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INTERPRETING FAITH: REASSESSING THE ESSENTIAL RELIGIOUS PRACTICES TEST UNDER THE INDIAN CONSTITUTION

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Abstract

The ERP test occupies a strange position in Indian constitutional law. Initially, it was stated as a doctrine of protection: the courts will respect religious autonomy by not permitting the state to convert matters relating to religion into merely matters of administrative nature. Nevertheless, over the course of seven decades, the doctrine shifted from protection to adjudicative control. The courts are now more frequently asking whether the claimed practice is obligatory, ancient, scripturally authorised, denominationally indispensable or theologically central even when the constitutional question is better framed in terms of burden, justification and rights limitation. This paper analyses the ERP test once again under provisions mentioned in Articles 25 and 26. The current doctrine exposes the judiciary to the dangers of essentialism and majoritarian asymmetry, encourages selective textualism, and entails an institutional overreach, inviting secular courts to become adjudicators of theological authenticity. This paper uses textual legal methodology to analyse leading Supreme Court judgments from Shirur Mutt to Aishat Shifa, alongside recent literature and 2026 Sabarimala reference hearings. The text makes a case for an alternative model of review that is based on constitutional justification rather than essentiality. It suggests using a model based on sincerity, burden, proportionality, dignity, equality, public order, health, morality and anti-exclusion as a better alternative to essentiality. A model of this kind would maintain the constitutional value of the freedom of religion while not allowing religious autonomy to become a basis for exclusion that the Constitution does not permit. The central claim is not that religion cannot be subject to constitutional scrutiny. Rather, the claim is that courts should scrutinise restrictions and harms, not certify which beliefs clearly amount to true religion.[1]

[1] For the constitutional setting of religious freedom in India, see Constitution of India, arts. 25-26; The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, 1954 SCR 1005.

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Keywords: Essential Religious Practices; Articles 25 and 26; Indian secularism; religious autonomy; constitutional morality; proportionality; anti-exclusion principle.

1. Introduction

In India, courts have always been required to stand at an uneasy constitutional border when adjudicating religious freedom. On one side is the guarantee that every person shall be equally entitled to freedom of conscience and to the free profession, practice and propagation of religion. On the other hand, there is a constitutional commitment to public order, morality, health, social reform, equality, dignity and the protection of historically subordinated persons by custom. The Indian Constitution does not follow the wall of separation. It neither removes religion from public law nor allows religious authority to rise above constitutional scrutiny. Rather, it constitutes a complex system of principled engagement whereby the State may regulate secular activities connected with religion, legislate for social welfare and reform, and open public character Hindu religious institutions to all classes and sections of Hindus.[2]

This special design of the constitution made the ERP test. Initially, the ERP test seemed to offer protection for the religious denominations from excessive Government interference. If something was really religious and essential to the faith, the State cannot treat it as a mere secular incident of temple, mutt or institutional managements. The doctrine thus became a device for drawing boundaries. It aimed to isolate the practices belonging to the autonomy of the religious groups from those economic, financial, political or administrative activity which the State is in a position to regulate. Within that context, the doctrine appeared to support pluralism by being unwilling to allow majoritarian legislatures or state departments to impose the definition or meaning of religion from outside.[3]

In the aftermath, we had other participants not pulling their weight. When the courts stepped in to determine what was indispensable, the doctrine began to take on a new character. Judicial inquiry changed from whether state interference with religious freedom is constitutionally justifiable to whether claimant can prove to court that practice claimed is essential to religion. Such a change is significant. A rights claim intended to commence with freedom and proceed to limitation, rather began with judicial filtration. Religious practices that were not proven to be ancient, obligatory, mandated by scripture or indispensable were generally denied protection

[2] Constitution of India, arts. 25-26; The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, 1954 SCR 1005.
[3] Sri Shirur Mutt, AIR 1954 SC 282, 1954 SCR 1005; see also Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255, 1958 SCR 895.

ISSN: 2582-6433

at the threshold. As a result, we have a jurisprudence in which courts sometimes read scriptures, classify rituals, compare doctrinal authorities, distinguish superstition from religion, and decide if the community's own account of its faith is constitutionally convincing.[4]

According to this paper, the core constitutional problem does not entail judicial review as such of religious practices. The constitutional courts must intervene when the competing claims of religion and the public order, health, dignity, equality, bodily integrity, access to public institutions or rights of others. The justification of intervention is the issue at hand. Judicial invalidation of claims on the basis that the practices are not essential run the risk of converting a court's role of constitutional adjudication into that of theological certification. A secular constitutional court must be capable of declaring that a practice, even if it arises from religious belief, will attract constitutional prohibition, one that is unequal, injurious to dignity, impairs health or is contrary to public order. It should not generally have to be the case that the practice is not truly religious, not one of the central practices, or not essential enough to the faith.[5]

Accordingly, the fundamental research problem is whether the ERP test continues to be a legitimate doctrinal tool under the Indian Constitution or it can be preserved by a different inquiry. The study poses five interrelated research questions. The ERP test emerged as a protective doctrine, as directed by articles 25 and 26. Next, how did it become a tool of the judiciary in the determination of essentiality? Does the judicial determination of essentiality infringe upon religious autonomy and pluralism? Can constitutional courts protect religious freedom without deciding theological truth? Should Indian constitutional law progressively transition from an essentiality inquiry to a justification-based rights-balancing model?

The working assumption is that the ERP test, originally developed to protect religious freedom, violates the Constitution, because it permits civil courts to evaluate the essentiality of theology. A more legitimate approach would change the question from necessity to constitutional justification. According to one school of thought, the court will ask whether the claimant sincerely associates the practice with the religious conscience or their identity as a community. Next, it will ask whether state action burdens religious freedom, and if it does, whether this burden is justified by public order, morality, health, equality, dignity, anti-discrimination or social reform. Finally, it will ask whether the restriction in question is proportionate and constitutionally necessary.

[4] For the shift from a protective to a filtering approach, see The Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402, 1962 SCR (1) 383; Acharya Jagadishwaranand Avadhuta v. Commissioner of Police, (1983) 4 SCC 522.

[5] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

ISSN: 2582-6433

The methodology used is doctrinal and normative. This paper analyzes the constitutional text, leading Supreme Court judgments, recent litigation, and scholarship on Indian secularism, freedom of religion and transformative constitutionalism. It also draws on approaches based on sincerity-based review, proportionality and anti-exclusion that are used or debated in the United States, Canada, South Africa and the European Court of Human Rights. The transplanting of doctrine is not to be made mechanically. It is used to clarify what Indian courts are already struggling to articulate; that the key question in religious freedom cases should not be whether judges think a practice is essential to a faith, but whether in the circumstances of the case, the Constitution justifies burdening or protecting the practice.[6]

The relevance of the investigation is amplified by the sustained centrality of ERP in recent legal cases. The Supreme Court's split verdict in 2022 on the hijab case reveal a broad disagreement between an approach which weighty discipline, uniformity and institutional regulation, and an approach which treats individual conscience, dignity, expression and access to education as central to constitutional analysis (Tella 2025). The status of ERP doctrine, relation between Articles 25 and 26, constitutional morality, public interest litigation and rights of denominational groups will be focus of Indian constitution debate in 2026 nine-judge Sabarimala reference (Supreme Court Observer, 2026a; The Leaflet, 2026). This means you are spelling out the implications of an argument. It is about the future grammar of religious freedom of part III.[7]

2. Early Protective Use of ERP: Constitutional Foundation.

The doctrine of religion in India is based on Articles 25 and 26. Article 25 gives an individual the freedom to conscience, the right to profess, practice and propagate religion, subject to public order, morality, health and the other provisions of Part III.[8]

Article 26 aids and secures the collective freedom of every religious denomination or section thereof to set up and administer institution of religious or charitable nature, manage its own affairs in the matter of religion, own and acquire property, and administer such property in accordance with law. The two provisions are notably distinct from each other. Article 25 starts with the individual conscience-bearing person and article 26 recognises religious communities

[6] For doctrinal scholarship on Indian religious freedom and secularism, see Rajeev Bhargava, The Distinctiveness of Indian Secularism, in The Future of Secularism (T. N. Srinivasan ed., 2010); Ronojoy Sen, Articles of Faith: Religion, Secularism, and the Indian Supreme Court (2019); Abhinav Chandrachud, Republic of Religion (2020).
[7] Aishat Shifa v. State of Karnataka, 2022 SCC OnLine SC 1394; K. K. Tella, Challenging the hijab ban in India: Plural embodiment and secular constitutionalism, International Journal of Law in Context (2025); Supreme Court Observer, Sabarimala Review: Nine-judge Bench to commence arguments from 7 April 2026 (Feb. 16, 2026).
[8] Constitution of India, art. 25(1).

ISSN: 2582-6433

as collective constitutional actors. However, the two provisions are interdependent because individual religious life often takes institutional form and denominational autonomy often shapes the conditions under which individuals experience faith.[9]

The Constitution contains within itself a strong reformist dimension. Article 25(2)(a) allows the State to regulate or restrict the economic, financial, political or other secular activity linked to a religious practice. According to Article 25(2)(b), laws could be provided social welfare and reform, and throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. These clauses show that the Constitution does not regard every act of religion as free from state control. The framers understood that religion in India was not just a private affair. Various forms of resistance were also implicated in caste exclusion, institutional property, gender hierarchy, temple entry, endowments, access to public religious spaces and community authority. The scheme of the constitution protects religion but also constitutionalizes reform.[10]

The initial protective utilization of ERP is mainly associated with the Shirur Mutt decision. The validity of statutory provisions regulating Hindu religious endowments was questioned in that case by the Supreme Court. The Court famously ruled that religion consists not merely of matters of doctrine or tenet, but also acts done in pursuance of religion. What an essential part of religion is, is primarily to be ascertained with reference to the doctrines of that religion itself. This formula is often considered to be the birthplace of ERP. However, properly understood, Shirur Mutt was not an invitation to judicial priesthood. It was a warning against the reductionism of the state. The State could regulate affairs and property but could not transform religious and spiritual matters which are essentially sectarian management by simply calling it so.[11]

This protective orientation is significant because it indicates that ERP was not initially created as a weapon against religious claimants. It aimed at preventing the state from interfering broadly. The Court's formulation was sensible in the realm of religious endowments. If a legislative regulation governs the management of a mutt, does the court have to decide if the regulation is on secular administration or on religious practice? Religious affairs and administration, if merged, would render Article 26(b) meaningless. Any state department could always characterise disputed rites, institutional usages or modes of worship as mere administrative details. Thus, the essentiality inquiry came into being as a structural device to

[9] Constitution of India, art. 26(a)-(d).
[10] Constitution of India, art. 25(2)(a)-(b).
[11] Sri Shirur Mutt, AIR 1954 SC 282, 1954 SCR 1005.

ISSN: 2582-6433

protect a space of denominational self-government.[12]

Sri Venkataramana Devaru has added a structural problem by contesting between the denominational right to entry and the constitutional right. The rights of a denominational temple and the effect of Article 25(2)(b) concerning the opening of public Hindu religious institutions to all classes and sections of Hindus. The Supreme Court has held that Article 26(b) must be read along with Article 25(2)(b). It is significant because it did not merely obliterate denominational rights. The action taken was not an attempt at reconciling the dogmas with the interpretations of the constitution.[13]

The early cases show two different constitutional impulses. One is autonomy: the courts must not allow the State to meddle with the religious core of a denomination under the guise of secular administration. Reform is the second issue: denominational autonomy cannot be invoked to justify the nullification of measures of access and social transformation permitted by the Constitution. ERP initially functioned within this pressure. Its proper function was not to evaluate or rank the religious faiths in terms of a doctrine approved by a court of law. Rather, it was to find out whether state action invaded a sphere assigned by the Constitution to religious communities subject always to public order, public morality, public health and other constitutional limitations.

Due to the difficulty with precision, the language of essentiality was never textually grounded. Articles 25 and 26 allow the freedom of conscience, profession, practice, propagation and management of matters of religion. They do not say only essential practices are protected. They are not; nor is religion characterised by age, focus on scripture, or obligation. Batra (2025) contends that without any clear verbatim purpose, the ERP framework limits the ambit of religious freedom at the threshold. Verma (2024) likewise illustrates that pleas of essentiality have a high failure rate, and judicial results have transgressed socio-religious contexts. The demands of space make a general end to end demands of space. The imposition of limits could be achieved by confining the definition of a protected religion rather than applying the grounds of limitation specified in the Constitution.[14]

An alternative interpretation of the early avatars of the ERP would confine its meaning as a tool for distinguishing between religious affairs and secular administration of an institution,

[12] Id.; see also Marc Galanter, Hinduism, Secularism, and the Indian Judiciary, 21(4) Philosophy East and West 467 (1971).
[13] Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255, 1958 SCR 895.
[14] Rushil Batra, The Essential Religious Practice Test: A Sorry Tale of Judicial Misreading, Indian Journal of Constitutional Law (2025); Pranav Verma, The Fate of Essential Religious Practices in India's Constitutional Courts, 83(3) The Journal of Asian Studies 701 (2024).

ISSN: 2582-6433

though a very narrow one. It does not intend to set a test for all cases involving religious freedom. In cases of dispute over the property, endowment management, hereditary office, temple administration or denominational control it is necessary for courts to identify whether the matter impugned is religious or secular. But when a party asserts that a practice reflects conscience, identity or religious obligation, the court should be cautious in demanding evidence that the practice is an essential component of an entire religion. The constitution protects individuals and denominations, not just orthodoxies. It safeguards one's conscience, not merely canon law.[15]

3. The shift from safeguard to adjudicative process

The Durgah Committee case shows how ERP moved from a protective boundary to a legal judgment of religious legitimacy. The Court cautioned that practices that are merely superstitious or unnecessary accretions would not receive protection even if they are in the name of religion. This move was understandable due to its instinct. Judges wished to ensure that certain deleterious or exploitative practices did not escape regulation by virtue of being labelled religious. Nevertheless, the price was doctrinally high. Once courts presumed to separate true religion from superstition, essential belief from accretion, and integral practice from peripheral custom, the judicial inquiry became theological in substance, even if expressed in constitutional language.[16]

The Durgah committee represented a watershed moment changed the orientation of the court. The Shirur Mutt suggested, that essentiality must be ascertained with reference to the doctrines of the religion itself. The Durgah Committee allowed the court to not trust the community's own claim but filter it through judicial judgment. Separating religion from superstition may be necessary in extreme instances of harm, deception or coercion. However, as a general method of doctrine, it gives judges a discretion that the constitutional text does not plainly confer. It also risks favouring elite and textually correct forms of religion over embodi-mental, local and oral practices.[17]

The ERP test's application in religious institutions' governance is exemplified in the archaka cases. The Supreme Court in Seshammal ruled the validity of the law abolishing hereditary

[15] Rajeev Dhavan & Fali S. Nariman, The Supreme Court and Group Life: Religious Freedom, Minority Groups, and Disadvantaged Communities, in Supreme but Not Infallible: Essays in Honour of the Supreme Court of India (B. N. Kirpal et al. eds., 2004).
[16] The Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402, 1962 SCR (1) 383.
[17] Compare Sri Shirur Mutt, AIR 1954 SC 282, with Durgah Committee, AIR 1961 SC 1402, on the change in judicial posture toward religious essentiality.

ISSN: 2582-6433

succession to the office of archaka while recognised that the performance of rituals in accordance with the Agamas is religious. The reasoning of the Court was partly reformist and partly classificatory. Hereditary appointment was regarded as secular; qualification in ritual was treated as religious.[18]

As such, the judgement reserved a doctrinal space for Agamic requirements but would not constitutionalise hereditary entitlement. The verdict may be supported as a careful effort to put distance between caste-linked office-holding and ritual performance. However, it also shows the detailed theological and institutional judgments that increasingly made courts to decide.[19]

The Ananda Marga case took the essentiality inquiry further. The Supreme Court ruled in the first Tandava dance case that the Ananda Margis' performance of the Tandava dance in the public is not an essential religious practice. In a latter round, the Court reiterated the finding and stated, that any practice instituted after the foundation of the order could not be to be essential. This reasoning is faulty. For it relies upon the historical recency to be evidence of non-essentiality. Religions and denominations are not unchanging. The establishment of new public forms and symbols may acquire deep significance within living communities. If the Constitution shields only practices that are ancient or foundational, it freezes religion into a court selected past.[20]

Ismail Faruqui is undoubtedly a prime example of judicial determination venturing into contested theology. The Court stated in relation to the acquisition of the disputed site at Ayodhya that a mosque is not an integral part of the practice of Islam. Briefly, "namaz" may be offered anywhere unless a specific place has special religious significance. The reasoning has been much criticised for generating a broad theological proposition out of a property acquisition case in which there is intense competing claim over a religious site. According to the statement concerning mosques, it was not merely administrative incidents that were to be classified. Later courts restricted or distinguished that proposition.[21] Its doctrinal afterlife illustrates the perils of making grand theological pronouncements in order to resolve constitutional disputes.

N. Adithayan shows a different related trajectory. In a significant ruling, the Supreme Court of India has upheld the appointment of a non-Brahmin priest at a famous Kerala temple. Moreover, the judges threw out the claim that only a Malayala Brahmin could perform the

[18] Seshammal v. State of Tamil Nadu, (1972) 2 SCC 11.
[19] Id.; see also N. Adithayan v. Travancore Devaswom Board, (2002) 8 SCC 106, for a later rejection of caste-based priestly exclusion.
[20] Commissioner of Police v. Acharya Jagadishwarananda Avadhuta, (2004) 12 SCC 770.
[21] Dr M. Ismail Faruqui v. Union of India, (1994) 6 SCC 360.

ISSN: 2582-6433

rituals at the temple. The decision is appealing more from the perspective of the principles of justice than application because they resist caste monopoly and the idea that constitutional religion can be synonymous with birth-based exclusion. However, the doctrinal basis remains important. The Court did not just state that exclusion of caste in priestly appointment is in breach of equality and social reform; it also engaged with the question of whether it is an essential religious requirement.[22] An outcome that protects rights should not blind us to the structural problem: even a progressive outcome can entrench a methodology that invites judicial classification of religious doctrine.

Shayara Bano case shows yet another application of essentiality in a case concerning personal law and gender justice. Through a majority ruling, the Court struck invalid talaq-e-biddat, albeit through different routes by the judges, such as manifest arbitrariness and religious non-essentiality. This is a significant ruling because it demonstrates that ERP may be compatible with equality. When a practice has severe gendered consequences, the court has strong constitutional reasons to subject it to scrutiny. Again, the problem is methodological. A court does not have to take a view on whether the practice is Islamic, if the practice is unconstitutional because it is arbitrary, discriminatory or destructive of dignity.[23] A constitutional judgment is more powerful when it clearly explains that a particular right-violating practice cannot be accepted by the State or the law than when it argues that the practice is not religious enough.

According to the Sabarimala judgment by the Indian Young Lawyers Association, ERP is the intersection of rights: gender equality, religious autonomy, public temples, and constitutional morality. Most judges of Supreme Court were of the view that the ban on entry of women aged between ten and fifty to Sabarimala was unconstitutional. Besides, Lord Ayyappa's devotees do not constitute a separate religious denomination and the practice in question isn't an essential religious practice. Justice Chandrachud's reasoning framed the exclusion via dignity, equality, untouchability and constitutional morality. Justice Malhotra which dislikes the court's interference in matters of faith at the instance of non-denominational persons. The case reveals the competing anxieties of the ERP.[24] Without judicial scrutiny, exclusionary religious authority would persist. Overly broad judicial scrutiny risks the possibility that courts override community autonomy on the basis of external moral reasoning.

Kantaru Rajeevaru review proceedings kept the dispute alive. In 2019, a panel of judges referred a larger bench to other issues pertaining to Articles 25 and 26, the ambit of the judicial

[22] N. Adithayan v. Travancore Devaswom Board, (2002) 8 SCC 106.
[23] Shayara Bano v. Union of India, (2017) 9 SCC 1.
[24] Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.

ISSN: 2582-6433

review, constitutional morality and the rights of denominational and other practices of other communities. In 2020, the reference's maintainability was upheld by a nine-judge bench. The reference recognizes that there are inconsistencies in the Court's religious freedom jurisprudence of constitutional significance. Article 26's inclusion of denominational right is subordinate to a provision elsewhere in Part III; what morality referred to in Articles 25 and 26; how far may courts go in identifying essential religious practices.[25]

Aishat Shifa, a hijab split verdict rendered by the Supreme Court, must hold unique significance for the future of ERP as it dealt with a personal religious freedom claim in a state educational context rather than a sectarian institutional one. The ban received support from Justice Gupta who assigned importance to discipline, uniformity and institutional regulation. Justice Dhulia dissented, stressing that choice, dignity, privacy, education and the relevance of ERP are limited in an individual conscience case. His opinion acknowledged that the ERP test has generally arisen in disputes challenging interference by the State in denominational or community rights and not in every instance where an individual claims a genuine practice of their religion.[26] The difference is important doctrinally. Article 25(1) claims may be better analysed in terms of conscience, burden and justification rather than essentiality.

The transition from Shirur Mutt to Aishat Shifa reflects a reversal of doctrine. ERP as developed to protect the State from predators Courts established the so-called "integral to faith" test to determine whether a person's belief is sufficiently sincere to be protected. It has been used in institutional matters to separate religion from secular administration. In some instances, it has acted as a denial of the right right from the beginning. As a result, the claimant must first convince the courts that the practice is essential before the burden falls on the state to justify its restriction. The phrase suggests that this order is not easy to make sense of the Constitution's very rights character. In a great many fundamental rights cases, the complainant demonstrates burden or infringement, then the State justifies the limitation. ERP alters that structure.[27]

The pattern is confirmed by recent scholarship. Verma found that pleas that argued essentiality moved in Indian constitutional courts have predominantly lost, and that outcome cannot be divorced from socio-religious context (Verma, 2024). Batra posits the text has none and sets a very high limit on the freedom of religion (Batra, 2025). Tella's analysis of the hijab litigation demonstrates how ERP can obfuscate questions of embodied pluralism, education, privacy and

[25] Kantaru Rajeevaru v. Indian Young Lawyers Association, 2019 SCC OnLine SC 1461; Kantaru Rajeevaru v. Indian Young Lawyers Association, (2020) 3 SCC 52.
[26] Aishat Shifa v. State of Karnataka, 2022 SCC OnLine SC 1394; see also Tella, supra note 7.
[27] For a critical account of the threshold burden created by ERP litigation, see Verma, supra note 16; Batra, supra note 16.

ISSN: 2582-6433

secular constitutionalism (Tella, 2025).[28] The criticisms coalesce around the following point: the issue is not whether religion is exempt from the Constitution but whether the Constitution merely protects those activities that the courts declare essential.

4. Judicial Essentialism and the Problem of Religious Autonomy

Judicial essentialism refers to the judicial tendency to characterize a religion as constitutive of a core that is essentially authoritative, such core being identifiable through texts, doctrines, institutional statements or historical continuity. In a country marked by multiple religions, sects, castes, denominations, oral traditions and regional practices, such essentialism is particularly dangerous. Most religious life is lived through practice rather than systematic theology. One of the most significant features of Indian religions appearing is syncreticism. A judicial determination of the essential may therefore favour the most textual or institutionally powerful voices within a community.[29]

The objection related to institutional competence is indeed a serious concern. Judges interpret legal texts, apply precedent, test state action and reason from constitutional principle. They aren't theologians, religious historians, ritual anthropologists nor representatives of faith communities. In other words, courts may examine religious material on occasion. A court's analysis of the nature of a claim may be necessary to assess whether state action burdens it. But understanding a claim is one thing; authoritatively settling whether it is essential to the religion is quite another. The former's evidentiary and contextual; the latter's theological and normative.

ERP also creates a problem of selective textualism. Courts usually seek religious authority or established teaching. But, courts make assumptions about many Indian religious practices that are not scripturally rooted. Even in traditions centered on scripture, it is possible to have competing schools and methods. A court that queries if a practice is mandated by scripture is likely to favour those traditions that have central texts and clerical institutions and to disadvantage religions or sects that operate through practice, memory, and usage of a community. The inquiry thus risks the creating of a hierarchy of religions that are legally eligible[30].

The issue of autonomy does not apply solely to minority religions. Article 26 recognizes

[28] Verma, supra note 16; Batra, supra note 16; Tella, supra note 7.
[29] Sen, supra note 6; Chandrachud, supra note 6; Bhargava, supra note 6.
[30] On the risk that textual proof privileges certain traditions over lived or oral practices, see Galanter, supra note 14; Sen, supra note 6.

ISSN: 2582-6433

autonomy of denominations and. If the courts decide often which practices are essential to a denomination, then the right to manage its affairs in matters of religion depends on whether the courts approve. It is difficult to square that outcome with the premise that Article 26(b) safeguards religious affairs as a sphere of community authority. However, the justification for imposing restrictions on such rights has to be made in terms of the Constitution, like equality, dignity, health, public order, morality or other guarantees in Part III.

It should not be masked as a finding contrary to the denomination's lack of understanding of its own religion but the possibility of majoritarian bias. Essentiality tests are infrequently used in a social vacuum. Within a political context, courts, litigants, the media and public opinion function. According to Verma, the destiny of essentiality pleas has not only varied over time but also across religious communities, with Muslim litigants facing particularly challenging terrain in recent decades (Verma, 2024).[31] Not every personal judgment is consciously biased, this is not the case. This implies that a doctrine which would require the judge to make a religious authenticity determination would be open to background assumptions about which forms of religion appear normal, reformable, excessive, superstitious or threatening.

The problem intensifies when ERP is employed in specific individual cases. Article 25 involves all humans. It does not state that one may practice only what an entire religion deems compulsory. Even when other believers do not, a believer may sincerely experience a practice as religious. In Bijoe Emmanuel, the Court protected Jehovah's Witness students from expulsion for not singing the national anthem. The focus was not on whether this conduct was essential to Christianity as a whole, but on the sincerity of belief and constitutional tolerance.[32] It is a better fit for the language of conscience. A constitution that protects conscience should recognize that within religions there can be minority interpretations, dissenting believers and non-universal but meaningful religious practices.

Judicial essentialism works uncomfortably with constitution morality. In the Navtej Singh Johar case, constitutional morality has been conceptualised as commitment to dignity, the autonomy, equality and protecting minorities from social morality. In cases involving religious freedom, constitutional morality has sometimes been invoked in a manner that risks replacing community autonomy with a judicially articulated moral judgment. The conundrum is to see constitutional morality as a limitation principle, when the practices violate rights, but not as a general licence to redesign religion in terms of judicial ideas of rationality or progress.[33]

[31] Verma, supra note 16.
[32] Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615.
[33] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1; Indian Young Lawyers Association, (2019) 11 SCC 1.

ISSN: 2582-6433

The relationship between religion and law in India is a further complication. Issues concerning personal law, temple administration, endowments, minority institutions, caste reform, gender justice and religious identity sit at the intersection of public and private authority. Scholars have observed that Indian secularism is not a model of strict separation; but one of principled distance, reformist intervention and negotiated pluralism (Bhargava, 2010; Sen, 2019; Chandrachud, 2020). ERP has a shaky reputation within this model. It allows intervention, but often through a vocabulary of religious truth rather than constitutional justification. As a result, the doctrine creates legitimacy issues for both parties, as religious groups face intrusion of the courts while rights claimants face denial when courts claim the practice is not essential.

The hearings of the 2026 Sabarimala reference show that there are still problems. According to reports of the hearing, there was a debate between the Court and the counsel on whether ERP narrows Articles 25 and 26, whether it is for the court to assess essentiality at all, whether denominational rights can be insulated from Part III, and whether reform is primarily a legislative or judicial function.[34]

Debates show a constitutional field that seeks a more stable structure. The ongoing dependence on ERP - the Essential Religious Practice test - does not only involve individual matters. It influences the institutional role of the Supreme Court in faith-related matters.

Defence of ERP strongest where a line must be drawn somewhere. In the absence of an essentiality inquiry, any practice associated with religion can seek protection under the Constitution so that the State would find it difficult to regulate exploitation, exclusion, public order or secular administration issues. This worry is genuine, but overstated. A Truthful and Burden Inquiry does not guarantee victory for Religious Claimants. It only recognizes that, the practice falls within the protected field. The State may justify restriction on public order, morality, health, equality, dignity, anti-discrimination, social reform and proportionality grounds. The court would not refuse to accept the existence of the right by deciding that the practice is not religious enough.[35]

A justifiable reason no longer requires exclusion but rather limitation. Definitional exclusion examines whether the claimant's practice counts as essential enough. The questions asks whether the State has sufficient constitutional justification for restricting the practice. The second option is clearer. It requires courts to state openly why a religious practice must give

[34] Supreme Court Observer, Sabarimala Reference Day 15: Essential religious practices test faces challenges from both sides (May 13, 2026); The Leaflet, Sabarimala Reference: Nine-judge Constitution Bench reserves judgment (May 18, 2026).

[35] For the objection that a boundary is required between religion and secular regulation, see Constitution of India, art. 25(2)(a); Sri Shirur Mutt, AIR 1954 SC 282.

ISSN: 2582-6433

way: because it excludes a protected class from a public institution; because it harms; because it undermines dignity; because it threatens public order; or because regulation is necessary for the secular administration. A constitutional court would have more use for such reasoning than theological essentialism.

All in all, judicial essentialism may undermine the expressive function of religious freedom. When the court says that a practice is not essential, it implies that the claimant loses the case and also the constitutional recognition. The judgment may be received by the community as saying that its practice is inauthentic or inferior. On the contrary, where a court were to say that some sincere religious practice must yield to a justified constitutional limitation, that would preserve the dignity of the claimant while drawing constitutional boundaries.[36] The key to pluralist adjudication is this distinction. State may restrict a practice. It need not deny that the practice matters religiously to those who perform it.

Internal disagreement presents a third problem. Religious communities are diverse. Women, lower caste members, converts, queer believers, and reformist sects may contest the official position of a religious authority. Judicial deference to the dominant religious force may effectively silence dissenting internal voices. Court override of the leadership by selecting a favored interpretation may undermine religious autonomy. ERP cannot satisfactorily answer this dilemma because it presumes that the core content of religion can be identified as one proposition. A model of justification can address the issue in a more forthright manner by drawing a distinction between the fact of religious disagreement and the constitutional injury that would result.

Another problem is evidentiary. Affidavits, scriptures, expert opinions, statements of institutions, and historic materials often prove essentiality. However, courts seldom possess a coherent standard to assess this kind of evidence. Is an initiation necessary because someone who is empowered says so, because the majority of practitioners do it, because it is regarded as tradition because it is stipulated in scripture, or because ceasing to do it would change the community? Different indicies have been used for different judgments. This is because of law's imprecision gives rise to volatility, and it incites strategic litigation where parties assemble rival theological archives for judicial selection.[37]

The generalised ERP test also attracts a democratic objection. Article 25(2) must be interpreted as legal reform. When reform is necessary, the Constitution usually expects a legislative

[36] This distinction resembles the general rights-structure of infringement followed by justification; see Puttaswamy, (2017) 10 SCC 1.

[37] On doctrinal instability in essentiality determinations, see Verma, supra note 16.

ISSN: 2582-6433

process that is reasoned, public, and judicially reviewable. When courts invalidate or preserve practices instead of deciding their essentiality, they can displace democratic deliberation as well as rights-based adjudication. This is a middle path that is unstable: courts neither fully defer to religious communities nor clearly demand legislative justification. The basis for this instability was that recent arguments in Sabarimala kept returning to the functions of the courts, legislatures and denominations.[38]

5. Rephrasing the Question: From Necessity to Constitutional Justification

An alternative to ERP that is constitutionally sound should be able to sustain three values at the same time: Religious Freedom, Institutional Autonomy and Constitutional Accountability. It ought to shelter honest religious claims while not permitting religion to be an unrestrained exemption from lefts. It should respect an understanding of itself by denominations that does not allow communities to impose constitutionally impermissible exclusions. This and similar actions must stop courts from becoming theological authorities while upholding their obligation to enforce the Constitution. This project develops a five-stage model of constitutional justification.

The first stage asks if the claimant genuinely associates the practice with his or her religious conscience, identity or community life. Being sincere is different from being essential. It is not necessary for the claimant to demonstrate that the practice in question is mandatory for all adherents of the religion. It questions the sincerity of the claimant's stated link between the practice, which he is seeking to protect, and the religion. The Canadian Supreme Court Amselem shows the approach to protecting sincerely held religious belief that does not require evidence showing the faith is ordained by official doctrine. In the same manner, Multani assumed a charitable analysis of the kirpan claim through sincerity and proportionality rather than a judicial inquiry into theological indispensability.[39] There is no need for Indian courts to adopt the Canadian doctrine wholesale, but a distinction between sincerity and essentiality is useful.

Whether the state action burdens religious freedom is the second inquiry. A burden might materialize due to forbidding, exclusion, penalty, denial of access, coerced choice, condition, denial of autonomy of institution or indirect pressure. This stage places Article 25 and Article 26 within the common rights analysis. The claim fails if no burden is present. If there is a

[38] Constitution of India, art. 25(2)(b); Kantaru Rajeevaru, 2019 SCC OnLine SC 1461.
[39] Syndicate Northcrest v. Amselem, 2004 SCC 47; Multani v. Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6.

ISSN: 2582-6433

burden, the State has to justify it. The context must be sensitive to burden analysis. A school rule that is uniform may affect students differently depending upon the religion, gender, caste, class and access to education.[40] The regulation may impact worshippers, sects and excluded groups differently. The load in consequence isn't merely formal but ought to be judged in lived constitutional terms.

The third stage is whether the limitation pursues a constitutionally legitimate purpose. The clear objectives of these texts are public order, morality and health. The secular adjustment and social reforms have also been expressly recognised by Article 25. Moreover, since Article 25(1) is subject to other provisions of Part III, depending on the case, equality, non-discrimination, dignity, bodily autonomy, privacy, access to education, and abolition of untouchability might have relevance. This does not imply that all other Article 14 or Article 21 standards apply by nature to every ritual. It indicates that religious freedom is within Part III, not outside it. The justification must be constitutional, not just authoritarian, regulatory or paternalistic.

The fourth strategic operation is proportionality. In order for a restriction on religious freedom to be lawful, it needs to be appropriate for the legitimate aim, necessary in the sense that less restrictive alternatives must be considered (e.g., educating people about religious practices), and balanced as well as proportional. Proportionality has already become a significant principle in Indian constitutional law after jurisprudence of privacy and limitations of rights. This court benefits from transparency in religious freedom cases. Rather than saying that a practice is not essential, the court could ask whether the interference by the State is excessive. A prohibition might be excessive despite the regulation's legality.[41] On the other hand, even if a practice is sincerely religious, its serious violation of rights may restrict it.

The fifth question asks whether the exceedance violates the rights of others or constitutional morality in a concrete sense. The outline of this stage should be framed carefully. Constitutional morality must not act as free-floating judicial disagreement with religious conservatism. It should be applicable in situations where a practice results in harm which is supposed to be constitutionally cognisable exclusion from institutions of public use, disabling because of caste, subordination because of gender, bodily harm, denial of civil status, coercion or destruction of equal citizenship. The anti-exclusion principle is advantageous here. When a practice structures internal worship with no harm brought to outsiders nor vulnerable insiders, it deserves strong

[40] Aishat Shifa, 2022 SCC OnLine SC 1394; MEC for Education: KwaZulu-Natal v. Pillay, 2008 (1) SA 474 (CC).
[41] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1; Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353.

ISSN: 2582-6433

protection.[42] This requires a closer look when it excludes people from public religious institutions, civil benefits or equal taking part in social life.

The approach to handling various types of cases would change. In cases relating to religious endowment and administration, the courts will still look to see whether the State is regulating the secular administration or burdening the religious affairs. However, the inquiry would not turn on whether it is essential in a theological sense. The question raised would be whether the State has intruded into religious self-governance. If yes, then whether such intrusion can be justified under secular administration, public accountability, equality, or reform. In individual conscience cases, courts will look to sincerity, burden and proportionality. In exclusion cases, the courts will examine if the practice violated the rights of those excluded and whether the institution is public, denominational, state-supported or performing a public function.

The United States imparts wisdom and warnings. The ruling on Employment Division v. Smith drew in the strict scrutiny standard for neutral laws of general applicability, while later cases that include Fulton show ongoing debates around free exercise exemptions. The American model does not fit for India as the Constitution of India permits reformist state intervention and does not follow strict separation. However, American doctrine shows that courts can examine burdensome religious practices without having to determine whether a practice is essential. It is possible to distinguish the sincerity of belief and the nature of state burden from the theology of the practice.[43]

South African law presents a comparator which is more equality-sensitive. In Christian Education South Africa and Pillay, the Constitutional Court acknowledged that, in a constitutional democracy with a strong commitment to equality, dignity and diversity, some limitation analysis of religious and cultural claims was necessary.[44] The South African approach is applicable because it takes pluralism and transformation to be complementary. It assumes that protecting religious identity does not automatically defeat equality, nor does equality always require flattening difference. Because of its transformative commitments and plural social structure, Indian constitutional law requires a nuanced account.

The European Court of Human Rights has ruled on religious symbols, dress and institutional secularism. It uses a margin of appreciation framework in these cases. Decisions like Eweida and S. A. S. v France illustrate proportionality's strengths and weaknesses in the realm of

[42] Indian Young Lawyers Association, (2019) 11 SCC 1; Navtej Singh Johar, (2018) 10 SCC 1; Bhatia, supra note 36.
[43] Employment Division v. Smith, 494 U.S. 872 (1990); Fulton v. City of Philadelphia, 593 U.S. 522 (2021).
[44] Christian Education South Africa v. Minister of Education, 2000 (4) SA 757 (CC); MEC for Education: KwaZulu-Natal v. Pillay, 2008 (1) SA 474 (CC).

ISSN: 2582-6433

religious freedom. The experience of the European Union warns that proportionality may defer to state secularism and majoritarian discomfort.[45] India, therefore, must combine proportionality with a strong anti-subordination lens. The state should not be able to justify restrictions in the name of minimizing disturbances by invoking uniformity, discipline or abstract public order. The rationale needs to be based on evidence and sensitive to rights.

The proposed model also seeks to address the realism that the abandonment of ERP would make courts impotent. It wouldn't not. Think of a practice that denies women entry into a public temple. The court wouldn't have to decide if the exclusion is of vital importance. The inquiry would examine whether the practice places a strain on religious freedom, dignity and equality of women; whether the temple may be characterised as public or otherwise denominational; whether Article 25(2)(b) or any other Part III provision applies; and whether the exclusion is constitutionally justified or not. Examine the assertion to don a religious emblem in a publicly funded school. The court will inquire if the student authentically associates the symbol with a religion, whether the ban encumbers education, expression, privacy, and conscience, whether uniformity is a legitimate aim, and whether accommodation is feasible without undermining institutional functioning. These are constitutional questions, not theological ones.

A justification model can enhance judicial legitimacy as well. Judicial courts will not have to rule whether a mosque is essential to Islam, a dance is essential to ananda marg, a hijab is essential to Islam, or a community's ritual is old enough. They will decide if State or any other rights bearing actor can burden the said practice under Constitution.[46] It does not signify abandoning constitutionalism. Constitutionalism is becoming more disciplined today. It acknowledges that freedom of religion is an entitlement and not a privilege bestowed on only those practices deemed necessary by judges.

However, the model must differentiate the three types of cases. First are intra-institutional management cases, where the State regulates property, appointments, finance or administration. The distinction between secular and religious remains relevant here but essentiality must be used minimally. The focus should principally be on the sincerity and burden of individual conscience cases. In cases of exclusion or harm, which is the third scenario, the courts must determine the rights of the affected people and the public or private nature of the institution. One ERP test won't give you the three. Overreliance on this provision

[45] Eweida and Others v. United Kingdom, Apps. Nos. 48420/10, 59842/10, 51671/10 and 36516/10, Eur. Ct. H.R. (Jan. 15, 2013); S.A.S. v. France, App. No. 43835/11, Eur. Ct. H.R. (July 1, 2014).
[46] Ismail Faruqui, (1994) 6 SCC 360; Acharya Jagadishwaranand Avadhuta, (1983) 4 SCC 522; Aishat Shifa, 2022 SCC OnLine SC 1394.

ISSN: 2582-6433

depicts doctrinal convenience, not doctrinal accuracy.[47]

A total erasure of ERP is less likely than its severe constraint for the future. It may still survive as limited evidentiary material where the court has to understand whether the dispute relates to religious affairs or secular administration. It ought not to be the threshold test for any and every Article 25 or Article 26 claim. It must not require proof of scriptural mandate. Courts should not be permitted to dismiss personal conscience simply because practices are not obligatory for the whole religion. Most importantly, it should not supplant the burden of constitutional justification of the State.[48]

The model would require greater transparency from judgments and is applied to future Article 25 and Article 26 litigation. The courts will say who the claimant is, what is his religious burden, what are the competing rights or public interest, what is the evidence of the restriction, and why less restrictive alternatives will not suffice. Such judgments may take longer and be more demanding than the conventional ERP analysis, but they would be cleaner. They would specify whether an assertion is unacceptable because it is not used sincerely, whether there is no burden, whether the restriction is justified, or whether the practice violates others' rights. Such clarity is required for doctrinal development.

The model uses comparative law with measure and requires judicial humility. Canadian sincerity review, South African equality-sensitive pluralism, American free exercise doctrine and European proportionality all arise from different constitutional histories. India is unable to import any of them. The Constitution of India contains specific reform provisions, has a unique caste history, a diverse religious milieu and a powerful transformation commitment. Comparative law is useful only if it can throw light on possibilities already there in the Indian text: sincerity as opposed to essentiality, burden as opposed to orthodoxy, justification as opposed to theological truth, and proportionality as opposed to categorical denial.[49]

Accommodation must be perceived as a consummate strategy of the Constitution, and not as an act of charity. All types of conflicts in schools, workplaces, prisons, armed services, public examinations and public institutions are amenable to resolution by reasonable accommodation rather than binary victory or defeat. It may not always be possible to accommodate a request. Accommodation may be refused if it causes undue hardship, endangers health and safety or undermines the institutional purpose. However, a court should normally inquire whether

[47] For the need to separate institutional, individual and exclusionary claims, see Dhavan & Nariman, supra note 17; Sen, supra note 6.
[48] This limited use of ERP is closest to the original framing in Sri Shirur Mutt, AIR 1954 SC 282.
[49] Amselem, 2004 SCC 47; Pillay, 2008 (1) SA 474 (CC); Smith, 494 U.S. 872; Eweida, Apps. Nos. 48420/10, 59842/10, 51671/10 and 36516/10.

ISSN: 2582-6433

accommodation was contemplated prior to endorsing a total ban. It is especially important where religious practice is related to accessing education, livelihood or public services.

Universally applicable rules must impose a clear burden of proof. It is on the claimant to move the court and put the burden of proof. In particular, this burden should be limited in individual conscience cases given that heightened evidentiary requirements can in themselves chill religious freedom. Once the claimant raises a reasonable doubt, the burden should shift to the State or restricting authority, to establish constitutionally legitimate aim, factual necessity and proportionality. According to ordinary rights logic, this allocation does not reflect an emerging tendency to impose the greatest burden on the rights claimant at the onset of the case.

6. Conclusion

The doctrine of essentiality is one of the most important and controversial doctrines in Indian constitutional law. The attractiveness of this project is its promise of order: in identifying what is essential to religion, the courts appear to protect religion and leave the State to regulate the secular. The danger is the same. By determining what is essential, the courts assume the power to determine meaning. So, the doctrine sways between protection and control.

This paper argues that the beginning of ERP as a protective device occurred in the early days of Article 25 and Article 26 cases. It aimed at restraining the State from inducing a corrosion of autonomy, by dealing with the matters of religion as secular administration. However, the doctrine changed over time. The Durgah Committee, Ananda Marga cases, Ismail Faruqui, archaka cases, Shayara Bano, Sabarimala and Aishat Shifa cases reveal that courts are increasingly resorting to ERP to determine confidence, necessity and doctrinal centrality of practices. Judicial essentialism, selective textualism, institutional competence, majoritarian asymmetry and weakening of religious autonomy were the problematic issues created by the movement.

The chief recommendation is doctrinal recasting. Indian courts could move from essentiality to a constitutional justification. The Court must first ascertain whether the claimant sincerely associates the practice with religion. Second, did the action of the state place any burden on the exercise of the religious freedom of the claimant? Third, whether this restriction is pursuing any legitimate aim in the Constitution. Fourth, whether the restriction imposed is proportional. Fifth, does the practice violate the rights of others concretely and in a manner that is cognisable in the Constitution. This approach will give courts the ability to defend religious liberty and

ISSN: 2582-6433

impose equality without certifying religious truth.[50]

The interpretation of Articles 25 and 26 in must follow five principles. It is essential to differentiate between the claims of individual consciousness and claims of denominational autonomy. Secondly, courts should refrain from regarding scriptural compulsion as the only test of constitutional guarantee. In the third instance, the courts should make the State justify restrictions using evidence and constitutional reasoning. Furthermore, constitutional morality deploys itself as a useful tool to prevent limitations on rights and not for sanctioning general judicial reform of religion Fifthly, autonomy and accountability must coexist within a pluralistic, transformative Constitution which protects religious freedom.

The Constitution does not expect judges to serve as priests, theologians or arbiters of authentic faith. It calls upon them to be judges of constitutionality. The demand is enough to protect conscience, to preserve pluralism, to scrutinise state power, to secure dignity, and to ensure that religious freedom does not become either the victim of majoritarian regulation or a shield for constitutional wrongs. As a result, a reassessment of ERPs is not merely a theoretical exercise. Restoration of the right relationship between faith, freedom and constitutional reason is a necessary step in India.

[50] For comparative support for sincerity, burden and proportionality analysis, see Amselem, 2004 SCC 47; Multani, 2006 SCC 6; Puttaswamy, (2017) 10 SCC 1.