
THE CASE OF JAMSHED NOSHIR SUKHADWALLA VS UNION OF INDIA: AN ONGOING TUSSLE TO SAVE THE SACRED AND HISTORIC PARSI FIRE TEMPLE IN MUMBAI

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ABSTRACT

The Indian Parsis being a religious minority in the Indian Subcontinent have called India it is home for over 1000 years now. It had become one of India's wealthiest communities, having luminaries of the industry like the Tata congregation. Which became the face of the economic richness growing in and around Mumbai. Such numbers have halved since 1940, to around 60,000 thus being recognised as a religious minority. This paper shall aim to deal with an ongoing struggle that is now going on over a decade long multi-billion-dollar metro project which is supposed to pass under the holy and historic fire temple of the Zoroastrians in Mumbai, which is a place integral to the religion and its people holding extreme historical significance and emotion in the hearts of Zoroastrians. This decision of tunnelling under the holy sanctum of the temple has caused widespread discomfort to the Parsi community.

The concept of understanding the 'essential part' of religion entails the foundational beliefs along which a religion is based. 'Essential practice' means those practices that are essential to abide by while adhering to that religion or community. The test of essential practices lies in the fact that if such a practice is not abided by, whether the basis of the religion gets altered without the active involvement of such a practice. If restricting such acts or practices which so intrinsic to the religion that restricting such acts, hinders with the basic fabric of the religion, and its associated belief systems, such would render in an essential practice to that religion.

As the Parsi community believes, that the holy fire which was brought from thousands of miles from Persia by their forefathers and consecrated in that temple is connected to the earth through a magnetic system and building a tunnel under the same would desecrate the sanctity thereby bringing ill-luck

and the wrath of mother nature. In the Indian context, M.C. Chagla, C.J., observed: “*Whatever binds a man to his conscience and whatever moral and ethical principles regulate the lives of men, that alone can constitute religion, as understood in the Constitution, essentially a religion, is a matter of personal faith and belief, of personal relationships with what he regards as his maker or his creator or the higher agency which he believes regulates the existence of sentient beings and the forces of the Universe.*”¹ Hence this paper will talk about the long struggle of the Zoroastrian community in protecting their religious interests and beliefs within the Indian subcontinent. Especially focusing on the legal grounds which entitles them to the protection of this sacred structure.

Keywords: Zoroastrian community, Parsis, essential practice

INTRODUCTION

In October, in the year 2018, a petition, had been filed by Shri Jamshed Noshir Sukhadwalla, which then had been delivered to the present Indian Prime Minister, regarding the recent section of the Bombay metro rail, being a 33.5 km long extension, which has been till date under construction.

The petitioner, Mr Jamshed Noshir Sukhadwalla, who is a structural engineer by profession and a former professor at the VJTI (Veermata Jijabai Technological Institute) College, in Mumbai, India. Mr Jamshed Noshir Sukhadwalla, a 72-year-old Indian citizen, had been in tandem with citizen’s reluctance to the making of an underground metro, in various parts of South Mumbai, since 2015 March.

Mr Sukhadwalla filed approximately seventy Right to Information (RTI)² applications, which led to an online protest hinging on the fact that such tunnelling work should stop below the Atash Behrams, which are the places of sacred interests to the Parsi community. According to Mr Sukhadwalla, there persisted a sense of betrayal within the community.

¹ Nations, U., 2022. *Universal Declaration of Human Rights* | *United Nations*. [online] United Nations. Available at: <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> [Accessed 2 December 2022].

² Rti.gov.in. 2022. *Right to Information*. [online] Available at: <<https://rti.gov.in/>> [Accessed 2 December 2022].

The claim of the petitioner was that if such a metro is built, then it would transgress the “magnetic circuits”³ of the Zoroastrian fire temples, thus “diminishing their spiritual powers”⁴, and releasing a few dark forces. This petition that had been signed by 11,000 people concluded that temples are the spontaneous living, vibrant linkage between God and mankind. If the holy fires of the Atash Behrams, are debased, the backlash from the nature would not spare anyone.

Now, the upcoming 3rd phase of Mumbai’s metro would travel under few of the most dilapidated housings of South Mumbai and would travel by close to near the religious Zoroastrian fire temples and a well having the magical ability to grant one a boon. The reducing Zoroastrian population shall be lesser than 45,000 in Mumbai, (and just 56,000 in India) amongst 18 million people residing in the city.

But the Zoroastrians being a high-profile group, many amongst them have had a conversation regarding the same matter with Mr. Ashwini Bhide, the managing director of the Mumbai Metro Rail Corporation (MMRC).

The city of Mumbai, desperately needs the new metro to start as early as possible to it can save the deficient shambled public transport mechanism. The Rail network being a British era transport mechanism, has a capacity of taking in 1 million commuters per day, has a footfall of 7 million commuters daily on an average, and a chunk of the transport to and fro Mumbai, is taken care of by the same.

The Phase I and Phase II of the Mumbai Metro Rail Corporation⁵, have been non- problematic. Phase I, has been taken care after by the Mumbai Metropolitan Region Development Authority⁶ (MMRDA), and a collaborative project jointly undertaken by Reliance Infrastructure and Veolia, a French company along with the Maharashtrian government, have successfully completed a 11.5 km east to west elevated railway, having inaugurated in 2013.

³ the Guardian. 2022. *'Dark forces will be unleashed': the fire temple v the Mumbai metro*. [online] Available at: <<https://www.theguardian.com/cities/2017/dec/14/metro-tunnel-mumbai-cricket-zoroastrian-india>> [Accessed 2 December 2022].

⁴ Change.org. 2022. *Sign the Petition*. [online] Available at: <<https://www.change.org/p/shri-narendra-modiji-don-t-destroy-the-sanctity-of-parsi-zoroastrian-atash-behrams-fire-temples-south-mumbai>> [Accessed 2 December 2022].

⁵ The Economic Times. 2022. *mumbai metro rail corporation ltd: Latest News & Videos, Photos about mumbai metro rail corporation ltd | The Economic Times - Page 1*. [online] Available at: <<https://economictimes.indiatimes.com/topic/mumbai-metro-rail-corporation-ltd>> [Accessed 2 December 2022].

⁶ Mmrda.edcr.in. 2022. *Mumbai Metropolitan Region Development Authority*. [online] Available at: <<http://mmrda.edcr.in/>> [Accessed 2 December 2022].

The Second Phase of the said project, is a 40-kilometre elevated sub-urban line that is currently half built.

Out of all the three phases, only *the third phase*, has been constructed below the ground. The third phase that passes under South Mumbai, which is a posh district having less affinity towards such rail project, as it is a community filled with the higher class of the economic sections, that they must hardly use the metro.

Mr. Ashwini Bhide, the Additional Commissioner of the Municipal Corporation of Greater Mumbai, has insisted time and over again that the construction of the metro line, would not cause damage or harm the structure of the Zoroastrian temple.

At a subsequent meeting over the issue of such risky construction, held between Metro chiefs and the Parsi delegation, having included the petitioners, arranged by the Chief Minister of the state, Uddhav Thackeray, Mr. Bhide pointed to reports of the government of the country, which gave a green signal to the implementation of such a project.

However, the highest priest of the Zoroastrian's shrine, situated at Udvarda in Gujarat, along with representative of the community in the secular National Commission for Minorities, has similar thoughts regarding the petition being filed very hastily and the petitioner has behaved in a disruptive manner.

The Rise of the Controversy

The local newspaper, the *Parsi Times*, had devoted several articles to clear out the confusion in pursuance to the 187-year-old temple, including pointing out to the Mumbai Metro Rail Corporation (MMRC), believed the concerned structure was more comprehensive than the other structures surrounding it in Girgaon, which happens to be a small overcrowded retail hub. Now, 85 of the 348 buildings surveyed by the Mumbai Metro Rail Corporation (MMRC), was designated to have structural problems in the category of "severe" to "very severe". However, basic argument of the petition bearers, remain unchanged. They fear that the construction of such a metro passage may harm the "spiritual integrity," of the Atash Behrams, as told by Hanoz Mistry, one of the signature bearers of the petition. Now, an Atash Behram (temple), is not just the holy fire which is enshrined within the chancel. There is no such distance which can be termed as to be safe.

The flagbearers of the petition feared that the construction of a metro passage beneath a nuclear field having all sorts of structural support and safety features in place, it might just happen that the execution fails and then the balance of the Atash Padsha (imperial fire) gets disrupted, which till date, has been kept intact with caution and has been carefully balanced and spiritually elevated.

Much dialogues showcasing on the MMRC's (Mumbai Metro Rail's Construction), sequestrating a 25-hectare tract of the green shelter, adjacent to Aarey Milk Colony, have been happening for a car cache, which has been challenged by the National Green Tribunal (NGT)⁷, since around 3,130 trees would have been affected. Recently, there has been insufficient soil-testing conducted on a tunnel channel under the "heritage mile", which is a territory for mercenary stone establishments.

Now the blame for such a catastrophe, has been put on the construction of metro by the flagbearers or the protectors of the Atash Behrams. The Bombay High Court had refused the petitioners two weeks to appeal against the order in the Supreme Court of India. However, Mr. Ashwini Bhide, Additional Commissioner of Municipal Corporation of Greater Mumbai, had correctly stated that city of Mumbai might come to a standstill, without the metro, within a few years.

It was also promised by Mr Ashwini Bhide, that the construction of the Phase III would begin, regardless of the controversy, as already 14 percent civil work has been completed and three tunnel boring machines have been fitted to the ground, and a batch of the next six was already ready to go. The petitioners went on to claim that, the magnetic loop, and the dark energy underlying the Atash Behrams, shall delay the completion of the project, and make the project surpass its inauguration date of 2021, but the question as to whether the construction of the metro, shall twist with the spiritual essence of the Atash Behrams, for the worse, is a point to be dealt with sincerely, because the future of nearly 1.7 million daily commuters of Mumbai, rely on that decision.

The Bombay High Court, categorically laid down certain poignant rationales, in the order passed by it, which is as follows:

⁷ Greentribunal.in. 2022. *National Green Tribunal*. [online] Available at: <<https://greentribunal.in/>> [Accessed 3 December 2022].

- 1) The Respondents No.3 (Mumbai Metropolitan Regional Development Authority) and No.4 (Mumbai Metro Rail Corporation), were permitted to continue the boring of tunnels under the Atash Behrams, inclusive of the H.B. Wadiaji Atash Behram and Anjuman Atash Behram, on the following guided conditions;
 - a) The Authorities, Technicians were given permission to start with the drilling and tunnelling work, provided that no damage is to be caused to the two Atash Behrams, while such drilling work is executed.
 - b) While the work of tunnelling will be carried on, there shall be strict monitoring in the levels of vibration that would be monitored continuously, using the necessary equipment and devices.
 - c) While the tunnels shall be bored, passing underneath the two Atash Behrams, a specially framed team of experts shall be present to assess the working.
 - d) If and when necessary, the Tunnel Boring Machines⁸ (TBMs), shall be slowed down while the tunnelling work is ongoing under the said premises.
 - e) A Controlled Blasting Method, should be adopted for the purpose of digging tunnels near the Zoroastrian temples.
 - f) Necessary equipment shall be permanently installed at different places in and around the two Atash Behrams to monitor the levels of vibration, by Respondents No.3 and No.4.
 - g) The Respondents No.3 and No. 4, are directed to continuously monitor water levels of the wells installed in the premises of Atash Behrams. They shall adopt necessary precautions in that regard by installing the minimum number of required ground water charging wells.
- 2) Ad-interim relief which had been considered earlier, stood vacated.
- 3) Petition is disposed of.
- 4) Rule is accordingly discharged with no order as to costs.

Senior Advocate Navroz Seervai, appearing for the petitioners, prayed for the continuation of the ad-interim relief for a further time span for 2 weeks, as the same had been in use since May

⁸ The Indian Express. 2022. *Explained: Why a tunnel boring machine has been stuck in Mumbai slush for a year.* [online] Available at: <<https://indianexpress.com/article/explained/explained-what-are-tunnel-boring-machines-why-is-one-stuck-in-mumbai-slush-for-a-year-now-7062822/>> [Accessed 4 December 2022].

2018. It had been submitted that no prejudice would be caused if ad-interim relief is extended for a period of two weeks.

The Learned Senior Counsel, Mr. Aney, for the Mumbai Metro Rail Corporation (MMRC), had opposed the prayer of the petitioners on the grounds of continuing the ad-interim relief. It had been submitted by the Respondent side, that a loss of more than 4 crores, per day, is still being lost due to the execution of the project. It's a project of aimed for the convenience of public, and more importantly for the city of Mumbai. There has been various financial as well as non-financial agencies, along with the State, and the Central Government, who are rendering the cost of such establishment. As, a final stance of the matter, the ad-interim relief must be discontinued. The Bombay High Court, the petitioners are not satisfied with such orders, they can very well resort to seek out for additional or appropriate measures, as they may deem fit.

Respective submissions by the Learned Counsel for both the parties, were taken a note of, and Hon'ble Bombay High Court, was conscious of the fact that the project being one as of the infrastructure types, had been executed in a manner that would suffice the larger interest of the public. The project involved huge costs, and the delay in the same might further increase the costs.

There has been a meaningful reference made to the provision of Section 41(ha), of the Specific Relief Act, 1963 which talks about injunction being refused, if the nature of the injunction is such that it would lag the process of completion of an infrastructure, or interject in the continuing mechanism of a relevant factional project, or any pertinent matter to that infrastructure.

However, Bombay High Court⁹ ruled that, they did not find it appropriate to withhold the infrastructure project of such a magnitude. In view of such matter, the High Court, did not accede to the demands put forth by the Senior Advocate, representing the petitioners, Mr. Seervai. The oral request for granting a stay order of the petition, had been dismissed.

⁹ News, C. and News, m., 2022. *Bombay high court: Bombay HC allows Metro tunnelling under two fire temples* | *Mumbai News - Times of India*. [online] The Times of India. Available at: <<https://timesofindia.indiatimes.com/city/mumbai/bombay-hc-allows-metro-tunnelling-under-two-over-century-old-fire-temples-in-mumbai/articleshow/66879247.cms>> [Accessed 5 December 2022].

A Brief and Consolidated Understanding of Article 25

Article 25, guarantees the freedom of conscience, the freedom to profess, to practice and propagate religion to all its citizens.

(1) 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.

(2) 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.

- **Fundamental Right Enshrined:** Article 25 of Indian Constitution enshrines, that every person, irrespective of caste, creed, colour shall be equally entitled to their freedom to profess, preach, propagate and practice religion.
 - **Freedom of conscience:** It refers to the capability of man getting moulded with God and whatever creatures in whichever method he wants to.
 - **Right to Profess:** Freely conforming to one's faith, religion and belief without any force.
 - **Right to Practice:** performing religious worship, ceremonies to exhibit ones beliefs and ideas.
 - **Right to Propagate:** one should transmit or disseminate ones choice of religion freely without harming anyone's religion or its associated sentiments.
- **Scope:**
 - Article 25 covers the expanse of religious beliefs (doctrines) as well as religious practices (rituals).

- Moreover, such rights are available to all persons—**citizens as well as non-citizens.**
- **Restrictions:**
 - These rights are subject to **public order, morality, health** and other provisions in relation to fundamental rights.
 - The State is **permitted to regulate or restrict** any economic, financial, political or other secular activity associated with religious practice.

The Preamble of the Constitution¹⁰ explicitly lays the concept of secularism, equality, brotherhood, freedom to worship any deity, and the protection of an individual's choice to faith and dignity. It is the duty of the State as envisaged in our Constitution to protect the equitable social order. Fundamental Rights and the Directive principles of State Policy seek to resuscitate them.

In *SR Bommai vs Union of India*¹¹, it was categorically held by the bench of nine judges that Secularism is an ingredient to the formation of the basic structure of the Constitution.

Protection of Religious Freedom vis-à-vis Article 25 and 26.

Religion in its archaic and verbal sense refers to the attachment that this institution has with the divine. It chains man to God or the force creating such world order. It is tough to define the expressions as contained in Articles 25 and 26 of the Indian Constitution in terms of religion. In India, we observe, that Muslims keep their faith in Allah and have faith in Islam; Christians keep in Christ and Christianity; Parsis in Zoroastrianism; Sikhs in the Guru Granth Sahib¹² and in the teachings of Guru Nanak Devji, its founder, which is a facet of Hinduism like the Brahma Samaj, Arya Samaj etc.

¹⁰ Constitutionofindia.net. 2022. *Constitution of India*. [online] Available at: <https://www.constitutionofindia.net/constitution_of_india/preamble> [Accessed 6 December 2022].

¹¹ Admin (2022) *SR Bommai vs Union of India Case for UPSC Indian Polity & Governance*, BYJUS. BYJU'S. Available at: <https://byjus.com/free-ias-prep/bommai-case/> (Accessed: 7 December 2022).

¹² BBC Bitesize. 2022. *The Last Guru – the Guru Granth Sahib - Waheguru (God) and authority - Edexcel - GCSE Religious Studies Revision - Edexcel - BBC Bitesize*. [online] Available at: <<https://www.bbc.co.uk/bitesize/guides/znmvt4/revision/6>> [Accessed 8 December 2022].

A religion shall without any hesitation, have its basis on a system of beliefs, and doctrines which are regarded by those who profess religion to be quite conducive to their spiritual well-being. A religion is not merely an opinion, belief or an “essential practice” per se. It has an outward expression in the acts construed as well. It is not so that every aspect of the religion has been safeguarded by Articles 25 and 26, nor has the Constitution provided that, every religious performance cannot be interfered with the broad concept of “Religion”¹³ per se. It cannot be described within the narrow scope of interpretation as provided under Article 25 and Article 26. Every religion must hinge on the concepts of conscience, moral and ethics.

Now, whatever a man shall bind to his own conscience, including the morals and ethical principles that regulate the lives of the common people believing in that conscious or religious belief, which shall alone constitute the “religion” as understood, fostering a feeling of brotherhood, fraternity and amity among all the people who find their grasp in the secular matrix¹⁴ of our Constitution.

Aspects of being secular does not constitute any religion, which brings into perspective every single human activity. A religious activity per se, can bring under its ambit, any daily activities starting to eating habits of a person, to his or her style of dressing, but such activity was never promised to be safeguarded under the Constitution, under the coverage of “religion”. Now, the very approach to protect religion, facets pertaining to religion, and religious practices, that have been promised under Article 25 and Article 26, should be seen with rationalism, as because with the nature of matters, it would be extremely arduous for one, to define or for that matter express, religion or aspects of certain religious acts.

The Case of Commissioner of Police and others Vs. Acharya Jagdishwarananda Avadhuta and Another, AIR 1991 Cal 263

The Commissioner of Police, West Bengal and others had filed an appeal against the impugned order of the Division Bench of the Calcutta High Court in FMAT No. 1451 of 1990 dated 8/11/1990.

¹³ the Guardian. 2022. *The last of the Zoroastrians*. [online] Available at: <<https://www.theguardian.com/world/2020/aug/06/last-of-the-zoroastrians-parsis-mumbai-india-ancient-religion>> [Accessed 8 December 2022].

¹⁴ India, I., 2022. *Secularism and Constitution of India*. [online] Legalservicesindia.com. Available at: <<http://www.legalservicesindia.com/article/1964/Secularism-and-Constitution-of-India.html>> [Accessed 8 December 2022].

The Calcutta High Court in the above matter had allowed the writ petition filed by Acharya Jagdishwarananda Avadhuta, Public Relations Secretary, Ananda Marga Pracharak Sangha (respondents in the said case). The Calcutta High Court declared that the order passed by the appellants prohibiting the respondents from taking out a procession in which the Tandava dance is performed in public on certain days, was declared to be illegal.

A writ petition under Article 32¹⁵ was filed before the Supreme Court seeking issuance of direction to the Commissioner of Police Calcutta and the State of West Bengal to allow processions by, the followers of the Ananda Marga¹⁶ cult, to be carried in the public streets and meetings to be held in public streets and meetings to be held in public places accompanied by the performance of Tandava dance within the State of West Bengal. The case involved petitions by the General Secretary, Public Relations Department of the Ananda Marga Pracharak Sangh: the Diocese Secretary of West Bengal Region¹⁷ and an ordinary follower of Ananda Marga.

Shri Ananda Murti¹⁸ had founded a socio-spiritual organisation claimed to have been dedicated to the service of humanity in different spheres of life such as physical, mental and spiritual in the year 1955, irrespective of caste, creed and colour. The headquarters of the organisation was located in the city of Calcutta, West Bengal. Ananda Marga cult teaches yogic and spiritual science to all the aspirants. It had been pleaded that Ananda Marga, shows the way and explains the methods for spiritual advancement and this helps a man to practice his dharma.

One of the prescriptions of religious rites to be daily performed by an Ananda Margi is the Tandava Dance¹⁹, and is claimed to have been so introduced from the year 1966 by the preceptor.

¹⁵ KNOWLEDGE, G., GK, C. and Javaid, A., 2022. *What is Article 32 of the Indian Constitution?*. [online] Jagranjosh.com. Available at: <<https://www.jagranjosh.com/general-knowledge/article-32-of-indian-constitution-1605699265-1>> [Accessed 8 December 2022].

¹⁶ India Today. 2022. *Ananda Marga: Spiritual saviours or tantrik terrorists?*. [online] Available at: <<https://www.indiatoday.in/magazine/special-report/story/19820531-ananda-marga-spiritual-saviours-or-tantrik-terrorists-771819-2013-09-20>> [Accessed 9 December 2022].

¹⁷ Cbci.in. 2022. *Catholic Bishops' Conference of India*. [online] Available at: <https://www.cbci.in/bengal_region.aspx> [Accessed 9 December 2022].

¹⁸ Blog, R. and yoga, C., 2022. *Contribution of Shrii Shrii Anandamurti in the field of yoga*. [online] Times of India Blog. Available at: <<https://timesofindia.indiatimes.com/readersblog/understanding-yoga/contribution-of-shrii-shrii-anandamurti-in-the-field-of-yoga-21953/>> [Accessed 9 December 2022].

¹⁹ The Economic Times. 2022. *No Tandava in public, SC tells Anand Margis*. [online] Available at: <<https://m.economictimes.com/no-tandava-in-public-sc-tells-anand-margis/articleshow/554891.cms>> [Accessed 10 December 2022].

Such processions were taken at intervals which are intended to be taken out in public places accompanied by the Tandava dance as a religious practice.

The Commissioner of Police (respondent No.1), made repetitive orders Under Section 144 of the CrPC²⁰, 1973 from August 1979, directing that “no member of a procession or assembly of five or more persons should carry any fire arms, explosives, swords, spears, knives, tridents, lathis or any article which may be used as a weapon of offence or any article likely to cause annoyance to the public, for example the skulls”.

On March, 29,1982, the respondent No. 1, made a fresh order Under Section 144 of the Code of Criminal Procedure, 1973 wherein the same restraints as mentioned in the earlier order was imposed. An application for permission to take out a procession on the public street accompanied with Tandava dance was rejected and that led to the filing of the petition before the Supreme Court.

The respondents contented that militancy continues to be the main feature of the organisation. Prior to the promulgation of the prohibitory orders, Ananda Margis, took out processions carrying out lethal weapons like trident lathis, as well as human skulls and knives from time to time which caused much annoyance to the public in general and onlookers in particular, and this tended to disturb public peace, tranquillity and public order.

It was pointed out by the respondents that in spite of the order of prohibition in force from August 10,1979, a procession was taken out on the following day within the city of Calcutta by Ananda Margis with lathis, tridents, skulls and knives and the procession became very aggressive.

Now the matter before the Honourable Supreme Court, was that

- 1) Whether the *Tandava dance* inculcated into an essential practice of religion owing to Ananda Marga?
- 2) Whether the prohibitory orders directed to stop the procession were in tandem with the law?

²⁰ Indiankanoon.org. 2022. *Section 144 in The Code Of Criminal Procedure, 1973*. [online] Available at: <<https://indiankanoon.org/doc/930621/>> [Accessed 10 December 2022].

While deciding of what shall construe as an “essential practice,” the courts are to do that very carefully. The rituals which are very intrinsic to the practice or the culmination of the religion and if not adhered to can cause moral turpitude or result in disturbance of public order and morality, should be categorised in the bracket of an *essential religious* practice.

India’s Supreme Court, had rightly, concluded the fact that the “Tandava dance,” shall not be a “essential practice”²¹, of Anand Margi, in consonance to the time period for which the practice prevailed.

The practices which construe as essential for a particular religion and must be adhered to, are and should be protected from being nudged in by the State authorities. However, while granting a customary practice the status of an *essential practice*, it must be kept in mind that granting of such a status, should not backfire at the society.

The Apex Court of India, in my view, had been fair in delivering its judgment of the said case, upholding that the Tandava dance, cannot be construed as an essential practice of the Ananda Margis, keeping in view the structure of the society at the time when the practice was carried out and also the time frame for which such activities were being carried out in our society.

The order of imposing Section 144 CrPC, by the Apex Court, stands correct. Such orders are never permanent in nature, but always holds the shade of temporariness. If the lacuna in implementation of such orders in due time, persists then, there is a high chance that such a law can be used as a means for suppressing the rights of the people.

Each citizen of India has their autonomous rights and powers, and while exercising authority in respect to such guaranteed rights and authorities as given to the people of this country by the Constitution, one needs to be aware of the nature, limitations and applicability of such rules and regulations.

The Supreme Court, after assessing the case and the societal consequences that might upheave, took a balanced view to conservate the public peace and avoid damages to public properties,

²¹ The Indian Express. 2022. *Sabarimala order: What is the ‘essentiality’ test in religious practice?*. [online] Available at: <<https://indianexpress.com/article/explained/explained-supreme-courts-sabarimala-order-and-the-essentiality-test-in-religious-practice-6119369/>> [Accessed 10 December 2022].

permitted the Ananda Margis to participate in the celebrations and perform their “Tandava” dance, provided they obey certain restriction laid by the Court. Such were:

- 1) The Commissioner of Police must prescribe the route.
- 2) The performers shall not use loud speakers.
- 3) Traffic regulations should be observed.
- 4) Traffic shouldn't be obstructed.
- 5) Normal activities of common man should not be disturbed.
- 6) Immoral, or illegal, or provocative slogans affecting others' sentiments shall not be voiced.
- 7) Crackers, along with spraying of colour powders are prohibited, and the instructions of police officers should be adhered to.

The Constitutional Bench decisions, in *Commissioner of H.R.E. v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*²² and *Seshammal v. State of T.N.*²³ are judgments by the Honourable Supreme Court which needs to be looked up on when determining the test of essentiality of a practice.

Now, what is meant by “an essential part or practices”, of religion is a matter to delve into.

Essential part of a religion, means the ultimate core beliefs upon which a religion is based on. Essential practices are those practices which are fundamental to follow a particular religious belief. It is on the strong foundations of the essential practices that a religion stands, without which a religion will not be a religion.

Now, the test of determining whether a part or practice is essential to a religion, is to be able to recognise the fact that the nature of the religion shall be changed without that part or practice. If omitting a part of the practice could result in a dynamic altering in the character of that religion or its belief, then such a practice could be treated as an essential or integral part. Now, there cannot be major alterations to such part because it is the very essence of the concerned religion and changes in that shall alter its fundamental character.

²² Indiankanoon.org. 2022. *Sri Lakshmindra Theertha Swamiar ... vs The Commissioner, Hindu ... on 13 December, 1951*. [online] Available at: <<https://indiankanoon.org/doc/33895/>> [Accessed 10 December 2022].

²³ Indiankanoon.org. 2022. *Seshammal & Ors, Etc. Etc vs State Of Tamil Nadu on 14 March, 1972*. [online] Available at: <<https://indiankanoon.org/doc/641343/>> [Accessed 10 December 2022].

Such essential parts are permanent in nature and are protected by the Constitution of India. It is not possible for someone to change an essential part of such a practice abruptly from a particular time or date.

Such alterable parts or practices do not form the "core"²⁴ of religion whereupon the belief is based and religion is founded upon. They can only be treated as mere elaboration to the non-essential (sic essential) part or practices.

CONCLUSION

The entire discourse of the case of Mr Jamshed Noshir Sukhadwalla, revolves around a Parsi man, who had filed a writ petition for obtaining a restriction order against the Respondents, typically the MMRC (Mumbai Metro Rail Corporation).

It was however held by the Bombay High Court, that the petitioner had not submitted any objections and suggestions in pursuance of the above issued notification. It had been incumbent upon the Petitioners, to have lodged any objections or suggestions and also to have participated at the time when there had been a detailed presentation addressed to the public by the Mumbai Metro Rail Corporation, as when had been done.

There had been harsh criticism, from the petitioners, to the reports authenticated and presented by the experts though they themselves had not presented any such report. The project undertaken by the Respondents was of high importance to the general public at large, and had not suffered from any error as to the decision-making process.

The Court also ruled, that the implied danger as to the structural safety and integrity of the premises of the Atash Behrams, in pursuance to the construction of the Metro rail, was unjustified and arbitrary. The Court ruled it was an infrastructural institution, that had been carried out in greater interest of people. The Bombay High Court, was of the opinion, that an injunction order, as demanded by the petitioners cannot be served, as to the provisions of Section 41(ha) of the Specific Relief Act²⁵, 1963.

²⁴ Encyclopedia Britannica. 2022. *Zoroastrianism | Definition, Beliefs, Founder, Holy Book, & Facts*. [online] Available at: <<https://www.britannica.com/topic/Zoroastrianism>> [Accessed 10 December 2022].

²⁵ Indiankanoon.org. 2022. *Section 41 in The Specific Relief Act, 1963*. [online] Available at: <<https://indiankanoon.org/doc/1436285/>> [Accessed 10 December 2022].

The Court in its considered view, did not find it much appropriate, to withhold the infrastructure project of such a magnitude any further, as it would also result in increased costs, and the oral request for the stay of the petition, as proposed by the Learned Counsel appearing for the petitioner, Mr Seervai, was declined by the Bombay High Court and the stay petition had been dismissed, with no further costs.

It is very unfortunate, that the Bombay High Court in the said case did not consider the consideration of the minority community of the Parsi-Zoroastrians in the state of Maharashtra. The sanctity of the Atash Behrams, and the spiritual and religious attachment that the Parsis have with the said establishment, in our limited opinion, had been undermined by the Bombay High Court.

In our limited opinion, it would be grossly wrong on part of the metro authorities to harm such institutions which might hurt the community's religious sentiment. The trustees of the Fire Temple and the Parsi representative(s) of the National Commission for Minorities, need to pull up their socks and get moving.