

INDIAN JUDICIARY'S STRUGGLE: RELIGIOUS FREEDOM VS. EQUALITY (2018-2023)

by

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ABSTRACT

The Indian Constitution is supposed to balance between freedom of religion and social equality and secularism within a diverse and pluralistic society. However, the judicial interpretation on balancing both these aspects has often led to confusion, especially due to the application of the Essential Religious Practices (ERP) Test. This paper critically examines how inconsistent rulings have been passed by the Supreme Court of India, between 2018 and 2023, while adjudicating conflicts between religious freedom and equality. Through a careful analysis of landmark cases such as *Indian Young Lawyers Association v. State of Kerala (Sabarimala, 2018)* and *Aishat Shifa v. State of Karnataka (Hijab, 2022)*, the paper brings to light the contradictions stemming from the ERP Test and its lack of clear standards. The paper further uncovers the shift in judicial stance on individual rights and freedom in the choice of religion and marriage, particularly in the context of Anti-Conversion laws, where Article 21 (Right to life and liberty) and the right to privacy have begun to have more importance in judicial decisions. On the basis of constitutional provisions, analysis of legal texts, precedents, ambiguity and conceptual incoherence, the ERP test is deemed to be defective, that weakens secularism and leading to uneven application of the law. The paper concludes by recommending for a nine-judge bench ruling to either reformulate or eliminate this ERP framework with a more consistent, rights-focused approach that upholds constitutional principles, Individual freedom and individual autonomy as the pillar of Indian secularism.

Keywords:

Essential Practices Test (ERP test), Article 21, Sabarimala, Hijab Ban, Anti-Conversion laws, Judicial Review, Constitutional morality.

Chapter 1: Introduction

The Constitution of India, which was adopted in 1950, provides a unique blend of secularism and religious accommodation which glorifies India's diverse religious landscape. However, it seems like a tightrope walk as it guarantees freedom of religion (Art.25) and Social Equality (Art.14-17), while balancing different faiths. Here, Art. 25(2) (b) allows the state to facilitate secular activities related to the religions, e.g. Abolishing Untouchability and giving access to the temple for everyone. The real tricky part is "how does judiciary balance without stepping into the religious ground? That's the question to India's secular setup.

The Essential Religious Practice (ERP) Test is the Supreme Court's tool to see if a practice is core to a faith. This is used to differentiate "essential" rituals which cannot be modified from the cultural adaptations which can be modified or reformed. Whether this puts the Courts in a difficult situation? The critics agree stating that by labeling a practice as "essential" might lead to them influencing religion itself, not just interpreting the law. As a result, the decision in different cases is confusing.

The ERP Test imposes a secular judicial lens on matters of theological significance, requiring courts to determine which practices are 'central' to a faith tradition in the absence of any agreed theological methodology. This exercise has been critiqued as one that exceeds the institutional competence of courts, which lack the training required to evaluate religious texts with doctrinal consistency. Scholars in the Oxford Journal of Law and Religion have concluded that the doctrine's inconsistent and incoherent application cannot meaningfully resolve religious disputes, producing normative gaps with consequences for both majority and minority communities.¹

This could be better understood with the help of comparison of Shirur Mutt case (1954) with Triple Talaq case (2017). Shirur Mutt case¹¹ is a case related to a Hindu practice that protected a religious institution's right to manage itself, stating that it was an "essential practice". While in the case of Triple Talaq¹², which involved a Muslim practice of instant divorce, was struck down. The

¹ Sumit Sonkar, 'Balancing Faith and Equality: Examining the Adequacy of the Doctrine of Essential Religious Practices from Gender Perspectives in India' (2023) 12(1) Oxford Journal of Law and Religion 121.

majority of the Supreme Court held that it was NOT an essential practice of Islam, and further found the practice to be manifestly arbitrary and violative of the constitutional guarantee of equality.

This paper emphasizes on the core idea that from 2018 to 2023, the Supreme Court of India has been giving contradictory and confusing judgments in the cases involving conflicts between religious freedom and Equality. In certain cases, like the Indian Young Lawyers Association v State of Kerala (also known as Sabarimala case)¹³, the court emphasized on equality stating that the old religious prohibition was unjust. Other times like in the case Aishat Shifa v State of Karnataka & ors¹⁴, the court seemed to emphasize the right to religious freedom. This back and forth approach proves that the tool they use is unreliable and unpredictable. In conclusion, this paper realizes that a special bench (nine-judge bench) should come up to clarify a single and fair rule for all the religions and cases in the future.

Chapter 2 Literature Review and Constitutional Framework

This chapter discusses the constitutional framework of the conflict and examining literature analysis that balance individual rights and collective religious freedom.

The Indian Constitution emphasizes a lot protection of religious freedom. It guarantees Individual rights (under Art.25)¹⁶ and collective rights for recognized “religious dominations” (under Art.26)¹⁷ to deal with their internal matters. The definition of “religious dominations” was later laid down by the Supreme Court in the case of Sardar Syedna Taher Saifuddin case (1962)¹⁵. It defined religious dominations as a distinct group within a broader religion united by common identity or faith. However, the most integral aspect is that all religious rights come below the fundamental rights of equality and dignity under Art. 14¹⁸, 16¹⁹ and 21²⁰. This implies any religious practice cannot be used as a justification to violate these fundamental rights of a person.²

This three step process checks on the following criterias:

1. **Identity:** Whether the said practice is really religious and not cultural?
2. **Integrity:** If the act is an integral and essential practice to that particular community?
3. **Constitutional recognition:** does the practice violate public order, morality, health, or other Fundamental Rights?

Due to its subjective nature, it often leads to Judicial Overreach. Some Scholars say that when these judges use this test and decide, the court is taking up the role of a religious leader instead of being a neutral judge of law. Adding to that, it also defies the intent of Dr. B.R. Ambedkar, under Article 25(2) envisioned the State to only regulate reforms related to secular activities, not decide on the core religious practices itself. This Doctrinal flux led to the foundation of these dilemmas observed in 2018-2023 period.

The literature also identifies a structural flaw in the ERP Test's design: there is no standardised threshold of theological evidence that a party must meet, nor any procedural framework governing how courts should weigh competing religious interpretations submitted before them. This leaves the outcome of each case substantially dependent on the subjective theological impressions of the bench constituting the court. A 2023 analysis in the Economic and Political Weekly noted that the absence of a consistent methodological framework means that judgments under the ERP Test are as much a reflection of judicial temperament as they are of constitutional principle.²

The Researchers and critiques criticize the Essential Religious Practices (ERP) test for causing doctrinal flux because of its lack of uniformity of the ERP Test, the Jeopardy of Constitutional morality and the for a unified and Secular test. Academic literature illustrate that the ERP Test forces secular judges to interpret theology and made the Sabarimala majority use Transformative Constitutionalism to strike down the restriction on women's entry, highlighting the exclusion violated the key principles of gender equality and dignity¹.

On the other hand, negatives of the Hijab ruling of Karnataka High Court and the divided Supreme Court verdict implies that applying the rigid ERP Test disregards the Constitutional focus on Article 21. Legal Consensus shows that the Judiciary is conflicted. It must adjudicate whether its main duty is to enforce religious rules (through ERP) or uphold democratic values. This repeated failure of this legal concept is the core idea of this research paper.

² 'Discarding or Limiting the Essential Religious Practices Test' (2023) 58(30) Economic and Political Weekly <<https://www.epw.in/journal/2023/30/special-articles/discarding-or-limiting-essential-religious.html>> accessed 15 September 2026.

Chapter 3: Case Study I: The *Sabarimala Verdict*, 2018

In the case of Indian Young Lawyers Association v. State of Kerala decided in the year 2018, the decision represented the most significant need of judicial intervention. This case challenged a time honored practice where menstruating women from the age 10 to 50 were not allowed inside the temple premises. The arguments favoring the ban stated the reason as the perpetual celibacy of the deity and claimed that the temple was recognized as a separate religious denomination under Article 26.

The Sabarimala dispute had a long judicial prehistory before its 2018 Supreme Court adjudication. The Kerala High Court had upheld the exclusion in 1992, accepting the Travancore Devaswom Board's claim that the restriction formed part of the essential character of the temple's religious practice. The Supreme Court's 2018 reversal thus represented a departure not only from an entrenched social practice but also from a pre-existing judicial ruling, illustrating how the ERP Test can produce diametrically opposed conclusions when applied by courts at different hierarchical levels and at different points in time.³

Majority of judges in this ruling rejected that the discriminatory practice was an “essential practice” under Article 26 of the Indian Constitution, instead to emphasize on the Fundamental Rights guaranteed to people under Article 15 which talks about non-discrimination and Article 21 which elaborates on dignity. Justice D.Y. Chandrachud specifically stated that exclusion of women based on the notion of purity is an unconstitutional practice of Untouchability. By making sure that Constitutional morality prevails over religious custom proved that dignity and non-discrimination shall be upheld over historical exclusionary practices.³

As far as the analysis is concerned four out of the five judges argued the same pointer that discrimination is a constitutional wrong. However, customs and usage were not even considered by the majority judges but was rightly pointed out by Justice Indu Malhotra who was the only judge who opined otherwise. She articulated that only aggrieved parties have the locus to file PIL's under Art.32²¹ of the constitution, considering the petitioner herein is a group of social activists. They hereby don't have the locus to file the petition hence questioning the maintainability of the

³ 'The Essential Practices Doctrine' (2022) 29(2) International Journal on Minority and Group Rights 350 <https://brill.com/view/journals/ijgr/29/2/article-p350_007.xml> accessed 15 September 2026.

case. She substantiated the same by citing the case of *Hans Muller of Nuremburg v. Superintendent, Presidency Jail, Calcutta* (1955) 1 SCR 1284¹⁰ which propounded the same.

Reverting back to aspects of freedom of religion governed under Art.25 and 26¹⁷ of the constitution if understood with the concept of constitutional morality which is the key moto of all the High Courts and the Supreme Court of India. Her Ladyship further opined that true justice in such unique cases can be rendered only when constitutional morality, the principles of equality, the freedom to practice religion along with custom and usage can be balanced.

Chapter 4: Case Study II: The Hijab Controversy

This case study analyses Karnataka High Court's decision in the *Aishat Shifa v State of Karnataka* (2022) case. This case dealt with the ban on wearing hijab in Pre University Colleges (PUCs). This case was taken by the division bench of Justice Hemant Gupta and Justice Sudhanshu Dhulia, where due to difference of opinion there was a split verdict. Later, the Supreme Court directed the matter do be placed before the Chief Justice. This case study talks about how Karnataka High Court upheld the ban on the hijab stating that it was not an essential religious practice. Furthermore, the Government's emphasis on uniformity was a reasonable restriction.⁴

Justice Hemant Gupta was in favor of the restrictive approach of the ERP Test. He also seemed to acknowledge that wearing Hijab was not an essential practice and also believed that upholding the state's interest in uniformity was permitted by the constitution and it was considered a reasonable restriction. His reasoning supported uniformity in education and exclusion of religious difference from the Institutional framework.

Justice Sudhanshu Dhulia clearly disregarded the ERP Test. He viewed this issue from the wider scope of Article 19 and Article 21. He argued that preventing a student from wearing a hijab was an explicit act of violation of their Right to Education, Autonomy and Dignity. He also highlighted the reality that by not letting them wear their religious attire, the state's action would result in limiting their access to education. To conclude, this case study emphasis on this doctrinal fracture between judges ending in a "clear split" where one judge was seeking Theological Validity through the ERP test and the other was seeking for civil liberties.⁵

The concrete educational consequences of the ban lend force to Justice Dhulia's civil liberties framework. Data reported before the Karnataka Legislative Assembly during its monsoon session in 2022 confirmed that 1,010 girl students had dropped out of educational institutions as a direct result of the hijab ban. Right to Information data gathered in June 2022 further showed that 145 of approximately 900 Muslim women students enrolled in colleges affiliated to Mangalore University had collected transfer certificates in the aftermath of the Karnataka High Court's order, demonstrating the quantifiable harm that flows from applying the ERP Test narrowly in educational settings.⁴

Chapter 5: Freedom of choice

This section of the paper draws attention to a legal tussle in India concerning Anti-Conversion Laws and personal liberty and the ability of choosing their partner and faith unimpededly. Essentially, some states have tried to outlaw religious conversions, more so when they do it for the sole purpose of marriage, which is linked to the informal term called the 'Love Jihad' Narrative.⁷ These laws are controversial because of their usage of invasive procedures such as the mandatory prescribed period for conversion which seems to be too intrusive of the state wherein it should be a personal decision. The decision should be of the two people involved who choose to get married or the one who chooses to change their faith.

By 2023, at least eleven Indian states had enacted or proposed freedom of religion laws in some form, with the states of Uttar Pradesh, Uttarakhand, Madhya Pradesh, Gujarat, Haryana, and Karnataka among those with operative enactments containing marriage-linked conversion restrictions. These laws share a common structural feature: they impose prior notice requirements and penal consequences for religious conversion, effectively placing the burden of proof on the person converting rather than on the state. The Supreme Court of India has been hearing a consolidated batch of petitions challenging the constitutional validity of these laws since January

⁴ Anu Parthiban and Sheena Sachdeva, 'Shattered Dreams, Hostile Environment: Muslim Women Students Dropping Out of College, Says Report' (Careers360, 9 January 2023) <<https://news.careers360.com/muslim-women-students-dropping-college-karnataka-puc-college-mangalore-university>> accessed 15 September 2026.

2023, while the High Courts of Gujarat and Madhya Pradesh have issued interim orders against specific provisions on constitutional grounds.⁵

It also talks about paradigm shift in the way Courts deal with protection of individual liberty⁶, particularly in context of marriage and religious conversions. Instead of the ERP test, the judiciary now relies on the “Clarity in Autonomy” established under Article 21 of the constitution and Right to Privacy in context of the K.S Puttaswamy case. The backing to this is that an adult’s decision with respect to marriage and faith falls within the ambit of inviolable zone of privacy and choice.

This implies that Courts can now consider any government’s act of interference with your individual liberty as an invasion to your privacy guaranteed under article 21. Provided that, the government can only interfere if it has a compelling reason of state interest. This new perspective has made it easier to deem such invasive laws unconstitutional.⁸

Chapter 6: Conclusion

In conclusion, it is evident that the Indian Judiciary has shown Constitutional infirmity in resolving conflicts of religious freedom and equality during the 2018-2023 time frames, which can be seen in rulings like Sabarimala, ban on hijab and that of Anti-Conversion laws. This ineffectiveness is not because of the judicial bias but due to the tool use i.e ERP test. ERP test has been unreliable and unclear which has failed to provide fairness in providing due justice in sensitive socio legal matters.⁹

The broader judicial resolution that this paper advocates has since taken a concrete procedural step forward. In April 2026, a nine-judge Constitution Bench of the Supreme Court, led by Chief Justice Surya Kant, commenced hearing the Sabarimala reference across sixteen days of arguments, examining seven fundamental constitutional questions about the relationship between Articles 25 and 26 and the scope of religious freedom in India. The Bench reserved its judgment in May 2026 and, when delivered, the ruling is anticipated to be the most consequential determination on religious freedom jurisprudence in independent India, with implications extending to questions of

⁵ ‘Constitutionality of Anti-Conversion Laws’ (Supreme Court Observer, September 2025)
<<https://www.scobserver.in/cases/cjp-v-state-of-up-constitutionality-of-anti-conversion-laws-case-background/>> accessed 15 September 2026.

Muslim women's access to mosques and dargahs, excommunication practices in the Dawoodi Bohra and Parsi communities, and the constitutional validity of the ERP Test itself.⁶

The legal debates have shifted from how ERP test is to be applied to if it should be used in the first place. This has changed due to more reliance on the Article 21 which includes a plethora of rights. Article 21 provides a framework which does not delve into the Philosophy of faith and gives importance to Personal dignity and choice over State's rule of uniformity. The future of India with regards to secularism and Social development depends on the 9- Judge Bench decision. The Supreme Court should either declare the ERP Test unconstitutional or put forth recommendation to have a clear and unbiased system to resolve conflicts related to religious freedom and equality.

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