UNIFORMITY IN DIVERSITY?: REFLECTING ON THE ESSENTIAL PRACTICES DOCTRINE AND ITS IMPLICATIONS FOR LEGAL PLURALISM

Dr. Kalindi Kokal[*]

This Article posits that the Indian courts' usage of the 'essential practices' doctrine has created a uniform understanding of religion and what is fundamental to it. This has been done by imposing an interpretation of public morality rooted in a human rights discourse. By reading into religion only those practices that reinforce the values of human rights as essential, courts have problematised the perceived clash between human rights and religious practices in a simplistic manner.

Part I presents an overview of the Indian jurisprudence concerning the essential practices doctrine. Building on such an understanding, Part II spells out the two components that courts have relied upon to determine what is fundamental to each religion. Thereafter, Part III underlines the problem with courts depending on spiritual scriptures to establish the core facets of religion. Part IV demonstrates the manner in which the human rights discourse flowing from the Constitution influences the pronouncements on essentiality and the underlying consistency that governs it. Finally, Part V reflects on the effectiveness of state laws regulating religious practices and the meaning that such regulations hold for the relationship between law and religion.

[*] Post-Doctoral Fellow at the Centre for Policy Studies, Indian Institute of Technology (Bombay).

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INTRODUCTION

Over the last few years, Indian courts have engaged extensively in defining what is 'essential' to the practice of different religions in India in several cases. Be it the bursting of crackers on Diwali,[1] the reading of *namaz* in a mosque,[2] the refusal of entry by places of worship to certain sections of society,[3] or the legitimacy of ritualistic practices around marriage and divorce,[4] higher courts in India have recurrently used the *essential practices* doctrine to distinguish between religious and secular practices and then to further determine whether a certain practice is necessary to the pursuit of a particular form of belief.

There has been a lot of development albeit fraught with debate, in the discourse around whether Indian courts ought to decide the essential practices of a particular religion.[5] There has also

[1] Arjun Gopal v. Union of India, (2018) SCC OnLine SC 2118.
[2] Mohd. Siddiqui (D) Thr Lrs. v. Mahant Suresh Das, (2019) SCC OnLine SC 1440.
[3] Indian Young Lawyers Association v. State of Kerala, (2018) SCC OnLine SC 1690; Dr. Noorjehan Safia Niaz v. State of Maharashtra, (2016) SCC OnLine Bom 5394.
[4] Shayara Bano v. Union of India, (2017) SCC OnLine SC 963.
[5] Ronojoy Sen, *The Indian Supreme Court and the Quest for a 'Rational' Hinduism*, 1(1) South Asian History and Culture 86–104 (2009); Tarunabh Khaitan, *Guest Post: The Essential Practices Test and Freedom of Religion – Notes on Sabarimala*, INDIAN

been a discussion about how the different interpretations of what constitutes *essential practice* have led to the Indian judiciary contradicting itself over and over again.[6] Resultantly, there has been an inconsistency of opinions on the subject, and thus, an unsteady and unpredictable relationship of the Indian state with religious practices generally.

While this might indeed be a deliberate move on the part of the Indian state,[7] what this Article seeks to highlight is how Indian courts, by using the *essential practices* doctrine, are in fact, creating a uniform understanding of religion and what is fundamental to it. I argue that this is being done by imposing an understanding of public morality – one of the exceptions to the exercise of the freedom of religion – that is rooted in a human rights discourse. I further contend that by reading into religion only those practices that reinforce the values of human rights as 'essential', courts have problematised the perceived simplistic conflict between human rights and religious practices.

I. DEFINING ESSENTIALITY

The need for Indian courts to determine what an 'essential' religious practice is, has arisen from the distinction made in Clause 2(a) of Article 25 of the Constitution between religious practice and economic, financial, political or other secular activities which are associated with religious practice. While the state can regulate the latter form of practices despite them being religious, the former, on account of being 'essential' are protected under the freedom of religion guaranteed to individuals and religious denominations.

Over the years, the Supreme Court has developed a series of tests against which it decides what practices are 'essential' to various religions. These tests have developed through several case laws and in varied religious, political, historical, and social contexts. I summarise the primary

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CONST. L. PHIL. BLOG (July 29, 2018), https://indconlawphil.wordpress.com/2018/07/29/guest-post-the-essential-practices-test-and-freedom-of-religion-notes-on-sabarimala/(last visited May 17, 2020); Rajeev Dhawan, *Why the Supreme Court's Judgment on Mosques Is Fatally Flawed*, THE WIRE (Oct. 1, 2018), https://thewire.in/law/why-the-supreme-courts-judgment-on-mosques-is-fatally-flawed (last visited May 17, 2020).

[6] Valentina Rita Scotti, *The 'Essential Practice of Religion' Doctrine in India and its Application in Pakistan and Malaysia*, STATO, CHIESE E PLURALISMO CONFESSIONALE (Feb. 8, 2016), https://riviste.unimi.it/index.php/statoechiese/article/view/6783 (last visited May 17, 2020).

[7] The judiciary, being an institution of the state, is not free from social and political dynamics that are part of the working of the state machinery. The author, therefore, holds the position that judicial decisions are necessarily impacted by political dialogues that constitute and are constituted by the government in power and as well as those ingrained in the routine working of bureaucratic institutions. For an understanding of the concept of 'state', *see* Hansen and Stepputat (2001, 8).

indicators of the *essential practices* doctrine hereunder, drawing on their recurrence in various case laws that have depended upon them to determine essentiality.

1. Ascertaining the essentiality of practices with reference to the doctrine and tenets of the religion in question;[8]
2. Testing if the acts have been done in pursuance of religion;[9]
3. Ascertaining the essentiality of practices with reference to community practice and historical background, in addition to the former list of doctrine and tenets;[10]
4. Asking whether the practice is part of the core upon which the religion is founded. This would include determining:
    a. Whether the said practice(s) changed with the efflux of time;[11] and
    b. Whether they are peripheral, merely superstition or a matter of tradition and custom;[12]
5. Testing whether banning, regulating, amending or prohibiting the said practice would fundamentally alter or change the nature of the religion in question;[13] and
6. Evaluating the essentiality of the practice in light of the context within which such a question has arisen and in view of the factual, historic and legislative evidence provided to prove this essentiality.[14]

Along the way, the Indian courts' stance towards the manner in which essentiality of religious practices would be ascertained changed from prioritising the opinion of the community to assuming a central role for the Court in determining what is and what is not essential to a religious belief. In the following section, this Article will use some practices – the essentiality of which were debated in the higher courts in India in the last five years – to elaborate how these tests developed the discourse on *essential practices* to create uniformity in the understanding and therefore, regulation of religions. These practices in the cases examined concern the entry of women into places of worship, triple *talaq* (a form of divorce), and fasting unto death.

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[8] The Commissioner Hindu Religious Endowments, Madras vs. Shri Lakshmindra Thritha Swaminar of Sri Shirur Mutt, (1954) SCR 1005 (known as the 'Shirur Mutt case').
[9] *Id.*
[10] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770 (known as the 'second Ananda Margis case').
[11] *Id.*
[12] Durgah Committee, Ajmer v. Syed Hussain Ali, (1961) AIR SC 1402.
[13] *Id.*
[14] A.S. Narayana Deekshitulu v. State of Andhra Pradesh, (1996) 9 SCC 548.

A. Entry into Places of Worship

The entry of women into places of worship was debated in two cases, once in the context of the Haji Ali Dargah in Mumbai and the other in the context of the Sabarimala temple in Kerala. In the case of *Dr. Noorjehan Safia Niaz v. State of Maharashtra*[15] (hereinafter "*Haji Ali Dargah case*"), the arguments revolved around the issue of whether denying women entry into the sanctum sanctorum of the *dargah* was an essential practice. In *Indian Young Lawyers Association v. State of Kerala*[16] (hereinafter "*the Sabarimala temple case*"), the practice in question was the exclusion of women between the age group of 10 and 50 years from entry into the Sabarimala temple. In both cases, the denial of women by religious groups into their respective places of worship was prefaced primarily on the fact of menstruation-related pollution.

In the *Haji Ali Dargah case*, the Bombay High Court declared the practice of restricting the entry of women into the sanctum sanctorum as not essential to the practice of Islam on the ground that this practice had been changed. As the arguments and evidence revealed, women were, in fact, allowed entry into the debated space until 2011, after which the practice was altered with a change in the composition of the Haji Ali Dargah Trust in the same year. This was, thus, a new restriction – one that did not satisfy the constitutional test which required essential practices to be unalterable.

In the *Sabarimala temple case*, the process to determine essentiality was two-fold. The Court first established that the followers of Lord Ayappa did not comprise a separate denominational sect and were followers of the Hindu religion. It then went on to declare that such exclusion of women was a non-essential practice based on the following grounds:

(a) for want of textual and scriptural evidence in support of such a contention;
(b) that this exclusion of women was an altered practice that had changed with time;
(c) that the practice violated the fundamental right of all women to practice religion; and
(d) that it was against the basic constitutional values of dignity, liberty, and equality.

In the Sabarimala case, the Court drew a parallel between the restriction on entry into temples on the basis of menstruation-related pollution and the practices of untouchability. Chandrachud J., in his judgment, grounded the dismissal of this practice as essential based on the

[15] Dr. Noorjehan Safia Niaz v. State of Maharashtra, (2016) SCC OnLine Bom 5394.
[16] Indian Young Lawyers Association v. State of Kerala, (2018) SCC OnLine SC 1690.

fact that practices of untouchability were specifically abolished under Article 17 of the Constitution.[17]

B. Regulating Matrimonial Practices

In *Shayara Bano v. Union of India*,[18] the Supreme Court of India was tasked with deciding whether *talaq-e-biddat*, the method of divorce by way of pronouncement of triple *talaq,* was essential to the Islamic faith. Here, the Court declared that *talaq-e-biddat* was not an essential practice in Islam and therefore could not be protected under Article 25 (1) of the Constitution.[19] One of the primary grounds based on which the Court arrived at this conclusion of non-essentiality was that the abolition of this practice would not change the fundamental nature of Islam "*as seen through a Sunni's eyes*" and that its essentiality could not be established in the context of Quranic principles. Three out of five judges deciding this case concluded that *talaq-e-biddat* was in fact "*perceived as sinful by the very Hanafi school that tolerates it*".[20]

C. Fasting Practices

In *Nikhil Soni v. Union of India*,[21] the Rajasthan High Court decided whether *Sallekhana* or *Santhara*, the practice of fasting unto death, was essential to Jainism. The non-essentiality of *Sallekhana* to the practice of Jainism was one of the reasons used by the Rajasthan High Court to justify its order to put a stop to this practice. Here, the Court remained unconvinced about the essentiality of *Sallekhana* to the pursuit of Jainism because *Sallekhana* was not "*practiced frequently*" by members of the Jain community. Additionally, the Court did not read taking one's own life as part of the Right to Life under Article 21 of the Constitution, and therefore, the practice was deemed to be in violation of it.

While this Article has relied on only four case studies to elucidate the manner in which courts apply and develop tests determining *essential practices*, the pattern of leaning towards analysing the 'popularity' of a practice within a religious community and examining its immutable nature through codification in texts or scriptures has been reflected in almost all the judgments referring to this doctrine. Therefore, in assuming their central role in determining the essential practices of

[17] Indian Young Lawyers Association, *supra* note 17.
[18] *Supra* note 4.
[19] *Id.*
[20] *Id.* at 331 (Nariman, J.).
[21] Nikhil Soni v. Union of India, (2015) Cri LJ 4951.

religions, courts seemed to be more inclined towards abolishing, banning, or regulating practices that are not ubiquitous. However, by doing so, courts nevertheless end up homogenising what religions mean; often empowering the majority narratives in religious communities and reducing the effectiveness of state laws (including case laws) in terms of their actual enforcement.

II. SET IN STONE- THE SEARCH FOR POPULAR AND IMMUTABLE PRACTICES

One of the consequences of these tests of the *essential practices* doctrine is that in granting legitimacy to some practices and not to others, the state (through its courts) as one authority of power, homogenises Hinduism, Islam, and Jainism. It sets a standard of what is core to these religions in the eyes of the Indian state. However, in order to do so in the abovementioned four cases, the judiciary (as an organ of the state) relied on *(a)* prevalence of the practice, and *(b)* interpretations of the scriptures from these religions, where available. For practices to be identified as core to the pursuit of religions, they had to be established as unalterable and popular. Interestingly, the pattern of judgments reveals that both these requirements were interconnected, in that, the determination of essentiality required both conditions to be fulfilled, even though the courts have not spelt this out as such. Therefore, with regard to the restriction on the entry of women into places of worship, even though the practice was widespread and popular, it was dismissed as unessential since it had been altered.

However, in the Triple *Talaq* case, the practice in question, despite finding its mention in Islamic texts and having been established as unalterable (in terms of being finite), was not deemed to be in popular practice because it was not commonly practiced by all Muslims who had different notions of divorce and was therefore declared as non-essential. Such a pattern of discernment, however, seeks to declare only those practices as essential that are homogenous i.e. those practices practiced by the entire religious community and that have not been altered. A mention of these practices in religious texts or scriptures is supposed by the courts an as indicator of their possible unalterability. In a country as diverse as India, where religious hybridity is synonymous with the practice of religion, the search for practices that are standardised across religious groups is paradoxical, to say the least.

III. SCRIPTURE, TENETS AND DOCTRINES: FINDING AN APPROPRIATE CONTEXT FOR RELIGIOUS PRACTICE

To take off from the preceding section, the trend of courts examining the essentiality of practices in the context of doctrines and scriptures also presents an anomaly because this usually means scrutinising the normative texts of religions. This, apart from satisfying the "*bent of minds of an elite milieu*" in any religious community, also tends to lend a rigid perspective to the practice of any religion.[22]

Religious practice in its very essence is bound to evolve within everyday contexts of the believers, including their socio-economic conditioning and geographical location, amongst other things.[23] In all the four cases referred to above, the courts have evaluated the veracity of the practices against the texts, scriptures, and doctrines of their respective religions. The unavailability of a text, as in the case of prohibiting women from entry into the Sabarimala temple (which involved members of the Hindu religious community) or the practice of *Sallekhana* (which concerned the Jain community), certainly presented an obstacle. What the courts, therefore, proceeded to do was to verify whether the regulation or abolition of the practice in question would alter the 'fundamental character' of the religion itself. By involving itself in deciphering concepts like the 'fundamental' character of religions, a closer reading of these judgments reveals that the Indian state was entangling itself in a web of complexities. These kinds of tasks require both vast intellectual expertise, interdisciplinary knowledge, and great lengths of time in order to be able to develop a sound discourse; neither of which the Indian judiciary presently has the scope for. Nevertheless, courts' engagement in such debates seems to have been strategic and capitalises on the agendas of the petitioners initiating such litigation.

As the next section shows, courts' engrossment with discovering the 'fundamental character' of religions unfolded a discourse on 'public morality' which is likely to be imbued with important political consequences as well as social implications for Indian society.

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[22] Gilles Tarabout, *Ruling on Rituals: Courts of Law and Religious Practices in Contemporary Hinduism*, 17 SOUTH ASIA MULTIDISCIPLINARY ACAD. J., (Mar. 2018), http://journals.openedition.org/samaj/4451 (last visited May 17, 2020).

[23] Yüksel Sezgin, *Human Rights under State-Enforced Religious Family Laws in Israel, Egypt and India*, CAMBRIDGE STUDIES IN LAW AND SOCIETY (Cambridge Univ. Press., 2013); Alefiya Tundawala, *Multiple Representations of Muslimhood in West Bengal: Identity Construction Through Literature*, 32(2) SOUTH ASIA RESEARCH 139–63 (2012); Kalindi Kokal, *Decoding Diversity: Experiences with Personal Law in the Lower Courts of Maharashtra* in RELIGION AS EMPOWERMENT: GLOBAL LEGAL PERSPECTIVES 78–105 (Kyriaki Topidi & Lauren Fielder eds., Routledge 2016).

IV. THE ASPIRATIONS OF A TRANSFORMATIVE CONSTITUTION

The Indian judiciary's strategic interest in assuming the role of defining the *essential practice* of any religion has been significantly motivated by the Constitution's ideals as set out in the Preamble.[24] The ideas of justice, equality, liberty, dignity, protection of personal freedoms under Part III of the Constitution of India; and the protection of public order, morality and health (under Articles 25 (1) and 26 (1) of the Constitution) have guided a large portion of the court's decision-making in this regard. In determining *essential practices*, courts have asked time and again whether, by granting constitutional protection to the practice in question by declaring it 'essential' to the concerned religion, the Indian state's quest for a society based on principles of equality, liberty and fraternity would be compromised.

However, as Tarabout highlights, the result of this judicial practice is an "*idealistic characterization*" of religions.[25] To give an example, in the judgment on women's entry into Sabarimala, Justices Dipak Misra and A.M. Khanwilkar held:[26]

> "*In no scenario, it can be said that exclusion of women of any age group could be regarded as an essential practice of Hindu religion and on the contrary, it is an essential part of the Hindu religion to allow Hindu women to enter into a temple as devotees and followers of Hindu religion and offer their prayers to the deity.*"

Similarly, in the judgment on the validity of the triple *talaq*, which delved extensively into Quranic principles, speaking about the practice of triple *talaq*, Justice Kurien Joseph held:[27]

> "*What is held to be bad in the Holy Quran cannot be good in Shariat and, in that sense, what is bad in theology is bad in law as well.*"

Thus, the analysis in the ruling held triple *talaq* to be inconsistent with Islamic scriptures.

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[24] Indian Young Lawyers Association v. State of Kerala, 2018 SCC OnLine SC 1690, Chandrachud, J., Part A, ¶5 (Referring to the Constitution's preamble, Chandrachud, J., in the case on the Sabarimala temple explains: "These questions are central to understanding the purpose of the Constitution, as they are to defining the role which is ascribed to the Constitution in controlling the closed boundaries of organised religion.")

[25] Gilles Tarabout, *supra* note 22.

[26] *Id.* at Para 122 (Misra & Khanwilkar JJ.).

[27] *Supra* note 4, at ¶26 (Joseph, J.).

Such idealising is often grounded in the Court's duty to protect public morality, which restricts the freedom of religion of both individuals,[28] and religious denominations.[29] But how does the court define a society's morality? Moreover, can there be a universal understanding of morality that does not come at the cost of discriminating against a certain section of society? As Chandrachud, J. highlights in his part of the judgment on the *Sabarimala temple case*, the concept of morality is bound to change as the society transforms. At the same time, he cautions that the concept of public morality should not be decided on the basis of popular notions of such morality.

Given this complex balancing act that courts must engage in,[30] it appears that the Court has, in the context of these more recent judgments, promoted a notion of morality based on human rights norms underscored by the need to protect individual dignity to determine the essentiality of practices and justify state regulation.[31] In cases concerning the restriction on women's entry into places of worship and the practice of unilateral divorce under Islamic law, courts relied on the promotion of gender equality couched in the principle of equality under the Constitution. Additionally, the Supreme Court held that the restriction on women's entry into places of worship fell within the ambit of an understanding of untouchability, already abolished under the Constitution. In the case of the Jain practice of *Sallekhana*, the courts depended on a restricted understanding of the principle of the right to life under the Constitution to legitimise state intervention. In doing so, courts have integrated human rights principles into what would constitute the 'core' or the 'fundamental nature' of a religion. Thus, courts have diffused the perceived binary between religion and human rights and their respective legal orders to construct a uniform kind of public morality for India.

A. Uniform Civil Code in Disguise

The nature of development in the jurisprudence on the *essential practices* doctrine as mentioned above, indicates an attempt by the Indian state to promote a set of principles that can be viewed as integral to all religions and thus seeks to set a common standard to measure the essentiality of various religious practices.

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[28] INDIA CONST. art. 25, cl. 1.

[29] INDIA CONST. art 26, cl. 1.

[30] Werner Menski, *Judicial Passivism in the Public Interest*, 10(1-2) BANGLADESH J. OF LAW 11–20 (2006); Deepa Das Acevedo, *Temples, Courts, and Dynamic Equilibrium in the Indian Constitution*, 64(3) AM. J. COMP. L. 555–582 (2016), https://doi.org/10.2307/26425464.

[31] *See* Sen (2009, 100) for his observation as to how "…*the essential practices doctrine can then be seen as the Court's attempt to discipline and cleanse religion or religious practices that are seen as unruly, irrational and backward…*".

India does not have a separate legislation on human rights. The values of human rights have been imbibed into the constitutional legal order.[32] If these same values find successful integration into the discourses about the fundamental nature of religions which has been so crucial to the essential practices doctrine, human rights values as a standard of public morality may ultimately bridge the gap between the state legal order based on the Constitution and the various religious legal orders – thus, lending a homogeneity to the principles of their respective state-enforced governance.[33]

V. RELIGION THROUGH THE LENS OF ESSENTIAL PRACTICES: EFFECTIVENESS OF STATE LAWS

Religion is essentially the belief in some cosmic form of power and order that is perceived to be beyond human control. This belief manifests itself in the form of practices, rituals, and specific forms of behaviour in an attempt to attach a sense of tangibility to this intangible macrocosmic universe. State laws seek to regulate the everyday life of people in the societies they govern. Regulating religious practice would, therefore, imply the regulation of everyday practices perceived to be related to the pursuit of different religions. However, finding religion in everyday life goes beyond the pursuit and interpretations of the tenets of religion and its orders. It means looking at wherever and however people invoke a sacred presence. This means looking for 'lived religion' that happens "*beyond the bounds and often without the approval of religious authorities*" on the boundaries of "*orthodox religion and innovative experiences*".[34] It is what manifests as the embodied and material aspects of religion in everyday life.

The very concept of determining the 'essential' in matters related to the practice of any religion, therefore, implies taking a partial and thus inevitably flawed perspective of the pursuit of

[32] Elsewhere, I have used Masaji Chiba's (1986) theory of postulational values to argue that human rights constitute postulational values that underscore not only state laws, but also certain types of religious laws and everyday practices; *see* KALINDI KOKAL, STATE LAW, DISPUTE PROCESSING AND LEGAL PLURALISM: UNSPOKEN DIALOGUES FROM RURAL INDIA (Routledge 2019).

[33] In such a context, would it be that the decision in State of Bombay v. Narasu Appa Mali (AIR 1952 Bom 84) does not remain deliberated at all, since the very reason for conflict between personal laws and the fundamental rights would stand obliterated?

[34] Nancy T. Ammerman, *Finding Religion in Everyday Life*, 75(2) SOCIOLOGY OF RELIGION 189–207 (2014).

religions and beliefs. Proceeding on the footing that law is a socially embedded process, the vigour of state laws including judicial decisions can, however, be examined only in the context of people's lived experiences. As these vary and cause conflicts and tensions, a variety of related cases continue to be brought to the Indian courts reflecting the pluri-legality of religion – the cause of much headache for Indian judges.

CONCLUSION

There has always been an aspiration that the Constitution and the values that underscore it would lead the way for societal transformation. In another paper, I have reflected upon whether a pattern could be deciphered with respect to Indian courts' decisions on whether to take the lead or to follow society with respect to regulation of societal practices founded in religious beliefs.[35] However, to examine such patterns, it is important to distinguish, as the courts seem to be doing, between reform at an ideological level and reform in actual practice. A closer reading of the judgments in the last five years, which constitute the development of the discourse on the *essential practices* doctrine, reveals that Indian courts have decided to lead ideological transformations.[36] Sezgin explains that one of the forms in which post-colonial jurisdictions have engaged in the reform of their respective personal law regimes is substantive reform. Substantive reform primarily aims to change the "…*substance of personal laws without reducing institutional or normative plurality*".[37] Such reform is often in response to intrinsic and extrinsic pressures for a change in personal law status.[38] At an ideological level, such reforms ultimately compel the Indian courts to regulate practices that do not align with the reformative ideologies often pitched by activist litigants and reinforced by the Indian

[35] Kalindi Kokal, *To Lead or To Follow?*, 49(50) ECON. & POL. WKLY. 19–21 (2014).
[36] This means that the Indian courts have tried to tackle the issues before them at the level of the values that underlie them and the thought processes that legitimate them.
[37] Yüksel Sezgin, *How to Integrate Universal Human Rights in Customary and Religious Legal Systems?*, 60 J. L. PLURALISM & UNOFFICIAL LAW 5–40 (2010).
[38] The reason why courts can and do engage in the regulation of religious practices is because the Indian state legitimates the governance of people's lives by their religious laws in activities concerning birth, death, marriage, succession, divorce, and adoption through the system of personal laws.

state.[39] But does a declaration of these practices as non-essential to religion itself reveal a different form of political dialogue?[40]

Ever since independence, governance of people by their religious laws under the personal law system has been perceived by the Indian state as an obstacle in the achievement of national unity where individuals would view themselves first as members of a composite nation.[41] However, by encouraging the development of a uniform understanding of public morality through the *essential practices* doctrine, Indian courts are reforming religion instead of doing away with it – as was previously envisioned – to achieve the ideological foundations of a uniform civil code, thus making a uniform civil code more complex to tackle and counter.

[39] Activists, and particularly women's organisations in India, have popularly used legal mobilisation through filing public interest litigations to use courts to *"… challenge the legitimacy of patriarchal norms, raise awareness within the community, and lay the groundwork for long-term institutional changes from within using the threat of external judicial intervention*", *see* Sezgin, *supra* note 37.

[40] Non-essential religious practices have often been regarded as 'superstitions' and the branding of practices as superstitious has been examined to have a powerful political and reformist impact in the Indian context, *see* Bharati 1970; *see also* Tarabout, *supra* note 20.

[41] Marc Galanter & Jayanth Krishnan, *Personal Law and Human Rights in India and Israel*, 34(1) ISRAEL L. REV. 101–33 (2000).