

BRIEF REPORT OF WEBINAR

ESSENTIAL RELIGIOUS PRACTICES: JUDICIAL INTROSPECTION

On 22ND MARCH 2022 at 12:30 PM Cisco WebEx:

<https://rtmnunagpur.webex.com/rtmnunagpur/j.php?MTID=mad9b2ae3d0e28b5ff328eb4852688753>

YouTube link of webinar:

<https://youtu.be/TXxvCXGHOGI>

Webinar on the topic " ESSENTIAL RELIGIOUS PRACTICES: JUDICIAL INTROSPECTION " was organized by the

Post Graduate Teaching Department of Law, Rashtrasant Tukadoji Maharaj Nagpur University, Nagpur and centre for women's studies & Development RTMNU under the supervision of Dr. Girish Kulkarni, Assistant Professor, PGTD of Law, RTMNU and Dr. Payal Thaorey, HOD & Assistant Professor PGTD of Law, RTMNU and the resource person for the webinar was Hon'ble. Dr Sanjay Jain Principal, ILS Law college, Pune, on 22nd March 2022 at 12:30 P.M at PGTD of Law Through Cisco WebEx.

In the beginning of the webinar the convenor of the Webinar Dr. Girish Kulkarni, Assistant Professor, PGTD Of LAW, RTMNU and Co-convenor Dr. Payal Thaorey, Head and Assistant Professor, PGTD of Law RTMNU welcomed the Hon'ble Resource Person Prof Dr. Sanjay Jain and all the participants.

Dr Sanjay Jain sir has shared his experience and knowledge on the topic of this Webinar i.e., ESSENTIAL RELIGIOUS PRACTICES: JUDICIAL INTROSPECTION The brief outline of his session are as follows:

The constitution has to be understood primarily in textual manner and not on the basis of hypothesis but the text of the constitution has to be understood in the light of context and spirit. When we read Article 25 & Article 26 nor implicitly neither explicitly there is a mention of Essential religious practices so the question arises how does judiciary reach to the point of evolution of this doctrine and does the doctrine of ERP (i.e., Essential religious practices) is utilised by the courts.

To discuss the protection of article 25 for the practices followed in the religion in the Laxminder case Supreme court has agreed that offering of prasadam at uniform interval is essentially religious and hence protected but in the case of Sethi, Allahabad High court have slightly altered the question that whether to marry 2nd time is essential religious practice, there is a difference of understanding: - Firstly something is essentially religious & secondly something religiously essential. In this debate the doctrine of ERP which requires judges to be expert of religious matter becomes very unjustified, the judges of one religion cannot have the authority and expertise to talk about practices of other religious belief. The very doctrine of ERP is super imposition of non-constitutional principles on constitution. This doctrine is imaginary and if it is far from the inclusive ideals of constitution.

With reference to the Jain practice of Sallekhana which is not held as fewer religious practices and hence unconstitutional appears to be the misunderstanding of Jain religion and

constitutional practices. The merit of argument is how can judges decide what is religiously significant? The protection of Article 25 and Article 26 is with a view to allow the people to assert their identities to oppose others. Unfortunately, in the hijab's controversy it is not religious interest at play but in the name of educational interest of the students, political motives are targeted when there are ulterior motives behind controversy cannot be decided with plain adjudication of disputes it requires the political solutions only.

After the informative session a Q&A session was conducted. Some of the interesting questions addressed by Sir are as follows: -

Question 1. If secularism says state has no religion of its own, then funding of public money by Government towards or promotion of particular religion is not violation of secularism?

Ans: Article 27 very clearly says that no tax may be imposed to promote a particular religion but nowhere constitution says that state should not provide assistance for performance of such religious ceremony which are culturally significant or important sometimes, for example 2500th birth anniversary of Bhagavan Mahavir, it is not merely a religious ceremony for Jain's but it is also a cultural milestone, so culture and religion is a complex blend. For example, when you go for jirnobdhar of any temple, temples are not merely places of worship of particular religion but they are more signified cultural heritage. When it comes to any particular thing like providing subsidy to go for Haj yatra or Government gives money for going to tirtha yatra these are controversial issues these issues should be looked differently. But when it comes to protecting symbols or celebrating general festivals, they are both cultural and religious as long as Government is not discriminatory & government is able to help all religions & as per speaker there is nothing wrong in funding.

Question 2. Sacrifice of human being or animal to offer to an idol or God in name of mannat or practice of dev dashi is an essential religious practice?

Ans: Not at all in fact public order, morality and health this are the 3 important constraints subject to which only freedom of religion can be entertained and legislation banning human sacrifice or legislation banning even the sacrifice of animal can be justified under public order, morality or health and in fact there is no need to invoke the doctrine of ERP. You will be textually correct, textually upright if you use the language of article 25 rather than invoking the fiction of ERP in speakers' opinion ERP is a fiction and on other than language of Art 25 and Art 26 is a reality.

After these Enlightening answers the webinar was concluded with a Vote of thanks given by Dr. Girish Kulkarni, Assistant Professor PGTD of Law RTMNU.