BETWEEN FAITH AND THE CONSTITUTION: RETHINKING THE LIMITS OF RELIGIOUS FREEDOM UNDER ARTICLE 25

Dr. Ram Charan Meena

Assistant Registrar (Examination), Pandit Deendayal Upadhyaya Shekhawati University, Sikar, Rajasthan

Abstract

Article 25(1) of the Indian Constitution ensures unequivocal freedom of conscience as well as the right to profess, practise, and disseminate religion. Recent disputes with the Sabarimala temple access issue and the Karnataka hijab prohibition reveal conflicts when governmental policies and judicial actions enforce religious uniformity. The article employs case study and doctrinal analysis to assess the Essential Religious Practices (ERP) theory, which inadequately safeguards conscience rights, while proposing modifications that honour individual beliefs and maintain constitutional tenets of equality and secularism.

1. INTRODUCTION

The liberty of conscience is a right that embodies the internal refuge of faith, conviction, and spiritual independence, existing apart from external religious expression. Article 25(1) of the Indian Constitution safeguards this mental autonomy by assuring "all individuals" the entitlement to freedom of conscience and the ability to freely profess, practise, and disseminate religion. In contrast to the outward aspects of religious liberty (expression, observance, dissemination), conscience pertains to the convictions individuals hold internally, protected from governmental pressure to endorse, reject, or alter their beliefs.[1]

The current constitutional conflicts have rendered the notion of freedom of conscience more prominent than ever. The 2018 Sabarimala ruling, which annulled the prohibition of menstruation women from a Hindu temple, incited demonstrations by devotees who argued that the decision infringed upon their deeply held beliefs regarding the deity's chastity.[2] The 2022 Karnataka hijab prohibition imposed limitations on headscarves for Muslim students in educational settings, as judges could not agree on whether this ban infringed upon the girls' religious duty to don hijabs for modesty.[3] These instances reveal a contradiction: the Indian secular judiciary employs constitutional morality and essential religious practices criteria to regulate religious observances, yet it neglects to protect individual conscience rights when they clash with prevailing societal standards or progressive reform initiatives. This article contends that the judiciary's prevailing methodology, focused on the Essential Religious Practices (ERP) theory, inadequately safeguards conscience rights by necessitating judges to render religious determinations rather than permitting individuals to select their own beliefs.

2. CONSTRUCTION OF REFERENCES

3.1. Doctrinal Foundation of Article 25(1)

Article 25(1) safeguards four interconnected liberties: (i) freedom of conscience, (ii) the right to profess one's religion, (iii) the right to practise one's religion, and (iv) the right to disseminate one's religion. Constitutional literature acknowledges that "freedom of conscience" holds a distinctive status. It serves as the fundamental freedom from which all others derive, safeguarding personal convictions irrespective of their expression in outward religious practices.[4] The

Supreme Court characterised conscience in Ratilal Panachand Gandhi v. State of Bombay (1954) as an individual's entitlement to hold views that promote spiritual welfare.[5]

The differentiation is important as Article 25(1) delineates conscience as an independent category from observable behaviours. The right to freedom of conscience is an absolute entitlement that cannot be limited by public order stipulations concerning the ability to profess, practise, and disseminate beliefs. The judiciary construes this legal structure to inhibit state imposition of religious convictions, as it permits states to regulate religious activities in accordance with Article 25(2).[6] Consequently, forcing a student to perform the national anthem infringes upon their conscience if it conflicts with their religious beliefs, despite the possibility of regulating anthem performance as an action.[7]

The secularism enshrined in India's constitution embodies distinct ideals compared to Western frameworks that advocate for total separation of church and state. The founders opted to adopt "principled distance," which ensures equal reverence for all religions rather than compelling individuals to confine their beliefs to private domains.[8] State authorities possess the ability to regulate religious practices in accordance with Article 25(2)(b), which permits the enactment of laws that promote social welfare and reform while preserving religious liberty. The current equilibrium between these two elements is disrupted when individuals use their religious convictions to oppose particular measures like temple admission regulations and uniform procedures.

The discussions of the Constituent Assembly expose this conflict. Dr. B.R. Ambedkar advocated for the extensive interpretation of Article 25, asserting that it safeguards "not only the liberty of religious belief" but also "actions undertaken in accordance with religion," while concurrently granting the state authority to oversee "secular endeavours" linked to religion.[9] Significantly, no framer proposed that the state could force individuals to alter their beliefs or relinquish their conscientious objections. The fundamental tenet of conscience upheld its position as a crucial element of religious liberty that the secular government must respect in regulating religious practices.

The Supreme Court has linked freedom of conscience to Article 21, which safeguards personal liberty and dignity. In the case of Justice K.S. Puttaswamy (Retd.) v Union of India (2017), the Court acknowledged that individuals possess the right to independently determine their religious convictions and personal affairs.[10] Justice D.Y. Chandrachud's agreement emphasised that privacy safeguards "the capacity to make choices regarding personal aspects of human existence," encompassing spiritual beliefs without interference from the state.

4. RELIGIOUS FREEDOM UNDER ARTICLE 25: THE EVOLUTION AND LIMITS OF THE ESSENTIAL RELIGIOUS PRACTICES DOCTRINE

3.1. Origins in Shirur Mutt (1954)

The ERP concept was founded in the case of Commissioner, Hindu Religious Endowments v Sri Shirur Mutt (1954), wherein a seven-judge panel determined that constitutional rights safeguard only those religious practices that are foundational to a faith.[11] The Court clarified that Article 25 of the Constitution allows "religion" to encompass all belief-oriented rites, however limits non-essential behaviours to governmental regulation for secular purposes. This examination necessitates that courts scrutinise religious scriptures, historical customs, and theological principles to ascertain fundamental significance, a responsibility that Chief Justice Dipak Misra subsequently recognised as placing judges in the awkward situation of "assuming a theological hat.[12]

Shirur Mutt established a structure for religious organisations to preserve their autonomy while enacting necessary reforms. The Court created a structure that safeguarded fundamental religious practices while categorising superstitious beliefs as subjects for legal regulation, so facilitating the implementation of progressive legislation that upheld vital religious rights.[13] The ERP test was utilised in further instances by evaluating various activities, which encompassed: deeming Tandava dance non-important to Ananda Marg belief,[14] endorsing prohibitions on animal sacrifice,[15] and determining if particular rituals are necessary elements of worship.

3.2. Structural Flaws in the ERP Test

Notwithstanding its enduring nature, the ERP concept is plagued by significant flaws that compromise the safeguarding of conscience.

3.2.1. Judicial Assumption: Courts presume authority to interpret sacred texts when determining whether religious convictions need to be regarded as significant and fundamental by adherents. In Sabarimala, Justice Misra referenced Hindu texts to determine that the exclusion of menstruating women was inconsistent with "authentic Hinduism".[16] Nonetheless, Hinduism does not possess a centralised ecclesiastical authority or a definitive canonical scripture, resulting in judicial decisions that enforce a legally favoured orthodoxy upon its varied traditions.[17]

3.2.2. Textual Bias: The ERP assessment favours written texts, hence marginalising oral traditions and local community customs. Consequently, belief systems such as indigenous religions or localised faiths (like the followers of Lord Ayyappa at Sabarimala) that developed autonomously from Vedic scriptures are at a disadvantage under the ERP philosophy.[18] Justice Chandrachud remarked in his Sabarimala concurrence that the ERP concept "is flawed due to the presumption that faith and belief may be distilled into a limited array of actions.[19]

***3.2.3. Frozen Orthodoxy*:** By enquiring if a practice was fundamental at the inception of the religion, courts immobilise faith in a specific era, obstructing its natural progression.[20] The prohibition of hijabs exemplifies this: judges of the Karnataka High Court deliberated on the presence of headscarves in the Quran, overlooking the fact that the attire of Muslim women has evolved over centuries of cultural tradition and individual devotion.[21]

3.2.4. Disregard for Conscience: Most importantly, the ERP test's fundamental component evaluates collective behaviours rather than individual convictions regarding morality. The examination enquires if this practice is of paramount significance for Islam and Hinduism, contrasting with the assessment that questions whether the individual have a genuine conviction to adhere to it. The examination is unsuitable for assessing conscience claims since these assertions initially manifest as personal convictions experienced internally by people, rather than through collective religious doctrines.

3.3. Chandrachud's Alternative: Constitutional Morality

Acknowledging these shortcomings, Justice Chandrachud suggested in Sabarimala that the judiciary forgo ERP in favour of a "constitutional morality" assessment.[22] According to this methodology, a behaviour deemed vital is still rendered unconstitutional if it infringes against fundamental rights such as equality (Article 14) or dignity (Article 21). Dr. Ambedkar presented the notion of constitutional morality, encompassing the principles outlined in Part III of the Constitution that safeguard against discrimination and uphold individual rights. Chandrachud's formulation enhances the safeguarding of conscience rights by prioritising individual rights over communal customs. Critics argue that the approach allows courts to overstep their jurisdiction by substituting their constitutional interpretation with the religious convictions of the defendant.[23]

4. CASE STUDIES

4.1. Indian Young Lawyers Association v State of Kerala (2018)

The Sabarimala temple in Kerala barred women between the ages of 10 and 50 from entering, based on the conviction that Lord Ayyappa is a celibate god whose meditation would be disrupted by menstruation women.[24] Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorisation of Entry) Act 1965 formalised this exclusion. In 2018, a 4:1 majority in the Supreme Court annulled the prohibition, deeming it a violation of women's right to worship under Article 25(1) and the equality provisions of Articles 14-15.

4.1.1. Majority Reasoning: *Chief Justice Misra, accompanied by Justice Khanwilkar, employed the ERP test and determined that the exclusion was unnecessary, referencing scripture evidence to affirm that women are entitled to equal treatment in Hinduism. Justice Nariman determined that, notwithstanding their significance, the Sabarimala devotees did not meet the criteria of a separate religious entity capable of governing their religious matters under Article 26. Justice Chandrachud advanced the most compelling argument, asserting that the exclusion breached fundamental morality irrespective of necessity and amounted to "untouchability" under Article 17 by viewing menstruation as impure. He stressed that the legislation cannot "revoke the right to worship from a group of adherents due to a biological trait.*

***4.1.2. Dissent*:** Justice Indu Malhotra's disagreement was distinctly focused on moral principles. She maintained that judicial bodies do not possess the jurisdiction to adjudicate religious tenets and should instead yield to the profound convictions of the faithful. For traditionalist adherents, the exclusion signified a genuine moral conviction regarding Lord Ayyappa's celibacy, a principle necessitating reverence under Article 25(1). Malhotra contended that individuals who are not adherents do not possess the standing to contest activities they do not observe, and that judicial interference may impose "majoritarian" reasoning on minority groups.

Consequently, the situation reveals a quandary: Should courts enforce and require participation contrary to the devotees' beliefs, they encumber the Art. Twenty-five entitlements of the faithful. Post-judgment demonstrations and aggression toward women seeking access illustrate that legal authority cannot supersede entrenched moral objections without social endorsement. However, restricting access weighs heavily on women's moral need to practise their faith unencumbered. The ERP paradigm does not resolve this dilemma as it reduces intricate human consciousness to two conflicting fundamental states.

4.2. Aishat Shifa v State of Karnataka (Hijab Ban, 2022)

In February 2022, the Karnataka government enforced a prohibition on headscarves in pre-university campuses, prompting Muslim students to protest since they viewed the hijab as a symbol of their obligation to dress modestly.[25] The Karnataka High Court affirmed the prohibition in March 2022, concluding that the hijab did not possess fundamental significance, while the uniform regulations constituted a legitimate limitation that preserved equality and public order in secular academic settings.[26] The Supreme Court rendered a 1:1 divided judgement in October 2022, affirming the High Court's finding with Justice Hemant Gupta endorsing the prohibition and Justice Sudhanshu Dhulia dissenting.[27]

***4.2.1. High Court Reasoning*:** The High Court determined that the hijab, as it is "not an integral religious practice of Islam," does not receive protection under Article 25(1).[28] It differentiated "religious conscience" from "simple individual superstition," determining that standardised norms foster constitutional secularism by reducing religious display in educational settings. The ruling referenced French secularism and cited Dr. Ambedkar: "In a secular State, religion is irrelevant.

***4.2.2. Supreme Court - Justice Gupta*:** Justice Gupta of the Supreme Court said that students willingly select government-funded schools and are obligated to adhere to institutional regulations, such as dress restrictions. He argued that the prohibition of hijab at school entrances is a "reasonable restriction" as per Article 25(2), rather than an infringement on education or personal beliefs.

***4.2.3. Supreme Court - Justice Dhulia (Dissent)*:** Justice Dhulia said that donning the hijab constitutes a personal choice safeguarded by Article 25(1) and Article 19(1)(a), and that its ban obstructs pupils from obtaining secular education. Dhulia fundamentally rejected the ERP test as a suitable means to assess individual conscience in religious actions. He asserts that the criterion of fundamental religious observance is irrelevant for evaluating if a person's private belief necessitates certain clothing.

The prohibition of the hijab presents a Hobson's choice: compelling individuals to select between two alternatives that necessitate either the abandonment of their religious convictions or remaining absent from educational institutions. For girls whose religious beliefs mandate modesty via hijab, the prohibition concurrently infringes upon Article 25(1) and Article 21-A (right to education). In contrast to Sabarimala, where no worshipper was denied entry to the temple, the state now restricts individuals from utilising public resources based on their religious convictions. The prevailing perspective sets a norm that compels individuals to forfeit their personal convictions, as organisations prefer uniformity in thought and appearance over adhering to the fundamental principle outlined in Article 25(1).

4.3. Bijoe Emmanuel v State of Kerala (1986)

The Bijoe Emmanuel example offers a different paradigm. Three children of Jehovah's Witnesses were dismissed from school for declining to sing the national anthem, asserting that such an act represents idolatry based on their religious beliefs.[29] The Supreme Court deemed the expulsion unlawful, holding that Article 25(1) safeguards conscientious objection as long as it does not disturb public order. The children remained reverently still during the hymn, their quiet protest posing no threat to state interests. Significantly, the Court refrained from utilising the ERP test to assess if non-participation was "fundamental" to Jehovah's Witnesses doctrine. Rather, it acknowledged the children's earnest and principled conviction and employed a proportionality assessment, as the expulsion surpassed the objective of honouring the anthem, which could have been accomplished through their silent standing. The approach that assesses sincerity and proportionality without delving into theological issues offers superior safeguarding for the rights of conscience protection under Article 25(1).

5. A NEW TEST

To enhance the safeguarding of Article 25(1), Indian judiciary ought to supplant the ERP doctrine with a bifurcated "conscience-proportionality" assessment:

The initial phase of the examination necessitates the court to ascertain if the applicant holds a genuine conscientious conviction. Judicial bodies evaluate good faith without determining theological accuracy. In the Hijab case, this investigation would determine if the student possesses a sincere conviction that wearing the hijab is a compulsory obligation for her, rather than assessing whether Islamic doctrine prescribes it. The second phase of the evaluation necessitates determining if, when conscience is encumbered, the limitation is essential, minimally invasive, and commensurate. This weighs moral considerations against the stipulations of Article 25(2) (public order, morality, health) by methodical examination instead of religious discourse.

In the context of the Sabarimala case, this criterion would acknowledge the conscience of women (to worship) as well as the conscience of devotees (believe in celibacy). Proportionality assessment may support the adherents if the access limitation solely pertains to women of a specific age bracket, rather than women in general. Crucially, the evaluation persists without the judiciary defining what embodies "authentic Hinduism" within the broader context of Hinduism.

In the context of the Hijab case, the assessment would acknowledge the genuine convictions of students and necessitate the state to justify the need for conformity enforcement. If hijabs do not interfere with students' education, then the prohibition lacks proportionality, irrespective of the hijab's significance in Islam.

6. CONCLUSION

The essential right to freedom of conscience, articulated in Article 25(1), provides a constitutional assurance that mandates a secular government to refrain from compelling individuals to embrace particular religious doctrines or penalising those who opt to adhere to their own conscientious beliefs and practices. The Sabarimala and Hijab cases expose significant strains and intricacies within India's secularism, as courts reference constitutional morality and ERP to enforce temple access or conformity in classrooms, neglecting the sincere convictions of the faithful. The ERP concept,

based on the judicial system's theological authority, does not safeguard conscience as it replaces individual authenticity with collective significance.

A conscience-proportionality paradigm, as proposed in the document, provides a viable solution. By prioritising personal conviction independently and requiring adequate reasons for limitations, courts can respect the textual precedence of conscience in Article 25(1) while addressing legitimate public order issues as outlined in Article 25(2). This framework enshrines the rights of religious pluralism, safeguarding religious minorities against coerced uniformity while upholding constitutional dignity as an inviolable principle. As India faces escalating threats to secularism and religious liberty, the court should avoid the allure of enforcing hierarchical theological reasoning. The legislation must protect individual conscience as it allows individuals to adhere to their personal convictions, which need to be exempt from judicial oversight. Secularism without of conscience safeguards is not impartiality, but rather coercion under a different guise.

REFERENCES

[1] Bijoe Emmanuel v. State of Kerala, MANU/SC/0061/1986.

[2] Indian Young Lawyers Ass'n v. State of Kerala, MANU/SC/1094/2018.

[3] Aishat Shifa v. State of Karnataka, MANU/SC/1321/2022.

[4] Gautam Bhatia, Individual, Community, and State: Mapping the Terrain of Religious Freedom under the Indian Constitution, IND. CONST. L. & PHIL. (Feb. 7, 2016).

[5] Ratilal Panachand Gandhi v. State of Bombay, MANU/SC/0138/1954.

[6] Comm'r, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, MANU/SC/0136/1954.

[7] Bijoe Emmanuel v. State of Kerala, MANU/SC/0061/1986.

[8] Shefali Jha, Secularism in the Constituent Assembly Debates, 1946–1950, 37 ECON. & POL. WKLY. 3175, 3176 (2002).

[9] 7 CONSTITUENT ASSEMBLY DEBATES, 781–82 (Nov. 4, 1948).

[10] K.S. Puttaswamy v. Union of India, MANU/SC/1044/2017 (Chandrachud, J.).

[11] Comm'r, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, MANU/SC/0136/1954.

[12] Indian Young Lawyers Ass'n v. State of Kerala, MANU/SC/1094/2018 (Misra CJ).

[13] Ronojoy Sen, The Indian Supreme Court and the Quest for a "Rational" Hinduism, 1 S. ASIAN HIST. & CULTURE 86, 92 (2009).

[14] Acharya Jagdishwaranand Avadhuta v. Comm'r of Police, MANU/SC/0050/1983.

[15] Mohd. Hanif Quareshi v. State of Bihar, MANU/SC/0027/1958.

[16] Indian Young Lawyers Ass'n v. State of Kerala, MANU/SC/1094/2018 (Misra CJ).

[17] Mary Kavita Dominic, Essential Religious Practices Doctrine as a Cautionary Tale: Adopting Efficient Modalities of Socio-Cultural Fact-Finding, 16 SOCIO-LEGAL REV. 46, 62 (2022).

[18] Sukriti, The Paradox of Juridical Secularism: An Illustration Through the Cases of Sabarimala and Hijab, 17 NAT'L L. SCH. J. 65, 77 (2023).

[19] Indian Young Lawyers Ass'n v. State of Kerala, MANU/SC/1094/2018 (Chandrachud, J.).

[20] Gautam Bhatia, Individual, Community, and State: Mapping the Terrain of Religious Freedom under the Indian Constitution, IND. CONST. L. & PHIL. (Feb. 7, 2016).

[21] Resham v. State of Karnataka, MANU/KA/0912/2022.

[22] Indian Young Lawyers Ass'n v. State of Kerala, MANU/SC/1094/2018 (Chandrachud, J.).

[23] Vrinda Narain, Constitutionalizing Women's Equality in India: Assessing the Sabarimala Decision, 42 COLUM. J. GENDER & L. 77, 95 (2022).

[24] Indian Young Lawyers Ass'n v. State of Kerala, MANU/SC/1094/2018 (Misra CJ).

[25] Ajoy Karpuram, Karnataka Hijab Ban Timeline, SUPREME COURT OBSERVER (31 October 2022) https://www.scobserver.in/journal/karnataka-hijab-ban-timeline/ accessed 15 February 2026.

[26] Resham v. State of Karnataka, MANU/KA/0912/2022.

[27] Aishat Shifa v. State of Karnataka, MANU/SC/1321/2022.

[28] Resham v. State of Karnataka, MANU/KA/0912/2022.

[29] Bijoe Emmanuel, MANU/SC/0061/1986, ¶2.