

Polity Class 21

26th September, 2023 at 1:00 PM

FREEDOM TO PROPAGATE RELIGION (01:06 PM)

- It means to spread and to publicise one's religious views.
- Through this right, one can communicate one's religious views by teaching, preaching and writing with the explicit intention of convincing others about the goodness of one's religion.
- In the 1970s, the Madhya Pradesh state legislature came up with an anti-conversion law that made the act of conversion through allurement, coercion and fraud illegal.
- In *Stanislaus vs. State of Madhya Pradesh*, the law made by the legislature was challenged on the grounds of violating Article 25. The court held that anti-conversion laws are not unconstitutional as the right to propagate one's religion is not an absolute one.
- The State may make laws on the grounds of public order to restrict individuals from converting others through fraud, coercion etc.

FREEDOM TO PRACTICE ONE'S RELIGION (01:18 PM)

- It concludes the right to perform religious duties, rituals, and ceremonies prescribed by one's religious order. Taking out religious processions, and conducting religious worship is an intrinsic part of this right.
- The right to Freedom of religion is not a fundamental right. This right can be restricted by the state on the grounds of Public order, morality, health and other fundamental rights.
- According to Article 25(2), Laws to regulate secular matters such as Economic, Financial, and Political activity associated with religious matters can be enacted by the state.
- Article 25(2)(b) allows the state to regulate even religious activities or religious matters for the purpose of social welfare or social reforms.
- Thus the law that was enacted to regulate the Sati system or child marriage did not violate FR of Freedom to religion.
- This Article also allows the state to throw open Hindu temples for all sections of the Hindu society.

TEST OF ESSENTIALITY OR ESSENTIAL RELIGIOUS PRACTICE TEST (01:40 PM)

- This doctrine was laid down by the court in the *Shirur Mutt* case in 1954.
- Essential religious practices mean all those practices that are fundamental to a religion and not following them would result in a change of the religion itself.
- Denying essential religious practices would violate Article 25 of the Constitution.

- Even though this doctrine does not have any constitutional basis, one can trace its origin to a statement made by Dr. Ambedkar in the constituent Assembly-
- "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 should strive to limit the definition of religion in such a manner that we shall not extend it beyond beliefs and such ritual as may be connected with ceremonies which are essentially religious "
- In the Tandava dance case, the court ruled that what determines if a practice forms an essential part of religion is whether the absence of practice fundamentally alters the religion.
- In the Triple Talaq case, the court held that Triple Talaq was against the basic tenets of the Quran. A practice merely permitted or not prohibited by religion can not be considered an essential practice of religion.
- In the Dawoodi Bohra case, the court stated that the essential practice should be determined from the text of the religion.
- Critical Analysis of Essential Practices Test
- This doctrine has been criticized by several constitutional experts on the grounds that it allows the court to enter into areas that are purely religious in nature. The court does not have any expertise on religious matters and ideally should stay away from them.
- Not only that, the court itself has been inconsistent in determining what constitutes essential religious practice. For example in some cases, they have relied upon religious texts and in others on the empirical behaviour of the followers and in some other cases on whether the practice existed at the time of origin of the religion. It has therefore resulted in uncertainty and confusion.
- In the Sabarimala case, Justice Indu Malhotra in her dissenting note, noted, 'matters of religion and religious beliefs should not be seen from the lens of rationality and the courts should refrain from entering into such matters'.
- Therefore, there is a need to find an alternative to this doctrine to find a fine balance between the religious beliefs, the views of the community and the basic principles of the Constitution.
- Also, in such situations, we may follow the principles of constitutional morality.
- Principle of constitutional morality (02:35 pm)
- It refers to steadfast adherence to the values of the Constitution and going beyond the literal text of the Constitution to interpret its true meaning.
- Even though Justice Chandrachud invoked this doctrine in the Sabarimala case, the court has relied upon the same in several other cases Such as Kesavananda Bharti vs. the State of Kerala, Maneka Gandhi vs. UOI case, Navtej Singh Johar vs. UOI, Naz Foundation vs UOI case,

- **Article 26 recognises the religious rights of Religious denominations in India.**
- **A religious denomination is a group within a religion with a distinct name, identity and a set of beliefs.**
- **It provides religious denominations with a bunch of rights including-**
- **Setting up institutions for charitable purposes**
- **Managing affairs with respect to religion**
- **Acquiring immovable and movable property**
- **Administering such property in accordance with the law.**
- **These rights are not available to a religion as a whole but rather to sections within a religion referred to as religious denominations.**
- **Article 27**
- **It prohibits the state from collecting taxes for the promotion and maintenance of a particular religion and is consistent with the spirit of secularism imbibed in the Indian constitution.**
- **A fee imposed by a temple for the maintenance of premises can not be considered a tax as the fee is levied in return for the services provided by the temple.**
- **The court has stated that a fee involves an element of Quid pro Quo where special services are rendered for the benefit of those from the payment received.**
- **Prohibition on religious education and worship in certain educational institutions(EIs)**
- **Article 28(1): EIs maintained fully out-of-state funds - No religious education or worship allowed.**
- **Article 28(3): EIs receiving aid from the state funds or seeking recognition from the state - Receiving religious education or involvement in religious worship is at the choice of the student or his guardian/parent (Can not be made compulsory).**
- **Article 28(2): Those educational institutions which were set up under a religious trust for the promotion of a particular religion are not limited by Article 28(1) despite the funds provided by the state.**
- **In Aruna Roy vs. UOI, the court held that there is no prohibition on the studies of religious philosophies and culture under Article 28.**
- **In fact, a comparative study of religions is important for building a value-based social life that is degenerating every day in society due to the want for power and money.**

ARTICLE 29 AND 30 (03:45 PM)

- **Article 29: Protection of interest of minorities**

- **Article 29(1)-** It aims at preserving the unique diversity and culture of India. Even though the title of Article 29 mentions the term minorities, it is equally applicable to the majority community as well.
- **Any section of the citizens having a distinct language, script or culture has the right to preserve the same.**
- **Article 29(2)-** It prohibits discrimination in matters of admission in educational institutions maintained by the state or receiving state funds on the grounds only of religion, race, caste, language or any of them.
- **A notable ground missing from this provision is sex as the constitutional makers wanted to leave a window open for promoting girls' and women's education in India.**
- **Article 30-**
- **It is a provision unique to the Indian Constitution that allows linguistic and religious minorities to establish and administer educational institutions of their choice.**
- **The main purpose behind this provision is to allow the minority community to maintain their unique tradition and culture and exercise the right under Article 29(1).**

TOPIC OF THE NEXT CLASS - ARTICLE 30, 31, DPSP
