CONSTITUTIONAL MORALITY VIS-À-VIS CULTURAL RELATIVISM IN INDIA

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ABSTRACT

Objective: The objective of the instant paper is to examine and potentially support the claim that fundamental rights guaranteed by the Indian Constitution, such as freedom of religion, despite reservations from cultural relativists, can be seen as emerging elements of constitutional morality. This examination will be based on a comprehensive analysis of judicial decisions, scholarly publications, and juristic opinions.

Methodology of the Study: The study will analyse relevant judicial decisions, including landmark cases related to fundamental rights, especially freedom of religion, to understand how the Indian judiciary has interpreted and applied these rights. This will involve examining how the courts have balanced cultural relativism concerns with the principles of constitutional morality.

Conclusion: The paper emphasizes the importance of universal human rights and argues against dismissing them due to their Western origin. It advocates for the acceptance of human rights across all cultures. The text acknowledges the complex interaction between law and religious culture, with an emphasis on individual morality. It highlights the value of human dignity within the Indian Constitution, aiming to balance individual rights with the state's duty to ensure equality. The paper also prioritizes women's rights and opposes customs that infringe upon them. It mentions Article 25 of the Indian Constitution, which secures freedom of religion with some limitations. In summary, the passage supports universal human rights, addresses the challenges at the intersection of law and religious culture, and stresses the importance of individual rights and dignity within constitutional morality.

Result: The findings of this paper will aim to provide a nuanced understanding of the relationship between fundamental rights, cultural relativism, and constitutional morality in the Indian context. It will shed light on whether fundamental rights, especially freedom of religion, can be considered as emerging elements of constitutional morality despite reservations from cultural relativists. The study will present an analysis of judicial dicta, scholarly publications, and juristic opinions to support its conclusions and contribute to the ongoing discourse on these complex and significant issues within Indian constitutional law.

Keywords: freedom of religion, cultural relativist, essential religious practice, equality and Constitutional morality.

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MORALIDADE CONSTITUCIONAL VIS-À-VIS RELATIVISMO CULTURAL NA ÍNDIA

RESUMO

Objectivo: O objectivo do presente artigo é examinar e potencialmente apoiar a afirmação de que os direitos fundamentais garantidos pela Constituição indiana, como a liberdade religiosa, apesar das reservas dos relativistas culturais, podem ser vistos como elementos emergentes da moralidade constitucional. Este exame será baseado em uma análise abrangente de decisões judiciais, publicações acadêmicas e pareceres jurídicos.

Metodologia do Estudo: O estudo analisará decisões judiciais relevantes, incluindo casos marcantes relacionados com direitos fundamentais, especialmente a liberdade de religião, para compreender como o sistema judiciário indiano interpretou e aplicou esses direitos. Isto envolverá examinar como os tribunais equilibraram as preocupações do relativismo cultural com os princípios da moralidade constitucional.

Conclusão: O artigo enfatiza a importância dos direitos humanos universais e argumenta contra a sua rejeição devido à sua origem ocidental. Defende a aceitação dos direitos humanos em todas as culturas. O texto reconhece a complexa interação entre o direito e a cultura religiosa, com ênfase na moralidade individual. Destaca o valor da dignidade humana na Constituição indiana, com o objetivo de equilibrar os direitos individuais com o dever do Estado de garantir a igualdade. O documento também prioriza os direitos das mulheres e se opõe aos costumes que as infrinham. Menciona o Artigo 25 da Constituição indiana, que garante a liberdade religiosa com algumas limitações. Em resumo, o passagem apoia os direitos humanos universais, aborda os desafios na intersecção entre o direito e a cultura religiosa e sublinha a importância dos direitos individuais e da dignidade no âmbito da moralidade constitucional.

Resultado: As conclusões deste artigo terão como objetivo fornecer uma compreensão diferenciada da relação entre direitos fundamentais, relativismo cultural e moralidade constitucional no contexto indiano. Irá esclarecer se os direitos fundamentais, especialmente a liberdade religiosa, podem ser considerados como elementos emergentes da moralidade constitucional, apesar das reservas dos relativistas culturais. O estudo apresentará uma análise de ditames judiciais, publicações acadêmicas e opiniões jurídicas para apoiar suas conclusões e contribuir para o discurso contínuo sobre essas questões complexas e significativas no direito constitucional indiano.

Palavras-chave: liberdade religiosa, relativismo cultural, prática religiosa essencial, igualdade e moralidade constitucional.

1 INTRODUCTION

The Indian Subcontinent was covered over an area of one and a half million square miles, as per history, it was considered as the land going beyond River Indus. The area consists of rich natural resources and different weather and seasons throughout time. The lifestyle of this region was considered rich and attracted people from different geographical locations and areas. Therefore, the Indian subcontinent has long been home
to a wide variety of religions, cultures and traditions. The main reason for this diversity goes back centuries when people from different regions entered the Indian subcontinent with different goals. Some of them came as traders, refugees, invaders, and religious propagators.

The Indian subcontinent is a treasure that was suitable to all and hence some of them had settled down and cohabitated with the natives. Before the invasion, the natives were governed under contemporary aboriginal customs and “Vedas”. A drastic change could be seen in the governing system when Arabs invaded the Indian Subcontinent, they introduced Islamic law so they could cohabitate with the natives. Further, the Indian Subcontinent was invaded by the British Colony, they introduced the natives to British Common Law and their system of livelihood. (Nazeer Abdul, 2021) This leads to bringing their individual culture, language, religion and legal system with them. India hence became the hub where they accepted and tolerated religious, linguistic and cultural diversity. (Ghosh & Chakraborty, 2020) The diversity could be seen in the 2011 census, Hinduism is practiced by 79.8% of the country's population, followed by Islam by 14.2%, Christianity by 2.3%, Sikhism by 1.7%, Buddhism by 0.7%, Jainism by 0.3%, and other religions by 0.66% by the people of India. (Kramer & Schiller, 2021) These diverse individuals could stay in India in unity because they believed in the values of vasudaivakutumbakam and sarvadharmasambhava. (Ghosh & Chakraborty, 2020).

The philosophy of Vasudhaiva Kutumbakam is against the thought of violence or fighting, it believes in the thought of mankind. Mankind does not limit itself to a specific religion or culture and the same is accepted by every Indian. Philosophy also believes in the idea of “unity in diversity”. (N. Sridhar & A.N.Gayathri, 2021) Further the term ‘Sarva Dharma Samabhava’, means equal respect for all religions. It evolved in the course of state formation in postcolonial India and is often taken as an Indian philosophical contribution to political thought. The idea is quite distinct from the Western concept of secularism, which advocates the total separation of state from religion in place of treating all religions equally. Secularism in the Indian context is creating an institute to reform religion and support some of the religious practices by being tolerant. (Das Acevedo, 2013); (Sumar).

Religious tolerance and religious freedom are considered one of the most important characteristics of this multicultural, multireligious and multi-traditional country. (Anthony et al., 2005) Religious freedom could be protected, Due to Government
institutes coercive capabilities. It may not only compel but also force recalcitrant religious leaders and zealous adherents to respect the laws of peaceful coexistence. This is significant for all faiths, not only those that are considered "strong religions" in the literature. (Anthony et al., 2005) Few individuals believed that the Indian state is not secular, in reality the Indian Constitution has been created with a strong influence on Hinduism. This was considered a disadvantage because the major reformation and social transformation happened concerning Hindus and Hinduism. (Das Acevedo, 2013) The word Secular was added to the Constitution after the 42nd amendment this happened mainly after the growing tension among the Muslims and Hindus. The term secularism should be rested on the notion that religion is inaccurate for the smooth functioning of the state, the requirement was for rational, practical understanding thinking which leads to economic growth. But with the current Indian condition, we cannot apply secularism as mentioned. As per the need of the current situation religion is considered as a powerful element in the personal identity of the individuals, therefore the secular policy cannot be constructed by avoiding the religious community. (Madan, 1987)

The process of accepting secularism, globalization and liberalization is increasing the complexity between religious cultures (cultural relativism) and modern cultures (believers of human rights). (Anthony et al., 2005). The Indians have also struggled a lot to adopt the elements of a democratic society. The enforcement of all these elements in combination with each other is creating a hardship for the Indian Constitution and is showing the fragile situation of the ideologies of secularism. (Maluleke Mikateko, 2012)

A huge section of women is being the victims of cultural relativism and are facing discrimination and atrocities in the Indian Subcontinent. (Misra, 2006) The same hardship was highlighted recently in Sabarimala Case (2017) 10 SCC 689 or in the Triple Talak case (2017)9 SCC 1, when the religious rights of a community were pitted against the fundamental rights of an individual under the Indian Constitution. To understand the situation that India is facing. We shall critically analyze two cases of two different sections of the community which are staying in India and how cultural relativism is affecting them. What are the changes seen after the judiciary tried to step in to establish constitutional morality which also takes into consideration cultural relativism if certain condition is fulfilled?
2 METHODOLOGY

**Review of Judicial Dicta:** The study will analyze relevant judicial decisions, including landmark cases known as Indian Young Lawyers Association vs The State Of Kerala and Shayara Bano vs Union Of India And Ors., related to fundamental rights, especially freedom of religion, to understand how the Indian judiciary has interpreted and applied these rights. This will involve examining how the courts have balanced cultural relativism concerns with the principles of constitutional morality.

**Analysis of Scholarly Publications:** A review of existing academic literature and scholarly publications on the topic will be conducted. This will involve assessing the arguments presented by scholars regarding the compatibility or conflict between cultural relativism and constitutional morality in the context of fundamental rights in India.

**Examination of Juristic Opinions:** The study will seek out and analyze the opinions of legal experts and jurists who have expressed their views on the relationship between cultural relativism and fundamental rights in India. This will include studying writings, commentaries, and interviews of legal experts.

**Comparative Analysis:** A comparative analysis will be carried out to evaluate whether the concept of constitutional morality, as enshrined in the Indian Constitution, aligns with or diverges from cultural relativism and Western notions of human rights. This analysis will consider key principles and arguments on both sides.

**Interpretation of Fundamental Rights:** The study will particularly focus on the interpretation of freedom of religion, as it relates to cultural relativism and essential religious practices. It will explore how the courts have balanced the protection of this fundamental right with the preservation of cultural diversity.

2.1 CASE STUDY

The first case which affected the Hindu Community was also related to women's rights against cultural relativism. The case is famously known as the Sabarimala Case. In this case, Lord Ayyappa also known as Hariharasudhan have its temple in the Periyar Tiger Reserve of Kerela’s Western Ghat Mountain ranges. The temple is considered the residence of Lord Ayyappa. The Devotees consider Lord Ayyappa as a Celibate divinity. Therefore, before the visit of the devotees to the residence of Lord Ayyappa, they are required to give up worldly pleasures for 41 days as atonement. Further, the women between the ages of 10 and 50 who are considered to be in their menstruating period, were
barred from visiting the lord’s residence the one which is situated in Periyar Tiger Reserve Kerela. This religious ritual of exclusion of women from entry to the temple was first challenged in the year 1991 in the Kerala High Court, the court ruled that the exclusion was constitutional as it was a long-standing practice and did not violate the right to equality and freedom of religion of woman devotees.

Later in 2006, The Indian Young Lawyers Association filed a petition to the Supreme Court challenging the exclusion of women in Sabarimala Temple Premise. They had challenged the practiced custom and considered it constitutionally invalid under Article 14 of the Indian Constitution as the dignity of the women was getting affected the other right getting affected was under Article 25 of the Indian Constitution, “all persons are equally entitled to freedom of conscience and the right freely to profess, practice, and promote religion.” Protection under Article 25 of the Indian Constitution can only be provided when a ritual or custom is coming under “essential religious practice”.

In this case, the Supreme Court passed a judgment and held by the majority of the judges that prohibiting women’s entry from Sabarimala Temple is violating the fundamental rights of women devotees. According to the majority of the judges, the devotees of Lord Ayyappa did not form a new religious denomination and the customary practice is considered as essential religious practice. They are further considered as violative of the right to equality and need to be stopped. But all the judges did not agree to the above-mentioned ruling. In the dissenting judgment, one of the female judges in the bench of five judges had a different view of the Sabarimala Temple. According to her, the courts must not determine whether these religious practices are to be abolished completely unless it proves harmful to mankind. The justification given in both decision was based upon “Constitutional Morality”.

Further, we shall observe another landmark judgment where the bench comprises Judges from different religious backgrounds. The bench consists of then Chief Justice of India J S Khehar believed in Sikhism, Justices Kurian Joseph believed in Christianity, Justice Rohinton Nariman believed in Zoroastrianism Parsi, Justice U U Lalit believed in Hinduism and Justice S A Abdul Nazeer believed in Islam. This case was famously known as the Triple Talaq Case. In this, Ms. Shayara Bano and her husband, Mr. Rizwan Ahmed, married and stayed in Uttar Pradesh for 10 years. The wife's family was compelled by the husband’s family to give dowry for the marriage to keep on going and
not fall apart. The wife’s family couldn’t give dowery, the husband and his family apparently abused and drugged her and further left her because she felt ill because of the abuse. The husband then divorced the wife Ms. Bano in 2015 using the religious rite or practice of talaq-e-bidet also known as the instantaneous triple talaq. Here a man can divorce his wife immediately by repeating the word ‘talaq’ three times in front of two male witnesses or one male witness and two female witnesses at the site. The wife’s acceptance or consent is not a requirement for this religious practice.

The wife because of the above situation filed a petition to the Supreme Court for a declaration that three practices, talaq-e-bidat, polygamy, and nikah-halala, are unconstitutional because they violate the basic rights of women established in Articles 14, 15, 21, and 25 of the Indian Constitution. Initially, the petition was filed by Ms. Bano, but over time the same was supported by Bebaak Collective an association that fights and protects the rights of marginalized women by religion and includes Muslim women. Bebaak was not the only organization that supported the petition, Bhartiya Muslim Mahila Andolan (BMMA) and the Union of India and other women's rights groups. The Bhartiya Muslim Mahila Andolan (BMMA) and the Bebaak Collective, supported Ms Bano's petition to declare these practices unconstitutional. They even sought the Court to pronounce that the Fundamental Rights apply to personal law. One of the petitioners had argued that the Muslim Personal Law is not codified, but is accepted in India because of the protection provided to it through Article 25 of the Constitution Of India as well as the courts don’t have the jurisdiction to challenge the Muslim Personal Law.

The judgment highlighted that many Islamic schools did not recognize triple talaq. The Triple talaq used by the Muslims in India has distorted the sayings of hadith. Neither the Quran supported talaq-e-bidat. The judiciary while coming down to the conclusion had kept their reliance on a few books “The Lawful and the Prohibited in Islam” by Al-Halal Wal Haram Fil Islam (edition – August 2009) and “Woman in Islamic Shariah” by Maulana Wahiduddin Khan (published by Goodword Books, reprinted in 2014) and “Marriage and family life in Islam” by Prof. (Dr.) A. Rahman (Adam Publishers and Distributors, New Delhi, 2013 edition), where the practice of instant talaq was described as sinful, and irregular and the same is required to be stopped. The other factor which help the judiciary to come to their decision was the standing of women of a particular denomination in the society as compared to other religions. Muslim women were considered to be in a position that was helpless as compared to other faiths followed in
India. One of the major reasons to conclude that the women were vulnerable was because their matrimonial rights could be ceased without their consent on the whims and fancies of their husbands without proper justification. Neither they had the power to question this process of triple talaq. This act clearly shows that Article 14 and Article 15 i.e. Equality and Prohibition of Gender Discrimination, of the Indian Constitution are getting violated.

The Rights provided under these Articles of the Constitution are provided to everyone no one can take them away. Not only Articles 14 and 15 are violated, but Article 21 having a larger ambit of rights is also violated. These rights states, the woman should also be provided with human dignity, social esteem and self-worth. These rights provided under the Constitution are not bargainable. Whereas in the case of seeking protection under Article 25 of the Constitution by the defendant, the ritual is required to be fulfilling the doctrine of essential religious practice. This judiciary in its majority decision held that the doctrine of essential religious practice is not getting fulfilled because triple talaq is not an integral part or aspect of the religion. The other aspect for not protecting Article 25 because, during the Constituent Assembly Debate, Dr. B. R. Ambedkar had clearly stated that Article 25 shall not apply to the law relating to marriage, divorce and inheritance. The civil status of the parties shall get affected under the disguise of religion. He mainly said this because he wanted to protect the constitutional value of human life. These were the opinion of the 3 of the judges sitting on the bench.

The other two judges had a different view, they tried to protect triple talaq under Article 25 of the Indian Constitution. According to them, religion is a matter of faith, belief and not of logic. They believed that they should not interfere in an integral or essential part of religion. These practices may seem irrational currently to some individuals but the Constitution assures believers of all faiths, that their way of life. According to the judges, the Constitution guarantees religious believers to follow their religious consciousness. (*Shayara Bano vs Union Of India And Ors. Writ Petition (C) No. 118 of 2016, 2017*) This religious consciousness helps to determine their separate existence then the masses. To understand this separate existence, we need to explore the word cultural relativism.

Let’s explore the word “culture” through the anthropological sense, to get a better understanding of the word. The word “culture” could mean "the degree of training acquired by a person" or "the external ways of life", the refinement of thought, emotions", etc... Culture is not a definite thing, to define the same is a very difficult task. Still the
same was taken up by E. B Tylor in 1871 to define the term culture. According to him, "that complex whole which includes knowledge, belief, art, morals, law, customs and any other capabilities and habits acquired by man as the member of society". Culture can evolve only when there is a relation between two different people or between a person and a thing or between two different things. Culture is made of relations and hence can be considered relative in characteristics. (J. De Marneffe, 1974) It is time now we look into the concept of cultural relativism.

Cultural relativism supported and claims that moral judgment depends on the cultural norm of a particular society. It strongly denies the existence of universal standards of moral value. This doctrine affirms that the diversity among cultures is complex because each culture is unique in itself. Each attribute of culture is so intertwined with each other to have a better understanding and evolution, the reference to the other attribute of culture is the necessity of the time. This so-called pattern is called culture. The doctrine of cultural relativism upholds and affirms that there is no concept like universal morality. But in reality, the diverse cultures and all cultures are morally equal and valid. (Jack Donnelly, 1984)

2.2 ESSENCE OF CONSTITUTION THROUGH CONSTITUTIONAL MORALITY

To understand the essence of the constitution one must go back to the period when the constitution was created. The Indians were not ready to accept a constitution that was created by the interference of foreign authority. They believed that the elected adult franchise shall be the right authority to create their very own Indian Constitution. As a result, the constituent assembly was convened. This assembly derived all its power of creation from the people of India, this was possible because of adult suffrage. Therefore, every individual from majority to minority, from schedule caste to women i.e. every possible individual was represented and their morality was represented in the constituent assembly debate while drafting the constitution. (Granville Austin, 2018) By doing this, Dr. B. R. Ambedkar felt this shall bring unity among the people and every individual's view will be taken into consideration. This was mainly done to protect the democratic setup of the Indian Constitution.

The Indian Constitution laid down fundamental rights, these rights expected perfect equality between the different communities and in matters related to civic rights, equality of liberty and security and the enjoyment of freedom of religion. This written
document not only protected the rights but it created a standard of conduct that is required to be followed by every section of individuals (citizens) in the same manner or way another individual shall do. (Dr. B. R. Ambedkar, 2014) There are chances that the citizens may interpret the constitution as they wish and shall ruin the basic spirit. Therefore, the constitution is in written format, so the citizen shall abide by it and shall maintain constitutional morality. The principle of constitutional morality is having various dimensions. According to one of the dimensions of constitutional morality, fundamental rights must work in cooperation with each other.

The Constitution of India guarantees fundamental rights, these rights are enforced by the judiciary. The rights provided under Constitution are not absolute. Because religious freedom is ethnic to Indian religious principles and to the socio-cultural to satisfy the religious pluralism in the country. Article 25 of the Constitution guarantees Freedom of conscience and free profession, practice and propagation of religion. (Granville Austin, 2018) However, clause (2) of article 25 does not oblige exemption to conscientious objectors on religious consciences from compulsory service of the State when services of some sort are necessary for public welfare and for the security of the country.

Although religious practices protected under the provision of clause (1) of article 25 are free from State regulation unless detrimental to public order, morality, health and the fundamental rights guaranteed under Part III of the Constitution, nevertheless these practices cannot be protected if they contravene social welfare and reform measures initiated by the State as provided under sub-clause (b) of clause (2) of the same article.

The same could be seen in Shayara Bano and Ors. vs. Union of India (UOI) and Ors. (2017)9 SCC 1 where the court laid that Triple Talaq is instant and irrevocable, the chances of reconciliation are not possible between the divorcing parties in case of instant triple talaq. The marriage could not be given a second chance with the interference of the two arbiters from the divorcing parties’ families, which was essential to save the marital tie. The procedure of triple talaq is so instant that even if it was not for any reasonable cause, then also it is considered valid. It was clear that this form of Talaq was arbitrary, this allowed the Muslim man to whimsically per his wish and fancy could break the marital tie as he is aware, there is no chance for conciliation to save it. This form of Talaq is held to be violative of the fundamental right contained Under Article 14 of the Constitution. The practice of talaq-e-biddat or triple talaq was set aside. It was pointed
out, that 'talaq-e-biddat' was not sacrosanct to the profession of the Muslim religion. The instant practice of 'talaq-e-biddat' should be removed as a religious right because in the same manner as the practice of 'Sati', 'Devadasi' and 'Polygamy', which were components of Hindu religion, and faith was reformed.

As earlier mentioned, the right to religion guaranteed Under Article 25 or 26 is not an absolute right for propagating religion. It is subject to restriction through legislation by the State, concerning regulating any activity which has a direct relation to economic, financial, political or secular form/structure and is further related to religious belief, faith, practice or custom. This leads to social reform by appropriate legislation by the State.

The same views were upheld in Indian Young Lawyers Association and Ors. vs. State of Kerala and Ors. (2017)10 SCC 689, the judgment emphasized that morality is founded on the four pillars which emerge in the Preamble i.e. justice, individual liberty, equality and dignity of human life. Along with these four pillars, secularism goes parallel with them. Under Secularism, all religions are treated to be equal on the same platform and allow citizens have the fullest liberty to believe or not to believe in a particular religion or with religious practice. If one wants to determine whether religious practice is protected under the constitution by the judiciary then religious practice is required to fulfill the test of “Essential Religious Practice” which was first laid under the Shirur Mutt Case. This means the Constitution shall protect the agnostic as it protects the worshipper. It is a universal truth that faith and religion do not express discrimination but religious practices are seen at a certain point to encourage patriarchy this lead to negating or opposing the basic elements of faith and gender equality and rights. When we say encourages patriarchy this means that the society revolves around a patriarchal mindset and with this, they try to discourage the status of women in the society and the religious practices. The Constitution is based upon the dignity and equality of each individual and their pursuit of happiness with an element of essential religious practice.

2.3 ESSENTIAL RELIGIOUS PRACTICE

Different paths are used to reach the universal one by all religions. Religion means the way of life which leads to recognizing the individual’s identity with Divinity. However, certain orthodox practices and rituals which are influenced by the prejudiced patriarchal methods have created clashes between the true essence of religion or faith and its practice with the patriarchal practice. Sometimes, in the name of important elements
of faith, such practices are intensely propagated. (2017)10 SCC 689 It was also laid, that the Constitution undoubtedly agrees and guarantees faith and belief to every citizen. As per the essential religious practice every custom, practice or tradition could not be considered as an integral part of religion and belief. It was therefore submitted, that every religious practice which is in use, must satisfy the overarching constitutional goal of gender equality and gender justice in the form of granting rights to anyone based on equality before the law. (Kholidah) Hence it was asserted, that the practice of 'talaq-e-biddat' or 'entry of female in Sabarimala temple, could not be regarded as a part of any "essential religious practice", and as such, could not be entitled to the protection of Article 25. The test of what amounts to an essential religious practice was laid down in a catena of cases. While determining the essential religious practice the following elements of the test must be fulfilled -

- That a religious practice is really a core part of the religion; (The Durgah Committee, Ajmer And Ors. Vs. Syed Hussain Ali And Ors., 1961)
- Superstitious beliefs should not be included.
- That the practice is required to be religious.
- That the religion itself would be changed or lose its nature if a particular religious practice was not given constitutional protection. (The Commissioner, Hindu Religious Endowments, Madras Vs., Lakshmindra Thirtha Swamiar Of Sri Shirur Mutt., 1954)
- The practice should not come under secular practice.
- Without such a practice the very nature of religion would change. (The Commissioner, Hindu vs Sri Lakshmindra Thirtha Swamiar, 2004)

But still, there is a problem in determination because, there are numerous religious groups who practice diverse forms of worship or practice religions, rituals, rites etc., even inside Hindus, these different denominations and sections residing within the country or abroad profess different religious faiths, beliefs, practices. They seek to identify religion with what may in substance be mere facets of religion. Hence it is difficult to devise a definition of religion that would be regarded as applicable to all religions or matters of religious practices.

This is mainly because for one class of persons “a perception or belief”, shall be of major importance in the matter of religion whereas to others, “rituals or ceremonies” may be predominant facets of religion; and to other third class of persons religion shall
be the “code of conduct or a mode of life”. Even different persons professing the same religious faith may have similarities or disparities in their beliefs. It may not be possible, therefore, to devise a precise definition of universal application as to what is religion and what are matters of religious belief or religious practice. That is far from saying that it is not possible to state with reasonable certainty the limits within which the Constitution conferred a right to profess the religion. (Surendranath, 2016) But from the above catena of judgment, one thing is clear that religion must not take away the individual right of dignity and equality. If the overlapping of interest is seen then the constitution shall use the freedom of religion under certain restrictions or by balancing the main aim and object of the constitution.

2.4 CONSTITUTION ENCOURAGE HUMAN RIGHTS AGAINST CULTURAL RELATIVISM IN PLURALIST SOCIETY LIKE INDIA

The Constitution of India seeks to establish a secular, socialist, democratic and republic India. Every citizen is provided with the right to equality in respect of status and opportunity, with a combination to promote the dignity of the individual, by doing this the Constitution is trying its level best to bring unity and integrity of the nation together by fostering fraternity among citizens of India. The emphasis, therefore, is on a citizen to improve excellence and equal status and dignity of the person. With the advancement of human rights and constitutional philosophy of social and economic democracy in a democratic polity to all the citizens.

The concept of human rights applies to everyone, universally, though the actual content of the concept is somewhat vague and subject to historical, economic, and political considerations. (Maluleke Mikateko, 2012) The Constitution of India seeks to establish a secular, socialist, democratic and republic India. Every citizen is provided with the right to equality in respect of status and opportunity, with a combination to promote the dignity of the individual, by doing this the Constitution is trying its level best to bring unity and integrity of the nation together by fostering fraternity among citizens of India. The emphasis, therefore, is on a citizen to improve excellence and equal status and dignity of the person. With the advancement of human rights and constitutional philosophy of social and economic democracy in a democratic polity to all the citizens. The international community considers human rights to be globally fair and equal, to have every individual on the same level. While the significance of national and regional particularities
concerning historical, cultural and religious backgrounds must be kept in mind, it is the
duty of States, regardless of their cultural systems, to promote and protect all human rights
and fundamental freedoms. The concept of human rights applies to everyone, universally,
though the actual content of the concept is somewhat vague and subject to historical,
economic, and political considerations. (*Human Rights and Constitution Making, United

Further, human rights are not limited to individuals they also include the
community collectively. But if individuals are not free to choose whether they are in or
out of a group, then the notion of collective rights is hollow i.e. only for
namesake. (*Nagengast & Turner, 2016*) In Sabrimalla and Triple Talaq the individuals are
asking for their individual right which is pitted against religious freedom of the
community. Majorly the Indian judiciary is facing a problem while dealing religious
problem in combination with class issue have characterized all the major social
complexity in modern India. Article 25 of the Indian Constitution plays an important role
for this complexity, is based upon the principle of cultural relativism. Cultural relativism
demonstrates the values and beliefs of the members of a community for time
immemorable. Some of these practices and beliefs are beneficial for the community,
while others are harmful for specific group (women) of the community. Despite their
harmful nature and their violation of national and international human rights laws, such
practices persist because they are not questioned or challenged and therefore take on an
aura of morality in the eyes of those practising them. (*Nagengast & Turner, 2016*) But the
judgment which we have seen earlier are laying their reliance on elements of human rights
i.e. equality and dignity. But this does not mean that the Indian constitution is only based
on modern human rights elements the element of cultural relativism is also taken into
consideration. And cultural relativism is protected if it satisfies the principle of the
essential religious doctrine laid down by the judiciary concerning the constitution.

3 CONCLUSION

The opposition to the concept of human rights was only on the basis that they are
considered of having their roots to western culture is irrational, illogical and their aim is
to abolish the traditional and cultural society cannot be justified. One can affirm that
universality of human rights is universally accepted and the opinion that of the traditional
non-western culture is being ignored is absolutely false. Origin of human rights is not of
much importance but the benefits of human rights are of extreme importance. It is necessary to embrace human rights in every culture, whether in the East or the West, and create a culture of human rights. There is no culture in this world which is unable to adopt the culture of human rights.

The intersection of law and religious culture is tough to sustain with each other, but the final conclusion must be for the benefit human life. A mathematical formulation cannot be formulated for the smooth intersection of religious culture and legal system. In the intersection of law and religion the consciousness and morals of an individual plays an important role. In concise human life and dignity is given the utmost importance with proper justification or elaboration as per the Indian Constitution.

Along with upholding an individual's dignity, the Indian Constitution aims to preserve the secular character of the nation by attempting to strike a balance between that individual's rights and the state's obligation and commitment to establish a free social order by upholding the principles of equality in every facet of the life of an individual. However, it is equally important to uphold the worth and dignity of women, and any social or religious customs that are upheld or practised in the name of religion should be seen as subordinate to the fundamental liberties and human rights of women. (Ghosh & Chakraborty, 2020)

It is now well settled that Article 25 secures to every person, subject of course to public order, health and morality and other provisions of Part III, as well as propagate and disseminate such religious belief which are not coming under the principle of “essential religious practice”. The denomination or community which is following a custom which is violating individual rights provided under the constitution shall be considered as going against the principle of constitutional morality.

This does not mean freedom of religion is not a part of constitutional morality in fact according to the judgment we have seen freedom religion is also a part of constitutional morality with certain restriction. The right of the Constitution to impose such restrictions as are desired or found necessary on grounds of public order, health and morality is inbuilt in Articles 25 of the Indian Constitution. It is very well said by J. De. Marneffe, “our task is not simply to understand past or neighbouring cultures, but to build our own.” (J. De Marneffe, 1974)
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