion, and Article 26(d) allows the denomination to administer property in accordance with law (i.e., subordinating the right to manage property to State-made law). Now if you think of situations where there is a dispute between the State and religious practitioners over whether a particular practice is, say, "political" or "religious", the Constitutional text itself provides no further guidance on the issue.

There are at least four questions thrown up by the text. First – to what extent can the Court sit in judgment over whether a particular law is for "social welfare or reform"? Second - does such a law completely override religious freedom? Thirdly – what happens when a particular sect claims that it is not "Hindu", and therefore not subject to the second part of Article 25(2)(b)? And fourthly – what happens when a Hindu temple claims that it is not of a "public

[23] Article 26: Freedom to manage religious affairs-Article 26 gives every religious group a right to establish and maintain institutions for religious and charitable purposes, manage its affairs, properties as per the law. This guarantee is available to only Citizens of India and not to aliens.

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character"? It is clear that the last two questions, at least, will require the Court to ask questions pertaining to the nature and character of religion.

It is therefore clear that, ultimately, this is a question that the Courts must decide, and consequently, to an extent, the Courts will have to answer questions about whether something is religious or not. Article 25(2)(b) further allows the State to make laws "providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus[24]." Now, opening the gates of Sabarimala temples[25] for all women seems to be a reasonable accommodation on the part of court, wherein the courts have gave us a classic example of adapting reasonable accommodation in religious matters. The researcher believes that the court has tried to put every citizen at equal footing so as related to the matter of entering the Sabarimala temple.

Using the loudspeakers for Azan is not guaranteed by the Constitution. The protagonists of this thought took shelter of Article 19(1) freedom of speech and right to expression. However, nobody can claim a fundamental right to create noise by amplifying the sound of his speech with the help of loudspeakers. In this context, cracking of fireworks on Diwali & using loudspeakers for Azan in the morning had also come under Supreme Court's scrutiny. The Court restricted the time of bursting the firecrackers, and it does not in any way violate the religious rights of any person as enshrined under Article 25 of the Constitution.

In this context, the Government of India framed and published Noise Pollution Control and Regulation Rules, 1999. This legislation was amended in 2002 and empowered the State Governments to permit use of loudspeaker or public address system during night hours (between 10 pm and 12 pm mid-night) on or during the cultural or religious occasions for a limited period not exceeding 15 days.

The Supreme Court in *Church of God in India v. K.K.R. Majestic Colony Welfare Assn.*[26] held that the Court may issue directions in respect of controlling noise pollution even if such noise was a direct result of and was connected with religious activities.

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24 Pierre du Plessis, *Right to Religious Freedom and Equality: Constitutional Rights to Practice One's Religion,* ANZELA CONFERENCE 2016 (Jan. 18, 2018) https://www.lawyerseducation.co.nz/site/nzlaw/files/ANZELA%202016%20Conference%20papers/18.%20du%20Plessis.pdf.

25 Indian Young Lawyers Association v. State of Kerala & Others, WRIT PETITION (CIVIL) NO. 373 OF 2006.

26 Church of God in India v. K.K.R. Majestic Colony Welfare Assn., AIR 2000 (SC), 576 (India).

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The researcher is of the view that not allowing the use of loudspeakers for azan does not mean that we are not accommodating their religion. But it means that since it is not essential to recite azan on loudspeaker only. But during holy month of Ramzan no objection is raised on use of loudspeakers for azan, it is reasonable accommodation of a religious practice, so as the Muslims will perform their religious rituals on specific timings.

The BMC had banned the sale of meat for four days during the 'paryushanparv' of Jain religion. Now, the people who are not Jain are of the view that ban on sale of meat is violating their right to equality. The people who would sale or buy meat would nowhere be intersecting with the right to religion of Jain people who will be observing the 'paryushanparv'. Therefore, such example in India now also reflects the lack of judging and testing every religion at equal front. But irrespective of this the courts are of the view that they do not differentiate between any religions. Therefore, all religions are treated equally in India, no preference or differentiation can be carried out. But the paradigm of equality can be only infused in reasonable accommodation for essential religious practices.

Reasonable accommodation with special reference to religious Freedom

The 'religious accommodation' issue (i.e. whether the state should be required to adjust the law to make space for religious practices) is complicated for reasons that relate both to the function of law and the nature of religion. Laws seek to advance public interests, the rights and welfare of community members and are framed in general terms. And while religion is often concerned with what might be described as personal/spiritual matters, it sometimes addresses matters of civic concern. Religious beliefs sometimes have something to say about the rights and interests of others and about the way in which society should be organized.

The conflict between religion and law may be described as indirect (or incidental), when the religious practice conflicts with the means chosen to advance public policy (the way in which a policy is advanced) and not with the policy itself. For example, the government may have decided on a particular route for a new highway, only to discover that its preferred route runs through an area that is sacred to an aboriginal group[27].In such a case it may be possible for the state to advance its purpose in a different way, through different means, so that it does not interfere (at least to the same degree) with the religious practice or space. But the practice in today's era suggest

[27] Such a claim was rejected in the U.S. Supreme Court judgment of Lyng v. Northwest Indian Cemetery Protective Association, 485 U.S. 439 (1988) (USA).

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that such sacred places are shifted somewhere else. It is not accommodation of religious practice or belief.

It is important to recognize, that even in the case of what might be described as an indirect conflict between law and religion, the adoption of different means will often detract to some extent from the law's ability to advance a particular policy.

In the case of an indirect or incidental conflict between law and religious practice, "Doctrine of reasonable accommodation" is an appropriate response (or an appropriate way to describe the response), even though in practice the state may be asked to do very little accommodating. "Reasonable accommodation" analysis asks whether the law (the way in which it advances its policy) can be adjusted so that it does not interfere (to the same extent) with the religious practice, without compromising the law's public purpose in any significant way. When applying this test, and determining whether a religious practice should be accommodated, there may be disagreement about the extent to which government policy should be compromised.

The researcher would like to mention that the courts have not been willing to require the state to compromise its policies in any serious way[28]. Sometimes, though, the conflict between religious practices and public policy is more direct, in the sense that the law is pursuing a policy (a public value) that is directly at odds with the religious practice. In such a case the conflict between the law and religious practice cannot be avoided or reduced by the state simply adjusting the means it has chosen to advance its public purpose. If law-makers have decided, for example, that corporal punishment of children is wrong and should be banned or that sexual orientation discrimination is wrong and ought to be prohibited, how is a court to decide whether an exception to these norms or requirements should be granted to a religious individual who believes that corporal punishment is mandated by God or that same-sex relationships are sinful and should not be supported? The issue for the court in the first example is not whether physical discipline is effective or whether the value or utility of physical discipline outweighs its physical and emotional harm to children. Nor is the issue whether parents should have the right to make judgments about the welfare of their children without state interference, which if resolved in favour of parental autonomy would result in the striking down of the ban and not just the creation of an exception for some parents.

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28 Multani v. Commission Scolaire Marguerite-Bourgeoys, [2006] 1 SCR 256 (India)

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A court's willingness, in a particular case, to exempt a religious individual or group from a public norm to treat the individual's/group's practice as part of the "private" sphere may depend on two related considerations. The *first* is whether the practice has an impact on the rights or interests of others in the community, or whether it is simply personal to the individual or internal to the religious group.

The *second* (but related) consideration is whether membership in the religious group is seen as voluntary. The internal operations of a group will be exempted from public norms (for example anti-discrimination rules) only if the members of the group have a meaningful right or opportunity to exit the group and are not thought to require protection from intra-group oppression. An individual's identity may be tied in a deep way to her/his religious group; and so exit from the group may be difficult even when there are few material barriers. The individual's exit from her/his religious community may be difficult for the very same reason that community autonomy is important.

The difficulty in determining when an exemption should be granted is nicely illustrated by the superficially simple case of a claim to exemption from a paternalistic law. A religious exemption may be appropriate in the case of paternalistic laws that preclude individuals from engaging in "risky" activities that are required by their faith: for example, an exemption for Sikh men from a law that requires everyone to wear a helmet when riding a motorcycle or bicycle. Paternalistic laws are intended to protect individuals from their own bad decisions. A commitment to religious freedom may at least limit the state's power to treat "self-regarding" religious practices as unwise as something against which the individual needs to be protected. Yet, even in the case of apparently paternalistic laws, the courts have been hesitant to recognize exceptions to treat the practice as a private matter[29]. The reluctance to recognize a religious exception in such cases appears to be based on a realization that no law is simply paternalistic (a private matter) and that any time an individual is injured there will be an impact on others, including friends and family members, employers, co-workers, and of course the general community, which must cover the injured person's medical costs.

First, accommodation may sometimes be given in the case of a religious practice that conflicts indirectly with the law. In such a case the court may require the state to compromise, in a minor way, its pursuit of a particular objective to make space for the religious practice. Second, in the case of a more direct conflict between a

29 R. v. Badesha, 2008 ONCJ 94; 2011 ONCA 60.

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religious practice and a public norm, the court will require the state to exempt (accommodate) a religious individual or group from the law only if this will have no real impact on others in the community. In such a case the practice will be treated as private and insulated from the application of the law.

Conclusion

The researcher can conclude that reasonable accommodation is something that is allowed discretionarily, which is usually not granted as a privilege. Any religious practice which needs to be accommodated in any religion is accommodated in the form of privileges for free exercise. This leads us to the ideology of right enabling concept. Therefore reasonable accommodation of religious practices can also be termed as right enabling concept which is usually not granted. The ideology of recognition of diversity is confused as reasonable accommodation in some cases, but in reality the recognition of diversity is not reasonable accommodation but it is pluralism. Therefore a reasonable accommodation of a religious practice has to be necessarily a privilege. Lastly, the researcher is of the view that reasonable accommodation is nothing but a delayed acceptance of a religious practice.

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