

# THE BOUNDARIES OF JUDICIAL INTERVENTION: ANALYZING THE SUPREME COURT'S AUTHORITY IN PERSONAL LAWS

**AUTHOR** – MD MUJTABA, STUDENT OF INDIAN INSTITUTE OF MANAGEMENT ROHTAK

**BEST CITATION** – MD MUJTABA, THE BOUNDARIES OF JUDICIAL INTERVENTION: ANALYZING THE SUPREME COURT'S AUTHORITY IN PERSONAL LAWS, *ILE CONSTITUTIONAL REVIEW*, 3 (1) of 2024, Pg. 01-11, APIS – 3920 – 0006 | ISSN – 2583-7168.

## Introduction

In the legal and political arenas, the relationship between personal laws, religion, and judicial involvement has been a challenging and nuanced affair.<sup>1</sup> People governed themselves under personal laws that are firmly anchored in religious or cultural beliefs in varied cultural groups.<sup>2</sup> Personal laws regulate things like inheritance, marriage, divorce, and other personal affairs.<sup>3</sup> There has been ongoing debate over the scope and limits of judicial intervention in personal laws; this study aims to clarify this complex and diverse field.

"Entire humanity rests on the foundation stone of religion and it was a matter of pride that religion occupied a central place in India's tradition, social system and political activities since time immemorial"<sup>4</sup>. In every religion, personal laws are an essential part of one's identity as an individual and as a member of that religious group.<sup>5</sup> It sets the rules for important facets of people's lives, such as religious beliefs, cultural customs, and family arrangements. Any action is extremely important as how deeply ingrained these laws are in the lives of people and communities. The judgement of *State of Bombay v. Narasu Appa Mali*<sup>6</sup> held that "personal laws are immune from the application of Article 13 on grounds of Personal laws are not "laws" under Article 13(3)(a) of the Constitution, and Personal laws are not "laws in force" under Article 13(3)(b) of the Constitution."<sup>7</sup>

In the case of "*the Commissioner, Hindu Religious Endowments, Madras Vs. Lakshmindra Thirtha Swamiar of Sri Shirur Mut*, the court decided to define what constitutes an essential and non-essential activity of a religion and declared that the term "religion" will encompass all rites and activities that are "integral" to a religion."<sup>8</sup> And evolved Essential Practice Doctrine, a legal theory that has been vital in issues concerning personal legislation, is at the center of this research. According to this theory, changing particular religious or cultural customs viewed as a breach of fundamental rights as they are vital to the faith or community. It is alleged that although the judiciary is charged with the responsibility of interpreting constitutional issues, it should proceed with caution when exploring

<sup>1</sup> Larcen, G.J. (no date) *Religion & Personal Law in secular india*. Available at: <https://casi.sas.upenn.edu/sites/default/files/ii/Religion%20%26%20Personal%20Law%20in%20Secular%20India%20-%202001.pdf> (Accessed: 07 November 2023).

<sup>2</sup> Tivari P, 'India's civil code: A source for ideological disputes' (*Al Jazeera*, 25 December 2015) <[www.aljazeera.com/opinions/2015/12/25/indias-civil-code-a-source-for-ideological-disputes](http://www.aljazeera.com/opinions/2015/12/25/indias-civil-code-a-source-for-ideological-disputes)> accessed 7 November 2023

<sup>3</sup> <https://www.aljazeera.com/opinions/2015/12/25/indias-civil-code-a-source-for-ideological-disputes>

<sup>4</sup> President Droupadi Murmu, "Religion Occupied Key Place in Social System Since Time Immemorial: Prez", *Business Standard*, Mar. 03, 2023, available at: [https://www.business-standard.com/article/current-affairs/religion-occupied-key-place-in-social-system-since-time-immemorial-prez-123030300686\\_1.html](https://www.business-standard.com/article/current-affairs/religion-occupied-key-place-in-social-system-since-time-immemorial-prez-123030300686_1.html) (last visited on Oct. 25, 2023).

<sup>5</sup> Srivastava, D. K. "PERSONAL LAWS AND RELIGIOUS FREEDOM." *Journal of the Indian Law Institute* 18, no. 4 (1976): 551–86. <http://www.jstor.org/stable/43950450>.

<sup>6</sup> *The State of Bombay vs. Narasu Appa Mali* (24.07.1951 - BOMHC) : MANU/MH/0040/1952

<sup>7</sup> Maniyar Z, 'Personal Laws Vis-à-Vis Fundamental Rights, Part III of the Constitution' (CJP, 30 November 2022) &lt;<https://cjp.org.in/personal-laws-vis-a-vis-fundamental-rights-part-iii-of-the-constitution/>&gt; accessed 11 November 2023

<sup>8</sup> MANU/SC/0136/1954 *The Commissioner, Hindu Religious Endowments, Madras vs. Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.* (16.03.1954 - SC) : MANU/SC/0136/1954

theological nuances because it is not its place to determine the veracity of a religion. The established doctrine of “essentiality” calls into question the extent to which the court can get involved in religious matters and the possibility that it will go too far in maintaining the separation of religion and state.

A number of court cases have surfaced that highlight the difficulties and nuances of judicial involvement in personal legislation. In *Mary Roy V. State Of Kerala*<sup>9</sup> case where it addressed identical entitlement to inheritance for Christian women. The court's decision in this instance established that no personal law could override the Indian Constitution, and any provision that did so would be null and void. Similarly in the case of *T Sareetha V. Venkata Subbaiah*<sup>10</sup> the Hindu Marriage Act, 1955's Section 9 was declared unconstitutional by the court on the grounds that forcing someone to engage in non-consensual sexual actions is extremely degrading and goes against Articles 14, 19, and 21 of the Constitution. Similarly the court has interfered and over reached in the cases of *Indian Young Lawyers' Association v State of Kerala*<sup>11</sup>, *Shah Bano Case*<sup>12</sup> and *Shayara Bano V. Union Of India*<sup>13</sup>. The study looks at these cases and analyses the debates, discussions, and ramifications that surround them.

One well-known case<sup>14</sup> with significant constitutional ramifications is the Sabarimala temple access issue, in which the Supreme Court rendered a decision which over turned personal law of Lord Ayyappa's devotees as a separate religious denomination. This case highlighted the need to carefully consider the limits of judicial interference in personal laws by sparking a national conversation about how to strike a balance between judicial power of determining the essential practices and religious practices.

The natural difficulty that judges have in comprehending intricate religious subjects is a crucial factor to take into account in the situation of determining the essential religious practices. It is difficult to understand the complexities of faith, tradition, and religious rituals for the judges who have no background knowledge of the religious scriptures, customs and traditional logic of the particular religion; this creates significant concerns, concerning the proper role of the judiciary in areas of personal law.

Sections 45 to 51<sup>15</sup> and Section 73 of the Indian Evidence Act, 1872, regulate the acceptance of expert testimony in court proceedings. Historically, these clauses have covered a wide range of topics, including science, art, foreign law, handwriting, and fingerprint analysis. One notable omission from these standards is the provision of professional opinions on religious and personal law concerns. In light of the current social and legal context, expert like pandit's, maulvi's or clergy's opinion should be taken into account when discussing the notion of necessary religious activities, especially where theological nuances play a significant role in the legal discussion. It will be unreasonable to decide the essentiality of religious practices without an expert opinion.

With the goal of providing insights and suggestions for future reforms in this important area of legal and social debate, this study aims to advance knowledge of the limits and ramifications of judicial action in personal laws and examines various court rulings to demonstrate how religious freedom is negatively impacted by the essentiality test.

<sup>9</sup> *Mrs. Mary v. State of Kerala*, 1986 AIR 1011, 1986 SCR (1) 371

<sup>10</sup> *T. Sareetha v. Venkata Subbaiah*, AIR 1983 AP 356

<sup>11</sup> *Indian Young Lawyers Association v. The State of Kerala*, 28 September, 2018, Supreme Court of India

<sup>12</sup> *Mohd. Ahmed Khan v. Shah Bano Begum*, 1985 AIR 945, 1985 SCR (3) 844

<sup>13</sup> *Shayara Bano v. Union of India*, 22 August, 2017 Supreme Court of India

<sup>14</sup> *Indian Young Lawyers Association v. The State of Kerala*, 28 September, 2018, Supreme Court of India

<sup>15</sup> *Indian Evidence Act*, 1872

### Statement of problem

- a. What are the main points of contention of the Essential Practice Doctrine, and how does it influence the level of judicial participation in matters pertaining to religion?
- b. In light of recent contentious decisions of the supreme court, how do constitutional provisions—particularly Articles 25 to 28—affect the Supreme Court's jurisdiction over personal law cases?

### Objectives of the Project

- a. To Examine the Essential Practice Doctrine
- b. To Assess the Unconstitutionality of Judicial Decisions
- c. To Evaluate Judges' Knowledge of Religious Practices
- d. To Highlight the Importance of Expert Opinion

### Literature Review

**Judgment of Sabarimala Temple Entry (Justice Malhotra's Dissenting Opinion)<sup>16</sup>.** "Justice Indu Malhotra had said "What constitutes an essential religious practice is for the religious community to decide"<sup>17</sup> and not a matter that should be decided by the courts. "It is not for the courts to determine which of these practices of a faith are to be struck down, except if they are pernicious, oppressive, or a social evil, like Sati,"<sup>18</sup> it clearly states that intervening in personal law is absolutely not under the authority of Supreme Court and Court is unauthorized to decide what is essential practice for one religion and what is not. In a dissenting opinion, Justice Indu Malhotra argued that constitutional morality required balancing conflicting claims to fundamental rights in a secular nation such as India. She argued that regardless of the reason or rationale behind their actions, the Court

should respect religious denominations' right to self-governance over their internal affairs. It directly makes sense that if the court does not do so then it will be judicial overreach and religious institutions will bear no significance. She contended that, subject to the restrictions of "public order, morality, and health," the Sabarimala Temple is eligible to be treated as a separate religious denomination, exempt from the social reform obligation of Article 25(2)(b)<sup>19</sup>, which only applies to Hindu denominations. Judge Malhotra emphasized the need for the State to respect people's varied religious practices and stressed that "morality"—that is, constitutional morality—must be defined within India's multicultural setting.

Article 25, which guarantees everyone the freedom to profess, practice, and disseminate faith, should not supersede the fundamental right to equality provided to women under Article 14. Moreover, it is argued that because Rule 3(b)<sup>20</sup> of the makes an exception for public worship and is compliant with Article 26(b) of the Constitution, it does not contradict the parent Act, the Kerala Hindu Places of Public Worship Act.

As it was claimed that the Sabarimala temple custom addressed untouchability and discriminated based on impurity. But it was argued that untouchability does not include discrimination based on gender; rather, it refers to caste-based discrimination within the framework of the Article and the Constitution as a whole. Discrimination based on gender is not covered by "untouchability," in contrast to Justice Chandrachud<sup>21</sup>.

So it can be said the Judicial should refrain from giving such judgement or order as it was given in Sabarimala temple entry case as it destroys the religion as a body and it is always emphasized that court should not interfere in

<sup>16</sup> Supreme Court Observer, "Judgment in Plain English (Sabarimala Temple Entry)" Justice Malhotra's Dissenting Opinion (28th Sep 2018)

<sup>17</sup> Ashish Tripathi D, 'Any Interference Will Affect Faith: Indu Malhotra' (Deccan Herald) &lt;<https://www.deccanherald.com/india/any-interference-will-affect-695193.html>&gt; accessed 8 November 2023

<sup>18</sup> Indian Supreme Court Strikes down Ban on Women's Entry into Religious Temple' (OHRH) &lt;<https://ohrh.law.ox.ac.uk/indian-supreme-court-strikes-down-ban-on-womens-entry-into-religious-temple/>&gt; accessed 8 November 2023

<sup>19</sup> Ram, M.R. (2009) Indian constitution. New Delhi: New Age International (P) Ltd

<sup>20</sup> The Kerala Hindu Places of Public Worship (Authorisation of Entry) Rules, 1965

<sup>21</sup> Express News Service, "Justice Chandrachud: 'Outlawing Untouchability Hasn't Ended Discrimination'", The Indian Express, Apr. 16, 2021, available at: <https://indianexpress.com/article/india/justice-chandrachud-outlawing-untouchability-hasnt-ended-discrimination-7275664/> (last visited on Oct. 25, 2023).

personal laws of any community until and unless if they are pernicious, oppressive, or a social evil, like Sati.”<sup>22</sup>

**Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy<sup>23</sup>:**

This article emphasises that in *Shirur Mutt* case<sup>24</sup>, the apex court impliedly rejected “assertion test”, “whereby a [plaintiff] could . . . assert that a particular practice was a religious practice”<sup>25</sup> and whereby and courts would stop looking into it. “This exercise of determining the essential practice of a religion leads to obscure results and tends to lead the court into an area which . . . is beyond its competence.”<sup>26</sup> However, the extent of religion in India is determined by laws crafted by judges.

The Indian Supreme Court’s “essentiality test” distinguishes between religious and secular affairs, stating that a practice must be deemed an essential component of a religion in order for it to be protected under the Indian Constitution’s guarantees of freedom of religion and ironically this is being decided by the judges who lack religious knowledge to determine such demonstrates the problems with this essentiality test where the sect in the case claimed that it was fundamental to their religion to catch and worship live cobras during the Nagpanchami festival, but the judiciary rejected this claim, citing more general Hindu religious texts as support.<sup>27</sup> This decision raised concerns about how different religious and cultural norms are recognized in India. The

ruling undermining religious institutions’ autonomy and feelings by questioning and destroying their customs and beliefs.<sup>28</sup> According to Article 25, the freedom of religion is an individualized right; as such, a person should have the autonomy to determine what aspects of their faith they deem essential or non-essential and it Judges of courts is not the authorize person to decide the essentiality or non-essentiality, it is the concern of religious scholars to decide so.

**Secularism And Religious Tolerance In India: A Critical Analysis from Constitutional Perspective<sup>29</sup>.**

Article 25 of the Indian Constitution guarantees the right to freedom of religion but places substantial limitations, such as public order, morality, and health, on the exercise of this right, marking a departure from the previously unrestricted practice and propagation of religious beliefs<sup>30</sup>. The right to freely profess, practice, and propagate religion encompasses not only the freedom to hold religious beliefs but also the liberty to engage in acts and expressions sanctioned by one’s religion and to propagate those beliefs to others, subject to reasonable restrictions.<sup>31</sup> When there is a significant risk of breaking the law, courts are essential in resolving disagreements. However, rather than getting engaged in minute minutiae of religious practices, court must wait to intervene until there is a clear risk of rule-breaking. With a few notable exceptions pertaining to specific business matters, religious institutions are largely free to function without interference from the government in India.<sup>32</sup> India is an excellent instance of democracy because of its unity in diversity and the way the

<sup>22</sup> Judgment in 25 Plain June English’ (Supreme Court 2022) Observer, &lt;https://www.scoobserver.in/reports/sabarimala-temple-entry-indian-young-lawyers-association-kerala-judgment-in-plain-english/#:~:text=Justice%20Malhotra’s%20Dissenting%20Opinion&amp;text=She%20held%20that%20the%20Sabarimala,considered%20a%20separate%20religious%20denomination.&gt; accessed 11 November 2023

<sup>23</sup> Faizan Mustafa and Jagteshwar Singh Sobi, “Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy” 4 BYU Law Review 915-952 (2017).

<sup>24</sup> Comm’r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, 1954SCR 1005, 1021 (India)

<sup>25</sup> Rajeev Dharan, *Religious Freedom in India*, 35 AM. J. COMP. L. 209, 220 (1987)

<sup>26</sup> Kaul DK, “The “essential Practices” Doctrine” (Brill, 15 November 2021) &lt;https://brill.com/view/journals/ijgr/29/2/article-p350\_007.xml?language=en&gt; accessed 11 November 2023

<sup>27</sup> Kaul, D.K. (2021) *The ‘essential practices’ doctrine*, Brill. Available at: &lt;https://brill.com/view/journals/ijgr/29/2/article-p350\_007.xml?language=en (Accessed: 08 November 2023).

<sup>28</sup> Religion and belief’ (no date) Manual for Human Rights Education with Young people, VII(10).

<sup>29</sup> Navin Pal Singh and Dr. Balvinder Singh, “Secularism and Religious Tolerance in India: A Critical Analysis from Constitutional Perspective” 10 Issn: 2173-0695-696 ~ Boletim De Literatura Oral 696-705 (2005).

<sup>30</sup> CAD, vol.7, p. 834 .

<sup>31</sup> The Right to Freedom of Expression and Religion’ (Icelandic Human Rights Centre)

<sup>32</sup> India: Religious Freedom Issues’ (EveryCRSReport.com, 30 August 2018)

&lt;https://www.everycrsreport.com/reports/R45303.html&gt; accessed 8 November 2023

people, the government, and the courts determine boundaries. This is especially true because India is a secular nation, meaning that everyone is free to choose, practice, and convert to any religion they so want. These rights do, however, have certain limitations. For example, one cannot violate public policy or incite intolerance or riots among Indians in the name of one's faith. By intervention of the court's in personal laws in a heterogeneous country like India, it potentially impede people's ability to freely express and share their religious beliefs, infringing on their right to religious freedom and limiting the diversity of religious practices and ideas. This in turn give rise to questions regarding the maintenance of religious diversity and personal freedom in matters of faith.

### **Representation and Legitimacy in the Supreme Court: Adjudicating Law and Religion in India<sup>33</sup>:**

This study has raised questions about the Supreme Court's approach to resolving religious issues are discussed in three landmark cases i.e., Sabarimala Temple case,<sup>34</sup> the Ram Janmabhoomi case, and the triple talaq case. It raised concerns about how well the Court handles disputes inside organizations, defends minority rights against judgments made by the majority, and defends individual rights against group interests.<sup>35</sup> As to Article 142 of the Constitution, the Court's jurisdiction include the doing complete justice.<sup>36</sup> When access to justice is uneven, the Court has utilized this power in Public Interest Litigations (PILs) to waive certain procedural requirements in the interest of justice.<sup>37</sup> Nonetheless, the Court's authority to "do complete justice" is intimately related to its

responsibility to protect fundamental rights, which includes making sure that all parties to legal proceedings receive fair treatment. The Court must strike a balance between allowing petitioners to make their case and taking into account the opinions of those who may be impacted by the petitions in matters involving religion and legal standing. It is clear from the Shayara Bano, Sabarimala Temple, and Babri Masjid cases that the Court favors a discretionary over a principled approach.<sup>38</sup> In the wake of these instances, the Court's discretionary rulings have enabled majoritarian politics to sway the legal system, exposing the flaws in this strategy.

### **Research Methodology**

The methodology employed for this research is doctrinal legal research. The laws found in primary sources, such as legislation, regulations, and court rulings, are descriptively analysed using this method. It compiles, arranges, and clarifies the law and describes how the various legal sources relate to the main idea or framework of the research title.

### **Interpretation**

"In the 1983 case of Acharya Jagdishwaranda Avadhutha v. Commissioner of Police, Calcutta, the centrality of the Tandava dance in the Ananda Margi faith was examined. Notably, Tandavadancing was first practiced in 1960 and the Ananda Margi sect was founded in 1955."<sup>39</sup> "The court concluded that the Tandava dance was not an indispensable component of the religion."<sup>40</sup> It was decided that the order itself was not a necessary component because the dance practice was even more recent than the order itself. The court also looked into whether there was any written proof from Shri. Ananda

<sup>33</sup> Raeesa Vakil, "Representation and Legitimacy in the Supreme Court: Adjudicating Law and Religion in India" 10 *S.A.G.E. Publications* ISSN 2321-0230 48-61 (2022).

<sup>34</sup> Sabarimala Temple Entry' (Supreme Court Observer, 24 June 2022)

<sup>35</sup> <https://www.scoobserver.in/cases/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-background/>; accessed 8 November 2023

<sup>36</sup> *Poojari and others, 'Irretrievable Breakdown of Marriage: Decoding Supreme Court Judgment on Grant of Divorce under Article 142 of Constitution; Waiver of 6 Month's Cooling off Period' (SCC Blog, 30 May 2023)*

<sup>37</sup> <https://www.sconline.com/blog/post/2023/05/02/supreme-court-article-142-of-indian-constitution-and-irretrievable-breakdown-of-marriage/#:~:text=Further%2C%20it%20said%20that%20Article,the%20litigation%20between%20the%20pa.rties.&gt;>; accessed 8 November 2023

<sup>38</sup> Vakil R, "Representation and Legitimacy in the Supreme Court: Adjudicating Law and Religion in India" (2022) 10 *S.A.G.E. Publications* ISSN 2321-0230 48-61

<sup>39</sup> The Legal Making of a "Hindu Sect": Understanding the Tandava Case in Its Context' (*Academic.oup.com*) <https://academic.oup.com/book/25707/chapter-abstract/193194181?redirectedFrom=fulltext&gt;>; accessed 8 November 2023

<sup>40</sup> No Tandava in Public, Sc Tells Anand Margis' (*The Economic Times*) <https://economictimes.indiatimes.com/no-tandava-in-public-sc-tells-anand-margis/articleshow/554891.cms&gt;>; accessed 8 November 2023

Murti requiring that the Tandava dance be done in public, even if it were regarded as a religious ceremony. According to the Supreme Court's reasoning, a religious practice could only be considered essential if it was present at the time the religion was established. When the case was later brought back, the Calcutta High Court noted that it could cause confusion and that the nature of the religious practice could be altered by the judicial preferences if the courts started to evaluate and decide if a certain religious practice was reasonable. The judgement of the court in the Gram Sabha case<sup>41</sup> shows how judges have a history of making irrational comments on the legitimacy of religious rites, which has had a negative impact on religious groups and minority communities.<sup>42</sup> Observation of the High Court of Calcutta in *Acharya Jagdishwaranda Avadhutha v. Commissioner of Police*<sup>43</sup>, Justice Malhotra's dissenting opinion in Sabarimala temple entry case clearly and critics arguments on the doctrine of 'essential practices' has been that it goes against the tenets of constitutional morality and answers the research question i.e. contention of the Essential Practice Doctrine.<sup>44</sup>

"*Ismail Faruqui v. Union of India*, which determined that mosque attendance was not considered a "indispensable" activity."<sup>45</sup> Since it was maintained that Namaz (prayer) could be performed anywhere, whereas Islamic scholar *Shaykh Ibn Baz*<sup>46</sup> wrote a useful essay entitled *Wujub Ada al-Salah fi Jama'ah* (The obligation of offering prayers in congregation)<sup>47</sup> where it is mentioned that Allah has commanded the believers to establish prayer in congregation

even at times of fear indicates that doing so at times of security is even more obligatory.<sup>48</sup> Hence from the interpretation of Islamic Scholar *Shaykh Ibn Baz* it can be concluded that offering Namaz (prayer) at mosque or in congregation is necessary and essential practices in Muslim religion. Similarly Supreme Court in *Sabarimala Temple case*,<sup>49</sup> "*Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi & Ors. v State of UP & Ors, Seshammal & Ors v State of Tamil Nadu*,<sup>50</sup> *Tilkayat Shri Govindlaji Maharaj v State of Rajasthan*,"<sup>51</sup> "*Sardar Syedna Taher Saifuddin Saheb v State of Bombay, Durgah Committee*,<sup>52</sup> *Ajmer v Syed Hussain Ali and Sardar Sarup Singh v State of Punjab*<sup>53</sup> the court has influence extreme level of judicial participation in matters pertaining to religion and destroyed the very basic structure of the religion. Indian court has to take a note that there is a difference between philosophy and religion. Religion cannot be treated as a philosophical denomination."<sup>54</sup>

Religious institutions are entitled to self-governance over internal affairs, including the authority to establish what religious practices are essential. Only in cases when a society's personal laws are judged to be harmful, repressive, or hostile to the general good is the Supreme Court justified in interfering with those laws. It is acceptable to acknowledge the Sabarimala Temple as a self-governing religious organization free from the restrictions outlined in Article 25(2). Clarifying the meaning of morality in India's multicultural environment is

<sup>41</sup> Gramsabha Of Village Battis Shirala vs UOI (HIGH COURT OF BOMBAY)

<sup>42</sup> Mathew John. (2019) *Framing religion in constitutional politics: a view from Indian Constitutional Law*. *South Asian History and Culture* 10:2, pages 124-135.

<sup>43</sup> *Acharya Jagdishwaranda Avadhutha v Commissioner of Police* (Supreme Court of India)

<sup>44</sup> Justice Indu Malhotra, Lone Dissenter in Sabarimala Case, Visits Temple' (India Today, 14 January 2023) <https://www.indiatoday.in/india/story/justice-indu-malhotra-lone-dissenter-in-sabarimala-case-visits-temple-2321511-2023-01-14>&gt; accessed 8 November 2023

<sup>45</sup> Dr M Ismail Faruqui Etc, Mohd . vs Union Of India And Others on 24 October, 1994 (Supreme Court of India)

<sup>46</sup> Abd Al-Aziz Ibn Baz' (Wikipedia, 31 October 2023) <https://en.wikipedia.org/wiki/Abd\_al-Aziz\_Ibn\_Baz>&gt; accessed 8 November 2023

<sup>47</sup> 'Dar Pdfs' (Dar Pdfs) <https://darpdfs.org/>&gt; accessed 8 November 2023

<sup>48</sup> *Al-Ansat*, 4/135

<sup>49</sup> 'Sabarimala Temple Entry' (Supreme Court Observer, 24 June 2022)

<https://www.scobserver.in/cases/indian-youth-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-background/>&gt; accessed 8 November 2023

<sup>50</sup> *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi & Ors v State of UP & Ors, Seshammal & Ors v State of Tamil Nadu* (Supreme Court of India)

<sup>51</sup> *Tilkayat Shri Govindlaji ... vs The State Of Rajasthan And Others* on 21 January, 1963 (Supreme Court of India)

<sup>52</sup> *Sardar Syedna Taher Saifuddin ... vs the state of Bombay* on 9 January, 1962 <https://indiankanoon.org/doc/510078/>&gt; accessed 10 November 2023

<sup>53</sup> *The Durgah Committee, ajmer ... vs Syed Hussain A ...* <https://indiankanoon.org/doc/1262157/>&gt; accessed 10 November 2023

<sup>54</sup> *Freedom of Religion in India: Current issues ...* <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3113&context=lawreview>&gt; accessed 10 November 2023

crucial in the context of constitutional morality. Article 25, which protects the freedom to profess, practice, and spread one's faith, shall not take precedence over Article 14, which defends women's fundamental right to equality. Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965 expressly prohibits public worship in accordance with Article 26(b) of the Constitution. Moreover, this exclusion is consistent with the Kerala Hindu Places of Public Worship Act, the parent Act that governs the restrictions. It is interesting to note that although discrimination based on caste is not classified as "untouchability," discrimination based on gender is occasionally referred to as such in legal discourse.

Justice Malhotra's dissenting view in the Sabarimala Temple Entry case made a substantial contribution to the conversation on the judiciary's role in controlling religious practices. Her viewpoint adds a great deal to the current discussion about the judiciary's responsibility for defending the fundamental rights of all Indian people.

The purpose of Article 25 of the Constitution is to protect people's religious beliefs from interference by the state.<sup>55</sup> The protection of personal law under Article 25-28 has been extended by Chief Justice Khehar. How can constitutional law legitimate gender imbalance if the personal legal system already supports it?<sup>56</sup>

Based on the Essential Religious Practice theory, Chief Justice Khehar did not question the Court's authority to decide a religious ceremony.<sup>57</sup> He did, however, voice concerns about the same in terms of constitutional

morality under Article 25 of Indian Constitution. It has been acknowledged that his application of the essential practice notion was incorrect.<sup>58</sup> Rather of challenging the constitutionality of triple talaq, the Minority suggested legislative alternatives. The dispute stated that religion is defined by faith rather than reason. The Court has no jurisdiction to adopt an equalitarian viewpoint for a ritual that is fundamental to faith.<sup>59</sup> According to this viewpoint, the Essential Practice Doctrine takes precedence over constitutional ethics. In accordance with the constitutional requirements, the Supreme Court of India has surpassed its jurisdiction to consider cases pertaining to personal laws. The foundational clauses that apply under specific circumstances are found in Articles 25 through 28 of the Constitution. A law that forbade Hindu widows from being married again was overturned by the Supreme Court in the Sarla Mudgal v. Union of India (1995) case on the grounds that it interfered with their right to freedom of religion, which is protected by Article 25 of the Indian Constitution. Similar to this, the Muslim Personal Law (Application to Shariat) Act, 1937 was found to have breached the wife's right to equality as protected by Article 14 of the Constitution in Mohd. Ahmed Khan v. Shah Bano Begum (1985), when it was ordered that a Muslim man pay alimony to his divorced wife. These rulings brought to light the Supreme Court's controversial rulings as well as the ways in which constitutional provisions—specifically Articles 25 to 28 affect the court's authority to hear issues involving personal law.

### Limitation of the proposed project

This project is based on legal interpretations of various case laws and judgements. Legal interpretations are arbitrary, and various academics, professionals, and attorneys have divergent opinions about the same cases and

<sup>55</sup> Gautam Bhatia, *The Supreme Court's Triple Talq Judgment*, (Aug.22, 2017), <https://indconlawphil.wordpress.com/2017/08/22/the-supreme-courts-triple-talaq-judgment/>

<sup>56</sup> Vrinda Narain, *Reconciling Constitutional Law, Gender Equality and Religious Difference: Lessons from Shayara Bano, India's Triple Talaq decision*, in *THE ASIAN YEARBOOK OF HUMAN RIGHTS AND HUMANITARIAN LAW*, Brill/Nijhoff, 345-377, 2021.

<sup>57</sup> Kaul DK, 'The "essential Practices" Doctrine' (Brill, 15 November 2021) &lt;[https://brill.com/view/journals/ijgr/29/2/article-p350\\_007.xml?language=en&gt](https://brill.com/view/journals/ijgr/29/2/article-p350_007.xml?language=en&gt); accessed 8 November 2023

<sup>58</sup> *The protection was granted upon establishing that the practice prevailed among Indian Sunnis for over 1400 years rather than establishing that Islam mandated the practice or that it was essential and integral part of Islam.*

<sup>59</sup> *Shayara Bano v. Union of India*, (2017), 9 SCC 1

subjects. The analysis of legal issues significantly impacted by subjectivity. Legal interpretation is subjective for a number of reasons. Personal laws and court decisions are subject to constant change as the legal system does. This implies that if new cases and legal developments arise, the findings of legal study may become old. A false impression of the frequency and significance of judicial overreach may result from case studies that do not include all possible instances. Legal interpretations and rulings are subject to change, so a study's conclusions or implications could change if it is later re-examined. The subjectivity of legal interpretation may also be influenced by the data's accessibility. Research that predominantly depend on legal documents, case files, and court rulings may not be comprehensive because such data isn't always readily accessible or complete. There are many variables that contribute to the complexity of the subjectivity of legal interpretation. These considerations should be taken into consideration while assessing legal research and making legal judgments.

### Conclusion

India's diverse culture is mostly guided by religious ethos and beliefs, therefore the freedom to practice one's religion is highly valued and acknowledged as one of the fundamental civil liberties, right up there with the freedom to live, the freedom of speech, and the right to personal freedom. However, the Indian Supreme Court has made an effort to change religious customs by limiting this freedom and enacting the essentiality test. Religious leaders no longer decide what is considered necessary or not in religious rites; the Court makes that decision. Furthermore, due of the Court's inconsistent application of this test and frequent revisions to the criteria for what qualifies as fundamental, religious freedom faces a grave threat. Spirituality and religion have always been significant parts of Indian society, despite the perception that they are personal matters. The Indian Constitution was

drafted with this principle in mind, attempting to limit state intrusion while allowing for modifications. However, as the Indian Supreme Court has clarified, the concept of essentiality tramples on individual freedoms and grants the court excessive authority in matters of faith, elevating the judiciary to the rank of religious clergy. In addition, politicians have imposed a variety of restrictions on people's freedom of choice, such as the current requirement that income tax payments be coordinated with the national identity card (Aadhar). The authors of the Indian Constitution initially aimed to establish a society marked by peace and harmony, with religion playing a significant role. But periodically, in India, religion has been exploited to foment strife and fragmentation. The essentiality criteria seems to be the main obstacle to religious freedom in India.

In the absent of any constitutional foundation, the Indian Supreme Court established these standards. Prior to placing too much reliance on this approach, the Indian Supreme Court ought to reconsider. The government has the authority to enact these kinds of reforms, thus social progress is not impossible.

For the sake of morality, public order, health, and other fundamental rights, the State has the authority to regulate religious activities; thus, it has resources in this domain. As such, it can address any nonreligious political or economic problem. It is empowered by Article 25 to initiate social welfare and reform programs without having to specify what religious practices or characteristics are required or optional. The essentiality test has caused social upheaval in India as minority populations have expressed unease about it. It is heartening to see that in its most recent ruling, issued on August 22, 2017, the Supreme Court's constitutional bench emphasized that, despite certain restrictions, the right to freedom of religion is inalienable. This verdict marks a significant turning point for religious freedom in India. The Chief Justice made it clear that "personal law" is protected under Article 25 of the Constitution. It is



important to keep in mind that personal law is seen as an essential freedom. Judge Kurian went a step further and ruled that, under certain limitations, the Indian Constitution's promise of religious freedom is an inalienable right in this specific case.

### Future Direction for Further Research

Future research on judicial intervention in personal laws with a global perspective can look into the various ways used by different locations around the world. Researchers can uncover common difficulties and potential answers by examining different countries and legal systems. Comparative studies that examine the legal frameworks, court decisions, and societal ramifications of judicial intervention in personal laws across regions could be one avenue of investigation. Such research could shed light on the universality of some obstacles that democratic societies experience in balancing religious freedom, individual rights, and equality, as well as the adaptability of legal systems to meet these issues.

It can concentrate on the role of international human rights principles and treaties in driving the debate over judicial intervention in personal law. Investigating how global human rights norms influence national approaches might provide significant insights. Furthermore, research may look into cross-regional collaborations and the sharing of legal best practices in order to address shared difficulties. This study can help us gain a better knowledge of the global dynamics surrounding judicial intervention in personal laws, as well as inform conversations about prospective international standards or norms in this area.

### Bibliography

#### Book:

1. Indian Constitutional Law – M P Jain – LexisNexis IndiaWeb– Sources:
2. (*Freedom of Religion in India: Current issues and Supreme Court*

*acting ...)*

3. <<https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3113&context=lawreview>> accessed 10 November 2023
4. (*Promoting and protecting minorit*
5. <[https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-12-07\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR-PUB-12-07_en.pdf)> accessed 7 November 2023
6. (*Sardar Syedna Taher Saifuddin ... vs the state of Bombay on 9 January, 1962*)
7. <<https://indiankanoon.org/doc/510078/>> accessed 10 November 2023
8. (*The Durgah Committee, ajmer ... vs Syed Hussain Ali and others on 17 ...*)
9. <<https://indiankanoon.org/doc/1262157/>> accessed 10 November 2023
10. (*Welcome to LSE theses online*
11. <<https://etheses.lse.ac.uk/1417/1/U084680.pdf>> accessed 7 November 2023
12. *Acharya Jagdishwaranda Avadhutha v Commissioner of Police* (Supreme Court of India)
13. Apoorva and others, 'Irretrievable Breakdown of Marriage: Decoding Supreme Court Judgment on Grant of Divorce under Article 142 of Constitution; Waiver of 6 Month's Cooling off Period' (*SCC Blog*, 30 May 2023)
14. <<https://www.sconline.com/blog/post/2023/05/02/supreme-court-article-142-of-indian-constitution-and-irretrievable-breakdown-of-marriage/#:~:text=Further%2C%20it%20s aid%20that%20Article,the%20litigation%20between%20the%20parties.>> accessed 8 November 2023
15. Ashish Tripathi D, 'Any Interference Will Affect Faith: Indu Malhotra' (*Deccan Herald*)

- <<https://www.deccanherald.com/india/any-interference-will-affect-695193.html>> accessed 8 November 2023
16. *charya Jagdishwaranand . vs Commissioner Of Police, Calcutta* (Supreme Court of India)
  17. *Dr M Ismail Faruqui Etc, Mohd . vs Union Of India And Others on 24 October, 1994*
  18. (Supreme Court of India)
  19. *Gramsabha Of Village Battis Shirala vs UOI* (HIGH COURT OF BOMBAY)
  20. Kaul DK, 'The "essential Practices" Doctrine' (*Brill*, 15 November 2021)
  21. <[https://brill.com/view/journals/ijgr/29/2/article-p350\\_007.xml?language=en](https://brill.com/view/journals/ijgr/29/2/article-p350_007.xml?language=en)> accessed 8 November 2023
  22. Maniyar Z, 'Personal Laws Vis-à-Vis Fundamental Rights, Part III of the Constitution' (*CJP*, 30 November 2022) <<https://cjp.org.in/personal-laws-vis-a-vis-fundamental-rights-part-iii-of-the-constitution/>> accessed 11 November 2023
  23. *Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi & Ors v State of UP & Ors, Seshammal & Ors v State of Tamil Nadu* (Supreme Court of India)
  24. Vakil R, 'Representation and Legitimacy in the Supreme Court: Adjudicating Law and Religion in India' (2022) 10 *Studies in Indian Politics* 48
  25. 'Abd Al-Aziz Ibn Baz' (*Wikipedia*, 31 October 2023)
  26. <[https://en.wikipedia.org/wiki/Abd\\_al-Aziz\\_Ibn\\_Baz](https://en.wikipedia.org/wiki/Abd_al-Aziz_Ibn_Baz)> accessed 8 November 2023
  27. 'Dar Pdfs' (*Dar PDFs*) <<https://darpdfs.org/>> accessed 8 November 2023
  28. 'India: Religious Freedom Issues' (*EveryCRSReport.com*, 30 August 2018)
  29. <<https://www.everycrsreport.com/reports/R45303.html>> accessed 8 November 2023
  30. 'Indian Supreme Court Strikes down Ban on Women's Entry into Religious Temple' (*OHRH*) <<https://ohrh.law.ox.ac.uk/indian-supreme-court-strikes-down-ban-on-womens-entry-into-religious-temple/>> accessed 8 November 2023
  31. 'Judgment in Plain English' (*Supreme Court Observer*, 25 June 2022)
  32. <<https://www.scobserver.in/reports/sabari-mala-temple-entry-indian-young-lawyers-association-kerala-judgment-in-plain-english/#:~:text=Justice%20Malhotra's%20Dissenting%20Opinion&text=She%20held%20that%20the%20Sabarimala,consider%20a%20separate%20religious%20denomination.>> accessed 11 November 2023
  33. 'Justice Indu Malhotra, Lone Dissenter in Sabarimala Case, Visits Temple' (*IndiaToday*, 14 January 2023) <<https://www.indiatoday.in/india/story/justice-indu-malhotra-lone-dissenter-in-sabarimala-case-visits-temple-2321511-2023-01-14>> accessed 8 November 2023
  34. 'No Tandava in Public, Sc Tells Anand
  35. <<https://economictimes.indiatimes.com/no-tandava-in-public-sc-tells-anand-margis/articleshow/554891.cms>> accessed 8 November 2023
  36. 'Sabarimala Temple Entry' (*Supreme Court Observer*, 24 June 2022)
  37. <<https://www.scobserver.in/cases/indian-young-lawyers-association-v-state-of-kerala-sabarimala-temple-entry-background/>> accessed 8 November 2023

38. 'The Legal Making of a "Hindu Sect": Understanding the Tandava Case in Its Context' (*Academic.oup.com*)  
<<https://academic.oup.com/book/25707/chapter-abstract/193194181?redirectedFrom=fulltext>> accessed 8 November 2023
39. 'The Right to Freedom of Expression and Religion' (*Icelandic Human Rights Centre*)
40. <<https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-freedom-of-expression-and-religion>> accessed 8 November 2023
41. (*OHRH*)  
<<https://ohrh.law.ox.ac.uk/indian-supreme-court-strikes-down-ban-on-womens-entry-into-religious-temple/>> accessed 8 November 2023

