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THE OTHER SIDE OF FREEDOM OF RELIGION IN INDIA

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Introduction

Freedom of religion is considered as the precious possession of every individual from the inception of mankind (Harold E., 2002).² Every modern nation in the world, in their Constitutions, clearly establishes the right to freedom of religion, belief, faith, thought, and expression of all these freedoms to all its citizens. Many a time, these expressions and practices attributed to religions, faith and beliefs become blind. Citizens or the people following such blind belief and faith on religion and practising so-called religious activities infringes forcefully the human right of others to live with dignity and status. The recent news and reports from print and television media reveals the truth that exploitations in the name of black magic are on the rise in Kerala as well as in India.³

Superstition- General meaning.

The term ‘Superstition’ is a complex term having no clear definition. In practical sense superstition is an elastic term which could be at once narrowly defined to exclude individual practice and also can be stretched to include a wide spectrum of beliefs, rites,

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² See generally Lurier, Harold E. (2002), *A History of the Religions of the World*, Indiana: Xlibris Corporation Publishers.

³ See for examples, The search list generated in NDTV website for the key word “Black Magic”, a minimum of 40 recent reports could be identified. URL: <http://www.ndtv.com/topic/black-magic> (Last visited March 11, 2016); see also, Shiva Dev Nath (2016), “Mumbai:Man Held For Digging In Neighbour's Home For Black Magic Ritual”, *NDTV*, Mumbai, (January 15, 2016), [Online: Web] Accessed 11 March 2016, URL: <http://www.ndtv.com/mumbai-news/mumbai-man-held-for-digging-in-neighbours-home-for-black-magic-ritual-1266086>; The death of two girls in Kerala (one in Kollam district and another in Pathanamthitta district), in December 2014, was allegedly due to physical and mental torture suffered during Black magic performed to rid them of being possessed; “Kerala plans bill to contain black magic and exorcism”, *THE ECONOMIC TIMES* (December 4, 2014), [Online: Web] Accessed 11 March 2016. URL:http://articles.economicstimes.indiatimes.com/2014-12-04/news/56723435_1_black-magic-anti-superstition-bill-awareness-campaign..

rituals and practices. It is very difficult to give a restricted definition of what ‘is’ or ‘is not’ a superstitious act (Parish and Naphy, 2002).⁴

Superstition is that which contradicts the natural science and holds on to belief in some type of supernatural causality. It asserts that one event causes the other event to occur, without establishing any sort of natural process or link among the two events (Rajvir Singh, 2014).⁵ The word ‘Superstition’ has been derived from the Latin word – “*Superstitio*”, which means excessive fear of the god.⁶

According to Collins English Dictionary,⁷ ‘Superstition’ is an irrational belief usually founded on ignorance or fear and characterized by obsessive reverence for omens, charms etc. Richard Webster (2012) argues that ‘superstition’ is that it is a notion, act or ritual that derives from such beliefs; and any irrational belief, especially with regard to the unknown.⁸

Superstitious is a person who believe in superstition or one who is influenced partially or fully by superstition. A superstitious person shows ignorance of the laws of nature; not apply logic or reason; show faith in luck, magic, chance or miracle; believe that horror he felt or the bad luck/ phase he was facing was due to some paranormal or unnatural forces. A superstitious person cultivates irrational fears with him.⁹

⁴ Parish, Helen and Naphy, William. G (2002), *Religion And Superstition In Reformation Europe*, Manchester University Press.

⁵ Singh, Rajvir (2014), “Superstitiousness : The Surviving, Devastating and Exaggerating Ancient Demon”, *International Journal of Arts & Education Research* (April-May 2014/Volume-3/Issue-3/Article No-3), [Online: Web] Accessed 11 February 2016, URL: http://ijaer.org/admin/upload_journal/journal_Rajvir%20Singh%20%203apr-may2014aer.pdf.

⁶ *Webster’s New World College Dictionary 1138* (New Millennium –Fourth Edition, Wiley India Publishers, 2007).

⁷ *Collin’s English Dictionary and Thesaurus 1197* (21st Century Edition, Harpur Collins publishers, 2000).

⁸ See generally Webster, Richard (2012), *The Encyclopaedia of Superstitions*, Llewellyn Worldwide Publishers.

⁹ See supra n. 4.

Religious Superstition in India

Now a days, Superstitious thinking, and practices are considered as a widespread social problem in India. Superstition refers to any belief or practices which presuppose a faulty understanding about cause and effect, usually by assuming notions of casualty that have been rejected by modern science, but many represent long standing popular beliefs or practices. These superstitions are centuries old, deep rooted and considered as part and parcel of our daily routine life, part of our tradition, culture.

Joanne O' Sullivan (2010a) claims that superstitions are not limited to a particular religion, class, caste, creed, community, or society, region, State or Country; but they are universal in their presence.¹⁰ Also, Sullivan (2010b) elucidates numerous practices ranging from harmless Lemon-and-Chilly totems for warding off evil eye to serious concerns like witch-burning and exorcism.¹¹ Some of these beliefs and practices are centuries old and are considered part of the tradition and religion by a small of fundamentalist in every stake. The beliefs and practices vary from religion to religion, with many religions having their own specific beliefs. It is often very difficult to distinguish faith from superstition. Superstitions change with respect to time and the individual.¹²

All Superstitious beliefs and practices cannot be said to harmful to any fundamental or legal right of any person. But some practices are not so. They may even cause to the death of human or animals. The practices which cause blatant violations of fundamental rights of common man are like branding women as witches and making them walk without clothes and beating them; persuading people to substitute medical aid by tying threads or getting bitten by a snake, dog, or scorpion; threatening to bring evil upon someone through supernatural powers; claiming to change the sex of the foetus by inserting fingers in the womb; one's supernatural powers can help a woman get

¹⁰ See generally O'sullivan, Joanne (2010), *Book of Superstitious Stuff: Weird Happenings, Wacky Rites, Frightening Fears, Mysterious Myths & Other Bizarre Beliefs*, Charlesbridge Publishers.

¹¹ O'Sullivan, Joanne (2010), *Book of Superstitious Stuff: Weird Happenings, Wacky Rites, Frightening Fears, Mysterious Myths & Other Bizarre Beliefs*, p.119, Charlesbridge Publishers.

¹² Dr. Narendra Dabholkar, *Faith and Superstition*, [Online: Web] Accessed 11 February 2016, URL: http://www.antisuperstition.org/index.php?option=com_content&view=article&id=145.

pregnant if she had sex with him; and that a disabled person has supernatural powers and thus using them for commercial purposes.

Recent reported cases in India and statistics

Due to lack of proper research and studies in this particular area, the statistics on all specific crimes based on superstitious beliefs, blind belief, and black magic is not so far available. But in the case of witch-hunting alone, incidents and cases has been compiled and recorded by the National Crime Record Bureau (NCRB) are available.¹³ In fact, a search of newspapers and internet reports reveal that there are at least fifteen states in India that can be identified with increased incidence rates for crimes based on superstitious activities.¹⁴ The increasing graph of crimes in the name of superstitious beliefs and agitations from various organizations has compelled some states to enact necessary legislation against such appalling practices.¹⁵

Indian Legal Position – Existing Scenario

Majority of states even today devices the provisions of Indian Penal Code to take cognizance of criminal charges over crimes committed over superstitious beliefs. In certain matters like, advertisement of magical drugs and treatments, provisions of the Drugs and Magic Remedies (Objectionable Advertisements) Act is also made applicable.¹⁶ However the escalating figures proved its inefficiency and compelled some states to formulate specific legislation for the purpose of curbing such crimes especially when targeted against women and children in the name of witch hunt. Six states have already formulated specific laws in this regard and some others are on the process of drafting new legal instruments. The states like Chhattisgarh¹⁷, Bihar¹⁸, Jharkhand¹⁹, and

¹³ See Dr. Rakesh K. Singh, *Witch-Hunting: Alive and Kicking*, [Online: Web] Accessed 12 Februaury 2016, URL: www.isidelhi.org.in/wl/article/rakesh1701.pdf.

¹⁴ The following are the said fifteen states:- Jharkhand, Haryana, Chhattisgarh, Orissa, Wes Bengal, Madhya Pradesh, Rajasthan, Andhra Pradesh, Gujarat, Maharashtra, Assam, Meghalaya, Tamil Nadu, Kerala, and Bihar.

¹⁵ “NCW demands stringent law against witch-hunts”, *The Hindu* (New Delhi edn., June 4, 2013), [Online: Web] Accessed 12 Februaury 2016, URL: <http://www.thehindu.com/news/cities/Delhi/ncw-demands-stringent-law-against-witchhunts/article4777416.ece>.

¹⁶ The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. This is an Act intended to control the advertisement of drugs in certain cases, to prohibit the advertisement for certain purposes of remedies alleged to possess magic qualities and to provide for matters connected therewith.

¹⁷ Chhattisgarh Tonahi Pratadna Nivaran Act, 2005.

Maharashtra²⁰, have made specific legislations in this regard. On the lines of legislation in Maharashtra, the State Government of Karnataka is also now in favour of a law against superstition and black magic.²¹ Assam and Rajasthan has also brought their own laws in this regard, very recently. The Assam Assembly on 13th August 2015, unanimously passed the Assam Witch Hunting (Prohibition, Prevention and Protection) Bill, 2015 making any offence under the Act as non-bailable, cognizable and non-compoundable to eliminate the superstition from society.²² The new Legislation proposes stricter punishment ranging from three years to life imprisonment. It also proposes action against negligence in investigation, formation of special courts for trial of witch-hunting cases and free legal aid to victims, among other provisions. In Rajasthan, The Rajasthan Prevention of Witch-hunting Bill, 2015 was passed to provide for effective measures by accruing responsibility on the law and order machinery to take preventive measures against two crimes witch-hunting and witch-craft.²³ States like Kerala, are working on bringing a legislation to curb such menace in there. The Kerala government has made a working draft of its anti-superstitions legislation called Kerala Exploitation by Superstition (Prevention) Act, 2014.²⁴ The demand for Anti-superstitious legislation at the national level is also very much existential.²⁵

¹⁸ Prevention of Witch (Daain) Practices Act, 1999.

¹⁹ Jharkhand Prevention of Witch (Daain) Practices Act, 2001.

²⁰ The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 (Maharashtra Act No. XXX of 2013).

²¹ “Anti-superstition Bill soon”, *The Hindu* (Karnataka ed., 2 November 2015), [Online: Web] Accessed 11 February 2016, URL: <http://www.thehindu.com/news/national/karnataka/antisuperstition-bill-soon/article7831287.ece>.

²² The Assam Witch-Hunting (Prohibition, Prevention and Protection) Bill, 2015. See, “ Assam Assembly passes Bill to end witch-hunting”, *The Hindu* (Guwahati ed., 14 August 2015), [Online: Web] Accessed 13 February 2016, URL: <http://www.thehindu.com/news/national/other-states/assam-assembly-passes-bill-to-end-witchhunting/article7538350.ece>.

²³ The Rajasthan Prevention of Witch-Hunting Bill, 2015. See “Rajasthan introduces Bill against witch-hunting,” *The Hindu* (Jaipur edn., April 2, 2015), [Online: Web] Accessed 11 February 2016 URL: <http://www.thehindu.com/news/national/other-states/rajasthan-introduces-bill-against-witchhunting/article7061645.ece>.

²⁴ This draft legislation says all acts “purported to be undertaken invoking supernatural or magical powers, with the intention of obtaining wrongful gratification” will be made accountable as “exploitation by superstition.” See “ Kerala ready with draft law against superstition”, *The Hindu* (Thiruvananthapuram ed., July 2, 2015), [Online: Web] Accessed 11 February 2016, URL: <http://www.thehindu.com/news/national/kerala/draft-law-against-superstition/article7482216.ece> (Last visited February 11, 2016); See also, “ Kerala plans law against superstition”, *The Hindu*

Criticism against Anti-superstitious laws

The main allegation against the anti-superstitious laws is that they are anti-religious in effect, though, a close analysis of such Anti-superstitious laws shows that they are not so.²⁶ It is just that legislative intention of such anti-superstitious laws is reformatory in character and the new laws, more or less, resemble with the reformatory legislations in the past.²⁷ Lyla Bavadam (2006) explains clearly and highlights that none of such Anti-superstitious law targets any religion or sect but only targets fraudulent practices in the name of God and religion.²⁸ It is to be noted that it is not against the law to make a miracle happen but instead it criminalises those frauds who claims to be a miracle maker and cheats at the expense of one's belief.

Thiruvananthapuram ed., July 2, 2015), [Online: Web] Accessed 11 February 2016, URL: <http://www.thehindu.com/todays-paper/tp-national/tp-kerala/kerala-plans-law-against-superstition/article7376813.ece>.

²⁵ Before one year, Vice President of India Hamid Ansari called for making the Anti-Superstition law in national level based on the legislation of Maharashtra as a model one. He also stressed the importance of rational thinking. See, "Make Maharashtra Anti-Superstition law national: Ansari", *Zee News Channel* [Online: Web] Accessed 27 February 2015, URL: http://zeenews.india.com/news/india/make-maharashtra-anti-superstition-law-national-ansari_1553852.html.

See also "National anti-black magic bill required: Dabholkar's daughter", *The Hindu* (New Delhi ed., September 16, 2013), [Online: Web] Accessed 11 February 2016, URL: <http://www.thehindu.com/news/national/other-states/national-antiblack-magic-bill-required-dabholkars-daughter/article5134507.ece>.

²⁶ See, *Introduction to the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013* (Maharashtra Act No. XXX of 2013). The Introduction to the said Act reads as follows, "*An act to bring social awakening and awareness in the society and to create a healthy and safe social environment with a view to protect common people in the society against the evil and sinister practices thriving on ignorance, and to combat and eradicate human sacrifice and other inhuman, evil, sinister and aghori practices propagated in the name of so called supernatural or magical powers or evil spirits commonly known as black magic by connen with sinister motive of exploiting the common people in the society and thereby destroying the very social fibre of the society; and for matters connected therewith or incidental there to.*"

²⁷ See, e.g., The Commission of Sati (Prevention) Act, 1987, Karnataka Devadasi (Prohibition of Dedication) Act, 1982, Immoral Traffic Prevention Act, 1956, Bombay Devadasi Prohibition Act, 1934, Sati Pratha Regulation, 1829.

²⁸ Bavadam, Lyla, "Bold but fuzzy", *Frontline* (August 12 - 25, 2006), [Online: Web] Accessed 11 February 2016, URL: <http://www.frontline.in/static/html/fl2316/stories/20060825001104900.htm>.

In order to understand that these anti-superstitious laws are not against Freedom of religion, there is a primary need to understand the meaning and concept of religion and Freedom of Religion in Indian context.

Freedom of religion under Indian Constitution

It is highly pertinent to note that the term 'religion' does not occur in the text of Preamble to the Indian Constitution, while it purports to secure all its citizens the "liberty of thought, expression, belief, faith, and worship." The idea so expressed in the Preamble is an important element in conceptualising the freedom of conscience and the rights to profess, propagate and practise religion, guaranteed under Articles 25²⁹ and Article 26³⁰ of the Constitution titled "Right to Freedom of Religion".

The guarantee of freedom of conscience and the right freely to profess, practise, and propagate any religion by Article 25(1) to every person³¹ is not absolute. The exercise of the right is subject to restrictions which may be imposed by the state on the following grounds:

1. Public order, morality, and health;
2. Other provisions of Part III of the Constitution;
3. Regulating nonreligious activity associated with religious practice;
4. Social welfare and reform;

²⁹The Constitution Of India Article 25 (1) & (2). It reads as follows, "*Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.*" Clause (2) of Article 25 further reads as follows, "*Nothing in this Article shall affect the operation of any existing law or prevent the state from making any law—*

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) 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."

³⁰ The Constitution Of India ARTICLE 26. It reads as follows, "*Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—*

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law."

³¹ Emphasis added. It may be noted that this right is not confined to citizens alone, but applicable to all persons residing in India.

5. Throwing open Hindu religious institutions of public character to all classes of Hindus.

Similarly under the clause (2) of Article 25, the State may make laws regulating or restricting, any economic, financial, political or other secular activity which may be associated with religious practice, or to provide for social welfare and reform or to throw open Hindu religious institutions of a public character to all classes and sections of Hindus.³² Also, Article 26, which guarantees to every religious denomination certain rights such as for the purposes of establishing, maintaining and administration of institutions, is subjected state concerns of public order, morality and health.

Meaning of religion, belief and faith in Indian context

In a pluralistic society like India, there are numerous religious groups with diverse forms of worships, practices, rituals, rites etc. It is very difficult to make a common understanding as to what religion is and what matters are of religious belief or practice.

Meaning of religion or the question as to what constitutes 'religion' can be ascertained only with reference to the various ingredients which are commonly associated with most of the religions such as:³³

- i. The assumption of a superior order of existence or life superior to our earthly existence and mundane affairs;
- ii. The concept of a creator or Supreme Being;
- iii. Belief in certain ethical rules of conduct for the up-liftment of a human being to a higher stratum.

However, by analysing the Indian Constitution and by judicial precedence, we can say that religion is a matter of faith. It is definitely a matter of belief and doctrine. It must be capable of overt expression in word and deed, such as, worship or ritual. There is no formula of general application and no knife-edge test.³⁴

³²The Constitution Of India Article 25, cl. 2.

³³ Basu, D.D *Commentary on the Constitution of India*, Vol. III, Y.V. Chandrachud CJ. *et al* (eds), 8th edn., 2008,3472.

³⁴ S.P. Mittal v. Union of India, AIR 1983 SC 1; (1983) 1 SCC 51 (Supreme Court of India).

The Concept of Essentiality in the Religion and Inhumane superstitious practices

The concept of essentiality is not a determinative factor in deciding the question regarding anti-superstition. Yet it is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself³⁵, in order to address the question whether an impugned action or belief is superstition or not.

However, the Constitution neither clearly defines nor distinctly identifies what is 'essential practice' to a religion. The plain reading of Articles 25 and 26 of the Constitution of India also does not make clear the idea. The judicial interpretations clearly stated that the rights guaranteed extend to rituals, observances, ceremonies, and modes of worship which form part and parcel of a religion. Only those practices which are integral part of religion are protected under Article 25(1). What would constitute to be essential part of religion or religious practice is to be ascertained with reference to the facets of a particular religion which includes practices which are regarded by the community as part and parcel of that religion.

In *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta*,³⁶ it was held that essential part of a religion means the core beliefs upon which a religion is founded. It was further held that essential practice means those practices that are fundamental to follow a religious belief and is the cornerstone or the superstructure of religion upon which a religion is built. Thus essential practice is the practice without which, a religion will be no religion.³⁷ In order to find the essential practices to the religion, it is to be tested that whether the nature of religion will be changed without that part or practice. If the detachment of that part or practice from the religion could result in a fundamental change in the character of that religion or in its belief, then such part could be treated as an essential or integral part. The essential part or practice of one religion cannot be

³⁵ *Shirur Mutt Case*, AIR 1954 SC 282.

³⁶ *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta*, (2004) 12 SCC 770 (Supreme Court of India).

³⁷ See also, J. Venkatesan, "Tandava dance in public not part of Ananda Margi faith", *The Hindu* (National, Friday, 12 March 2004), [Online: Web] accessed 11 March 2016, URL: <http://www.thehindu.com/2004/03/12/stories/2004031201171300.htm>.

changed from time to time. Such alterable parts or practices are cannot be considered as the 'core' of religion and only be treated as non-essential part or practices.³⁸

It is very difficult to determine whether a certain practice is an essentially religious, as well as the question as to whether practice in question limits itself to religious realm. This is because sometimes practices, religious and secular, are inextricably mixed up³⁹ and the protection guaranteed by Art. 25(1) cannot be extended to secular practices and affairs which are not matters of religion.⁴⁰

It is a pertinent question that whether superstitious practices which are derogatory of human rights and minimum humanitarian standards can be treated as the essential and integral part of religion. The judiciary in India has shown very rational approach while deciding such complex situations in past and present days. Some of the decision quoted under establishes the above view point. Superstitious practices which violate any of the fundamental rights of common man cannot be treated as essential practice of a religion or a matter of religion.

In *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta*⁴¹ it was held that the practice of Tandava dance in public carrying a skull, a trident, a knife and a live snake, etc., is not an essential part of 'Ananda Margi' faith and hence the protection of Article 25 is not attracted.⁴² In *State of West Bengal v. Ashutosh Lahir*⁴³, it was held that slaughtering of healthy cows on a particular festival of a particular religion is not essential or required for religious purpose of that community.⁴⁴

³⁸ *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta*, (2004) 12 SCC 770 (Supreme Court of India).

³⁹ *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi v. State of U.P.*, (1997) 4 SCC 606 (Supreme Court of India).

⁴⁰ *Tilkayat Shri Govindlalji Maharaj v. The State of Rajasthan*, AIR 1963 SC 1638 (Supreme Court of India).

⁴¹ *Ibid.*

⁴² *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta*, (2004) 12 SCC 770 (Supreme Court of India).

⁴³ *State of West Bengal v. Ashutosh Lahiri*, AIR 1995 SC 464; (1995) 1 SCC 189 (Supreme Court of India).

⁴⁴ *See also Mohd. Hanif Quareshi v. The State of Bihar*, AIR 1958 SC731 (Supreme Court of India).

Very recently, the Honourable Supreme Court of India held that marrying a second wife during the life time of the first wife cannot be said to be an integral part or practice of any religion in India in the case of the *Khursheed Ahmad Khan v. State of Uttar Pradesh*⁴⁵. No religious scripture or authority permits bigamy or polygamy.⁴⁶ Polygamy is not an integral part of a particular religion even though that particular religion recognizes it, in order to to get a male descendent (i.e. son) for religious efficacy and spiritual salvation.⁴⁷

Therefore, essentially one must understand that there is only very little help for the lawyers or judges to differentiate what is secular, economic or political activity from what is understood as religious. Even when ‘offer of prayer’ or ‘worship’ is a religious practice, offering of prayers at every location where it can be offered would not be an integral part of such religious practice⁴⁸ and it may have serious political, social, economic or secular implications and underpinnings unless the place is of a particular significance for the religion. It is of consequential interest, therefore, for the State to regulate by law any custom⁴⁹ which may violate the rights of common and vulnerable. For example, in spite of large ancient cultural and traditional support for the conduct of Jallikattu or Bullock cart race, the Apex court maintained that it cannot be allowed in the form in which they are being conducted at present, because it is considered as against public order, morality, and public health.⁵⁰

⁴⁵ *Khursheed Ahmad Khan v. State of Uttar Pradesh*, MANU/SC/0113/2015, August 9, 2015 (T.S. Thakur and A.K. Goel JJ.) (Supreme Court of India).

⁴⁶ *Javed v. State of Haryana*, AIR 2003 SC 3057; (2003) 8 SCC 369 (Supreme Court of India).

⁴⁷ *The State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84 ; MANU/MH/0040/1952 (High Court of Bombay).

⁴⁸ *Dr. M. Ismail Faruqui v. Union of India*, AIR 1995 SC 605 (Supreme Court of India).

⁴⁹ Salmond, *Jurisprudence*, 190-92, P.J. Fitzgerald(ed.), 12th edn., Indian Economy Reprint 2004. Salmond defines Custom is the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility. About the binding force of custom, Salmond opined that custom is to society what law is to the state each is the expression and realization of the measure of man’s insight and ability of the principles of right and justice. Custom embodies them as acknowledged and approved not by power of the state, but by the public opinion of the society at large.

⁵⁰ *Animal Welfare Board of India v. A. Nagaraja*, (2014) 7 SCC 547 (Supreme Court of India). In this case, by analyzing the legal validity of the Legislation, which prohibits the traditional practice of Jallikkattu in Tamil Nadu, the Court observed as TNRJ Act and PCA Act, are welfare legislations.

The Freedom of religion guaranteed by Articles 25 and 26, therefore, is intended to be a guide for community life, which shall allow for fine-tuning religions to act according to the cultural and social demands of an egalitarian social order. Article 25 and 26 strike a balance between the rigidity of right to religious belief and faith and the freedom of conscience of the people to commune with his Cosmos/Creator and realize his spiritual self.⁵¹

From these illustrations it can be clearly discerned that the activities like Black magic, Witch Hunting, mentioned in the initial paragraphs of this writing cannot have any rational basis as an intrinsic religious practice. A democratic and progressive society can no longer tolerate such inhuman practices in the name of religion.

Whether an Anti-superstitious law is constitutionally valid in respect of Freedom of Religion?

The vision of the founding fathers of Constitution to liberate the society from blind and ritualistic adherence to mere traditional superstitious beliefs sans reason or rational basis has found expression in the form of Article 17 of Indian Constitution.⁵²

Any custom or usage which was in existence in pre-Constitutional days cannot be permitted as a source of law in the present days as a matter of right, if it is found violation of human rights, dignity, social equality and the specific mandate of the Constitution by the virtue of Article 13 and Part III of the Constitution. It was also reiterated by the Supreme Court in 2003, that any usage or custom, which are pernicious and derogatory to the law of the land or opposed to public policy or public morality cannot be accepted or upheld.⁵³

The right to worship God according to the dictates of one's conscience, man's relation to his God is not a concern for the State. But the Right to freedom of conscience and religious belief don't exclude citizen from fulfilling his duties owing to the State.⁵⁴ Any

⁵¹ *Kashi Vishwanath Temple*, (1997) 4 SCC 606.

⁵² *N. Adithayan v. The Travancore Devaswom Board*, AIR 2002 SC 3538 ; (2002) 8 SCC 106 (Supreme Court of India).

⁵³ *N. Adithayan*, AIR 2002 SC 3538 ; (2002) 8 SCC 106.

⁵⁴ *Acharya Jagadishwarananda Avadhuta*, (2004) 12 SCC 770.

activity in furtherance of religious belief must be subordinate to the criminal laws of the land. Law cannot accept a crime even if it is sanctioned by a particular sect as religious. For example polygamy or bigamy in India may be prohibited or made a ground of disqualification for the exercise of political rights, notwithstanding the fact that it is in accordance with the creed of a religious body.⁵⁵

Restrictions by State on freedom of religion

Further as mentioned earlier, the right to profess practice and propagate religion, guaranteed under Article 25 and 26 of Constitution of India is subject to public order, morality, health, and the other provisions in the Fundamental Rights Chapter under Part III of Indian Constitution. Also the State can bring in social welfare and social reform by restricting freedom of religion under the ambit of Article 25 of the Constitution.

Public order

Among which the word “public order” is an expression of wide connotation and signifies state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established.⁵⁶ For maintaining public order the suggestion mooted by the Court to shift the graves of a particular religious community for the performance of their religious ceremonies and functions by the members can be considered as for protecting the larger interest of the society.⁵⁷

Health

The right to health is included in Article 21 of Constitution of India. Where health of the citizens is involved the right of such practice to profess, practise, and propagate religion gets controlled and is subservient to the powers of the State to regulate such practice.

The Supreme Court of India, clearly declared that the propagation, practice and profession of ‘Faith Healing’ in public on charging consideration is violative to the Constitutional and Legislative scheme, and that such ‘Faith Healing’ based on a person’s faith in the religious practices, in public for consideration is not permitted and

⁵⁵ *Ibid.*

⁵⁶ Ramesh Thappar v. The Stats of Madras, MANU/SC/0006/1950 (Supreme Court of India).

⁵⁷ Abdul Jalil v. State of U.P. AIR 1984 SC 882; (1984) 2 SCC 138 (Supreme Court of India).

is violative of the legislations prevailing in this country.⁵⁸ The court further unequivocally manifested that the right to health is regulated by validly enacted legislations and the right to cure the ailment through religious practices including 'Faith Healing', cannot be claimed as a fundamental right.

The prayers and rituals performed through voice amplifiers, beating of drums or even bursting of firecrackers in celebrations of religious festivals are all restricted and regulated by the Indian judiciary applying the public health clause.⁵⁹ If there be any such practice, and adversely affect rights of others, such activities in the name of religion should be restricted on the ground of health of other people prescribed in Article 25(1) itself.⁶⁰

Morality

Assuming the practice of having more wives than one or procreating more children than one is a practice followed by any community or group of people the same can be regulated or prohibited by legislation in the interest of public order, morality and health or by any law providing for social welfare and reform which the impugned legislation clearly does.⁶¹

Social welfare and reforms:

The term social welfare is not only a technical term but also a generic expression of wide sweep. It is capable to cover the entire public sphere where the collective interests of the society should prevail over individual rights, for the common good. In making

⁵⁸ *Rajesh Kumar Srivastava v. A.P. Verma*, AIR 2005 All 175 (High Court of Allahabad). In the present case the Society and Sri Ajay Pratap Singh, an individual was claiming, that the chanting of certain 'mantras' is a cure for all ailments. The court held that but they have no right to impose by professing and practicing on others to believe and to propagate the same belief in a public place by charging fees by way of consideration or contribution to any temple or to the society. Such a practice is illegal, and violative of law as well as falls within the domain of the right to health guaranteed under Article 21 of Indian Constitution, which is protected and regulated by the legislations and which the State and the Court are obliged to protect. These legislations do not come in conflict with the right of the petitioner to believe that his faith in his religion cures all ailments.

⁵⁹ *See generally Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association*, AIR 2000 SC 2773; (2000) 7 SCC 282; *Forum, Prevention of Env'n. and Sound Pollution v. Union of India (Re: Noise Pollution)*, AIR 2005 SC 3136 ; (2005) 5 SCC 733.

⁶⁰ *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association*, AIR 2000 SC 2773; (2000) 7 SCC 282 (Supreme Court of India).

⁶¹ *Javed and Ors. v. State of Haryana and Ors.*, AIR 2003 SC 3057 : (2003) 8 SCC 369.

schemes for social welfare, the state should be very careful about overriding religious considerations in order to avoid discriminatory schemes, which is against Article 14 of our Constitution.⁶² However where there is a conflict between religious practice and need of social reform, religion must be capitulated. In *Khurshed Ahmad Khan v. State of Uttar Pradesh*⁶³, Supreme Court reiterated its viewpoint that, Social reform means eradication of practices or dogmas which stand in the way of country's progress as a whole but do not reform the essence of religion.

Dr. B.R. Ambedkar stated in the Constituent Assembly Debates about religion,

*“The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion.”*⁶⁴

If the state were to accept this conception of religion, the state cannot step back from reformatory legislations.⁶⁵ The Freedom of religion guaranteed by Articles 25 and 26, therefore, is intended to be a guide to community life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order.⁶⁶

Anti-superstitious law and social reform

Law is an instrument of social change evolved by a gradual and continuous process. History and customs, utility and the accepted standards in the society of right conduct are the forces which singly or in combination mould the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. According to Cardozo (1921: p.112) there shall be symmetrical development with history or custom when history or

⁶² Basu, D. D., (2008), See supra n.33.

⁶³ *Khurshed Ahmad Khan*, MANU/SC/0113/2015. See also *The State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84 ; MANU/MH/0040/1952 (High Court of Bombay).

⁶⁴ Statement of Dr. B.R. Ambedkar, *Constituent Assembly Debates*, 781 (December 2, 1948).

⁶⁵ Basu, D. D., *supra* n.33 at p. 3489.

⁶⁶ *N. Adithayan v. The Travancore Devaswom Board*, AIR 2002 SC 3538; (2002) 8 SCC 106 (Supreme Court of India).

custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs.⁶⁷

Laws made by a competent legislature in the interest of public order and the like, restricting religious practices, would come within the regulating power of the State. For example, there may be religious practices of sacrifice of human beings or sacrifice of animals in a way detrimental to the wellbeing of the community at large. It is open to the State to intervene, by legislation, to restrict or to regulate to the extent of completely stopping such pernicious practices.⁶⁸

It was on such humanitarian grounds, and for the purpose of social reforms, that so called religious practices like immolating a widow at the pyre of her deceased husband, or of dedicating a virgin girl of tender years to a god to function as a Devadasi, or of expelling a person from all social contacts, are stopped by legislation.⁶⁹

If any community is compelled by the State to become monogamists, it can be considered as a measure to protect public morality and health and then the State is empowered to legislate in that regard.⁷⁰

It is for the Legislature to decide what constitutes social reform. In a Democratic state, as the representative of the will of the it is the legislature are responsible for the welfare of the State and it is for them to lay down the policy that the State should pursue.⁷¹ Thus social reform is a result gradual and continuous process.⁷²

⁶⁷ Benjamin N. Cardozo, *The Nature of the Judicial Process* (10th Indian Reprint, 2012) at p.112.

⁶⁸ Sardar Syedna Taher Saifuddin Saheb v. The State of Bombay, AIR 1962 SC 853 (Supreme Court of India).

⁶⁹ *Saifuddin Saheb*, AIR 1962 SC 853.

⁷⁰ The State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84 ; MANU/MH/0040/1952 (High Court of Bombay).

⁷¹ *Narasu Appa Mali*, AIR 1952 Bom 84; MANU/MH/0040/1952.

⁷² *Ibid.*

Further, religion in a modern democratic State is purely a matter of the individual freedom. Usually, the State would not interfere with the religious beliefs of the citizen and his religious practices. But if these religious beliefs or practices conflict with matters of public order, morality, health, social reform or welfare, other provisions of Fundamental rights, such religious beliefs or practices must yield to the higher requirements others, especially to social welfare and reform.⁷³

No rights in an organized society can be absolute. Enjoyment of one's rights must be consistent with the enjoyment of rights also by others. Where in a fair play of social forces it is not possible to bring about a voluntary harmony, the State has to step in to set right the imbalance between competing interests.⁷⁴ No fundamental right can exist in isolation in a water-tight compartment. One fundamental right of a person may have to co-exist in harmony with the exercise of another fundamental right by others also with reasonable and valid exercise of power by the State in the light of the directive principles in the interests of social welfare as a whole.⁷⁵

Some of the legislation that aimed to protect public morality against abusive religious practice can also be considered for their social content and reformative outlook.⁷⁶ Various temple entry statutes passed by provincial governments were substituted by the Protection of Civil Rights Act, 1955.⁷⁷ For better management and prevention of maladministration in Religious and charitable endowments in India, many central and state legislations were passed.⁷⁸

⁷³ See *supra* n. 72.

⁷⁴ Acharya Maharajshri Narendra Prasadji Anand Prasadji Maharaj v. The State of Gujarat, 1975 (1) SCC 2 (Supreme Court of India).

⁷⁵ Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association, AIR 2000 SC 2773; (2000) 7 SCC 282 (Supreme Court of India).

⁷⁶ The Commission of Sati (Prevention) Act, 1987, Karnataka Devadasi (Prohibition of Dedication) Act, 1982, Immoral Traffic Prevention Act, 1956, Bombay Devadasi Prohibition Act, 1934, Sati Pratha Regulation, 1829 are some of the social reform measures in this regard. Stern approach about *narabali* (human sacrifice) by treating it as murder of rarest type has also exemplary effect.

⁷⁷ Section 3 of the Act prescribes punishment for enforcing religious disability on the ground of "untouchability".

⁷⁸ Hindu Religious and Charitable Endowments Act, 1951 Religious Endowments Act, 1863, Charitable and Religious Trusts Act, 1920, Wakf Act, 1995 are examples of central legislations in this regard. Apart from the above legislations, various states in India also have their own state legislations in this respect. Andhra Pradesh

By virtue of above described arguments, it can be found that an anti-superstitious law have the constitutional sanctity as a remedial and reformative legislation. It is intended to keep in terms the public order and is to applause the journey of Indian society to a modern one by deterring itself from such inhuman and derogatory practices in the name of religious beliefs and practices. Such draconian activities⁷⁹ are totally against public order, morality, and health of ordinary man. On such grounds an Anti-superstitious Law made by a competent legislature in India, in the interest of public order and the like, would come within the regulating power of the State.

Conclusion

It is a truth admitted that in most of the religious beliefs and practices, there may be some element of so called superstitious beliefs and practices. There is a thin line between faith and superstition that needs to be defined in law, as these practices and rituals performed in the name of God may be an expression of faith to some. From the point of view of a theist, such beliefs and practices are not superstitious, but all are truth and part of religion. But from the point of view of an atheist, every religious belief is a bunch of superstitious beliefs and practices and against truth. But our Constitution protects the rights of both believer (theist) and non- believer (atheist). But each cannot infringe the rights of others in the name of religion.

Similarly an anti-superstitious law is also one which protects the Freedom of religion granted under the Constitution and at the same time safeguards the public from the pernicious and draconian practices in the name of religion. Law can allow certain superstitious beliefs, on the basis of religion and custom, which are not harmful to the rights of others. For example, practices like Lemon-and-Chilly totems for warding off evil eye, can be considered as harmless. But there is no doubt that, concerns like witch-burning and exorcism and such practices danger to life and health of common man must be penalized by a Strong Anti-superstitious Law. Similarly, one can claim that he or she is 'GOD' or 'Avatars of GOD', and people who believe in such God man

Charitable and Hindu Religious Institutions and Endowments Act, 1987, Kerala Travancore-Cochin Hindu Religious Institutions Act, 1950, Bombay Public Trusts Act, 1950 and etc., are Examples for such State enactments.

⁷⁹ E.g., Branding women as witches and making them walk without clothes and beating them; persuading people to substitute medical aid by tying threads or getting bitten by a snake, dog, or scorpion; threatening to bring evil upon someone through supernatural powers; claiming to change the sex of the foetus by inserting fingers in the womb; one's supernatural powers can help a woman get pregnant if she had sex with him; and that a disabled person has supernatural powers and thus using them for commercial purposes.

have the right to believe in such a way, and then the law can be silent. But if anybody exploit, cheat, or endanger the life or property of another, the law should act by punishing such pernicious practices.

Therefore, it can be undoubtedly stated that National Anti-superstitious Law is the perfect tool to build a nation with scientific temperament and modern outlook. Such legislation is supposed to be a social welfare legislation capable tackle the present menace of black magic and the like atrocities, exploitations against common man in this country. Along with that it should be one protects the freedom of religion guaranteed by our Constitution also.

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Afterthoughts

Juvenile Justice Bill, 2014- A Regressive Step

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If human rights are grounded in the inherent dignity of the individual, how can derogation ever be justified?

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