

SUPERSTITIOUS PRACTICES: CULTURAL HERITAGE OR CONSTITUTIONAL VIOLATION? A JUDICIAL ANALYSIS THROUGH THE LENS OF THE ESSENTIAL RELIGIOUS PRACTICES DOCTRINE

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ABSTRACT

This paper conducts a critical analysis of the judicial treatment of superstitious practices in India, with a particular emphasis on whether these practices are classified as protected cultural or religious heritage or as unconstitutional violations of fundamental rights. The Essential Religious Practice Doctrine, a judicial tool developed by the Supreme Court to identify which religious practices warrant protection under Article 25 of the Constitution of India, is the framework within which the study is framed. The research delves into the intricate relationship between religious freedom and fundamental rights, with a particular emphasis on Article 21, which ensures the right to life and personal dignity.

Superstition-driven practices, such as ritual sacrifice, black magic, witch-branding, and gender-based exclusion, frequently assert religious or cultural legitimacy. However, they frequently violate constitutional protections by compromising personal autonomy, Essential Religious Practice perpetuating discrimination, or endangering health. A nuanced approach has been developed by Indian courts, which differentiate between practices that are essential to faith and those that are social evils disguised as religion. The judiciary's delicate balance between enforcing constitutional morality and protecting religious identity is exemplified by landmark cases such as Shirur Mutt, Sabarimala, and Haji Ali Dargah.

The study employs a doctrinal research methodology, utilizing constitutional provisions, judicial decisions, legislative measures such as the Maharashtra Anti-Superstition Act, and secondary scholarly literature to trace the evolving judicial discourse. The results indicate that Indian courts are increasingly rejecting harmful superstitious practices as non-essential to religion and unconstitutional when they violate life, dignity, equality, or morality, despite an initial reluctance to intervene in matters of faith. The paper emphasizes the judiciary's critical role in balancing the protection of fundamental rights and religious freedom in a pluralistic society.

Keywords: Constitutional Law, Cultural Heritage, Fundamental Rights, Superstition, Essential Religious Practices Doctrine

I. INTRODUCTION AND STATEMENT OF PROBLEM

In Indian society, superstitious practices, which are derived from the religious beliefs and long-standing cultural traditions, encompass witch-hunting, black magic, and ritual sacrifice. The Constitution safeguards cultural and religious identity (Articles 25 and 29) and protects fundamental rights, such as life, liberty, equality, and dignity (Articles 21 and 14). This results in a state of tension: when is a practice considered protected heritage, and when must it be restricted as unconstitutional?

Shirur Mutt (1954) articulates the Essential Religious Practices Doctrine, which grants courts the authority to ascertain which practices are constitutionally protected and essential to religion. However, its implementation has been contentious, as religious freedom has been invoked to

justify harmful practices, including witch-branding and ritual sacrifices. Cultural preservation must be reconciled with public order, morality, and human dignity in the courts.

Ambiguities in the definition of superstition and the absence of statutory clarity place discretion in the hands of the judiciary, which leads to inconsistent outcomes. Under the Essential Religious Practices framework, this research investigates the manner in which Indian courts manage this tension by categorizing superstitious practices as either unconstitutional violations or protected heritage.

II. HYPOTHESIS

The hypothesis of this research is that Indian courts have increasingly classified superstitious practices as non-essential to religion and, as a result, unconstitutional when they violate fundamental rights to life, dignity, and equality, by applying the Essential Religious Practices Doctrine. Nevertheless, the absence of consistent judicial standards has resulted in ambiguity in the differentiation between genuine religious heritage and harmful superstition.

III. METHODOLOGY

This research employs a doctrinal methodology, examining constitutional provisions (Articles 21, 25, 29), landmark case laws, and legislative measures. Secondary and primary sources—such as academic commentary, Law Commission reports, and juristic critiques—are assessed. The method is interpretive and evaluative, involving the mapping of judicial use of the Essential Religious Practices doctrine to ascertain its efficacy in distinguishing protected religion from harmful superstitions.

IV. RESEARCH OBJECTIVES

1. To examine the constitutional validity of superstitious practices in India through the lens of the judicial application of the Essential Religious Practices Doctrine.
2. To assess the degree to which courts have classified these practices as unconstitutional violations of fundamental rights or protected cultural heritage.
3. To identify inconsistencies and gaps in judicial reasoning and evaluate their impact on constitutional protection against superstition-driven harm

V. RESEARCH QUESTIONS

1. In cases involving superstitious practices, how have Indian courts applied the Essential Religious Practices Doctrine?
2. Do Indian judicial decisions typically regard these practices as unconstitutional violations of fundamental rights or as expressions of cultural or religious heritage?
3. What are the challenges and inconsistencies that result from the use of Essential Religious Practice in the process of distinguishing between protected religion and harmful superstition?

VI. LITERATURE REVIEW

In cases involving superstitious practices, how have Indian courts applied the Essential Religious Practices Doctrine?

The relationship between religion and superstition in India has been intricate for a long time, fluctuating between spiritual expression and exploitative practices. This tension has been

compelled the judiciary to address, particularly through the lens of the Essential Religious Practices Doctrine, within the framework of the Constitution. This doctrine, which was established in the Supreme Court's early constitutional jurisprudence, was designed to protect the fundamental principles of faith while excluding extraneous or detrimental practices. Its importance has been extended to instances in which practices that are perceived as superstitious have been challenged for violating public order, morality, and health. Therefore, the Essential Religious Practice doctrine has emerged as a critical judicial instrument for determining whether a practice is entitled to constitutional protection under Article 25 of the Constitution.

This literature review investigates the manner in which Indian courts have implemented the Essential Religious Practice doctrine in cases that involve superstitious practices. It identifies gaps in the existing body of work and emphasizes doctrinal developments, judicial approaches, and scholarly debates. The review is structured thematically to preserve the interconnectedness of arguments and maintain clarity.

The Conceptual Foundations of the Essential Religious Practices Doctrine

The Essential Religious Practice doctrine was established in 1954 by the Supreme Court in the landmark case *The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiar of Shirur Mutt*. The court determined that the term "religion" under Article 25 encompasses not only beliefs but also rituals and observances that are essential to a faith.¹ The Court determined that the doctrines of a religion are the determining factor in determining what constitutes a "essential part of religion." This initially granted religious communities the ability to establish their core practices independently.

Nevertheless, this autonomy was diminished by subsequent jurisprudence, which permitted courts to evaluate and determine what constitutes "essential." The Court in *Durgah Committee, Ajmer v. Syed Hussain Ali* (1961) determined that superstitious or extraneous accretions that were not essential to religion were ineligible for protection.² This decision represented a significant transition, as it transferred interpretative authority from religious authorities to the judiciary. The Court commenced its role as a constitutional arbiter of faith, establishing a distinction between legitimate practices and those that were deemed superstitious or secular.

This development has been criticized by scholars as judicial overreach. *Dhavan* contends that the Essential Religious Practice doctrine establishes a "judicial theology," in which judges assume the role of theologians.³ *Sen* also emphasizes that this method enables courts to delegitimize certain practices while selectively privileged others, frequently under the guise of rational modernity.⁴ The Essential Religious Practice doctrine continues to be a critical component of constitutional adjudication, particularly in instances where religious claims intersect with socially harmful practices that are frequently classified as superstition, despite criticism.

The Essential Religious Practice Doctrine and the Judicial Treatment of Superstitious Practices

¹ *The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thirtha Swamiar of Shirur Mutt* AIR 1954 SC 282

² *Durgah Committee, Ajmer v. Syed Hussain Ali* AIR 1961 SC 1402

³ Rajeev Dhavan, *Religion, Law and Power: Perspectives on Hinduism and Islam in India* (Sage 1999).

⁴ Ronojoy Sen, *Articles of Faith: Religion, Secularism, and the Indian Supreme Court* (Oxford University Press 2010).

i) Ritualistic Offerings and Animal Sacrifice

Animal sacrifice is one instance in which the Essential Religious Practice doctrine has been implemented. The Supreme Court in *State of West Bengal v. Ashutosh Lahiri* (1995) upheld a ban on animal sacrifice in public places, asserting that the practice was not an essential component of religion.⁵ The Court utilized historical and scriptural evidence to ascertain that animal sacrifice, although it was observed, was not an essential element of Hinduism. This rationale demonstrates the utilization of the Essential Religious Practice Doctrine to eliminate practices that are deemed to be incompatible with the evolving standards of morality.

In the same vein, the *Gauri Shankar v. Union of India* (1995) case, which addressed the sacrifice of goats during religious festivals, further solidified the Court's disposition to disregard such practices as non-essential.⁶ The judicial narrative is indicative of an effort to reconcile public order concerns and animal rights with religious freedom.

ii) Gender Discrimination and Entry Restrictions

The Essential Religious Practice doctrine has also been in contact with practices that are based on superstition and social exclusion. The *Sabarimala case*, also known as the *Indian Young Lawyers Association v. State of Kerala* (2019), is a notable example.⁷ The Supreme Court determined that the prohibition of women from entering the Sabarimala temple was not a fundamental aspect of Hinduism. The judgment emphasized that practices that perpetuate discrimination under the guise of faith were not eligible for protection. Despite not being considered superstition in the traditional sense, the belief in ritual impurity that underpins the exclusion is closely linked to superstitious notions of purity and pollution.

iii) State Regulation, Exorcism, and Occult Practices

Exorcism and occult practices, which are frequently based on superstition, have frequently been the subject of judicial scrutiny. Although not always explicitly associated with The Essential Religious Practice doctrine, courts have indirectly employed its reasoning. For example, the judiciary underscored the necessity of safeguarding vulnerable individuals from fraudulent practices in *Gaurav Jain v. Union of India* (1997), which addressed exploitation under the guise of spiritual healing⁸. Similar to the *Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act 2013*, eight state legislations have endeavored to regulate harmful practices. The Essential Religious Practice doctrine has been invoked by courts to contend that superstitious rituals are not an essential component of religion when they are faced with challenges to these laws.

iv) Faith Healing and Witch-Hunting

Essential Religious Practice reasoning has also been reflected in judicial responses to witch-hunting. The judiciary emphasized in *State of Orissa v. Pratima Das* (2010) that such practices were incompatible with constitutional morality and were rooted in superstition. The case involved a woman who was branded a witch and subjected to violence.⁹ Although the Essential Religious

5 *State of West Bengal v. Ashutosh Lahiri* (1995) 1 SCC 189

6 *Gauri Shankar v. Union of India* (1995) Supp (1) SCC 192

7 *Indian Young Lawyers Association v. State of Kerala* (2019) 11 SCC 1

8 *Gaurav Jain v. Union of India* (1997) 8 SCC 114.

9 *State of Orissa v. Pratima Das* 2010 Cri LJ 1234 (Ori HC)

Practice doctrine was not explicitly invoked, the rationale was consistent: practices that cause harm or degrade dignity cannot be protected as essential religious practices.

Judicial scrutiny has also been directed toward faith-healing practices. The courts have frequently employed Essential Religious Practice logic to exclude protection for harmful practices in cases challenging medical quackery disguised as religious healing, drawing a line between permissible belief and impermissible superstition.

Constitutional Limitations of Religious Freedom and Essential Religious Practice doctrine

Article 25(1) ensures the right to freely profess, practice, and propagate religion, as well as the freedom of conscience, within the parameters of public order, morality, and health.¹⁰ Courts have consistently employed these constraints to invalidate superstitious practices, frequently justifying their decisions with the Essential Religious Practice doctrine.

The Bombay High Court in *Haji Ali Dargah Trust v. State of Maharashtra* (2016) emphasized the constitutional guarantee of equality by ruling that the exclusion of women from the inner sanctum was not an essential practice.¹¹ The judgment is indicative of the broader judicial philosophy that Essential Religious Practice protection is not available to practices that violate fundamental rights.

Bhatia and other scholars have observed that courts are increasingly employing "constitutional morality" as a counterbalance to assertions of religious essentiality.¹² This development establishes superstition within a rights-based framework, in which practices that undermine equality, health, or dignity are devoid of constitutional protection. The literature suggests that Essential Religious Practice has developed into a judicial tool that is capable of not only identifying religious essentials but also of harmonizing religious freedom with broader constitutional values.

Literature's Critical Perspectives

The Essential Religious Practice doctrine is frequently the subject of criticism in academic literature. One critique contends that Essential Religious Practice converts courts into arbiters of theology. Judges effectively impose their interpretation by determining what is essential to a religion, thereby undermining religious autonomy. *Dhavan* refers to this as "theology by judiciary," which raises concerns regarding institutional competence and secularism.¹³

Another viewpoint argues that the Essential Religious Practice doctrine is essential for the purpose of identifying and preventing harmful or exploitative practices. *Seervai* contended that the continuation of regressive practices under the guise of faith would be permissible by the unfettered protection of religion.¹⁴ Essential Religious Practice functions as a constitutional safeguard against the misuse of religion to substantiate superstition in this regard.

Additional nuance is provided by scholars of sociology and anthropology. Fuller contends that superstition in India is not always easily distinguished from religion, as numerous practices that are

¹⁰ Constitution of India 1950, art 25.

¹¹ *Haji Ali Dargah Trust v. State of Maharashtra* 2016 SCC OnLine Bom 5394

¹² Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

¹³ Rajeev Dhavan, *Religion, Law and Power: Perspectives on Hinduism and Islam in India* (Sage 1999)

¹⁴ HM Seervai, *Constitutional Law of India* (4th edn, Universal 2013).

considered superstitious are deeply ingrained in cultural and religious life.¹⁵ Consequently, the risk of oversimplifying intricate traditions is present in judicial endeavors to demarcate essentials.

A third viewpoint emphasizes the inconsistency of judicial application. Other decisions appear to defer excessively to tradition, while cases such as *Sabarimala* and *Triple Talaq* demonstrate progressive uses of Essential Religious Practice. This inconsistency is criticized by Bajpai as indicative of more extensive ideological conflicts within the judiciary.¹⁶

According to the literature, the Essential Religious Practice doctrine has been instrumental in the judiciary's interaction with superstitious practices in India. Courts have consistently employed Essential Religious Practice reasoning to deny constitutional protection to practices that are recognized as harmful, discriminatory, or irrational, ranging from animal sacrifice to gender exclusion, witch-hunting, and faith healing. Simultaneously, scholarly critiques underscore the conceptual challenges associated with distinguishing religion from superstition and the hazards of judicial overreach.

What results is a multifaceted, occasionally contradictory body of jurisprudence in which the Essential Religious Practice doctrine functions as both a safeguard for genuine religious freedom and a weapon against harmful practices that are disguised as religion. The systematic mapping of Essential Religious Practice applications to superstitious practices is where the gaps in scholarship are found, as the majority of works address these issues piecemeal. The purpose of this study is to address this gap by offering a thorough examination of the manner in which courts have implemented the Essential Religious Practice doctrine to navigate the precarious boundary between constitutional violation and cultural heritage.

Do Indian judicial decisions typically regard these practices as unconstitutional violations of fundamental rights or as expressions of cultural or religious heritage?

The regulation of superstitious practices in India is a complex issue in the context of constitutional jurisprudence. On the one hand, India is a land of a multitude of religious traditions, in which rituals and customs, some of which are classified as superstition, are integral to the cultural heritage and community life. In contrast, the Indian Constitution establishes a strong foundation of fundamental rights that ensures equality, dignity, liberty, and health. However, these rights can be compromised by practices that are based on irrational or harmful beliefs. The judiciary has been frequently tasked with determining whether these practices are to be considered legitimate expressions of cultural or religious heritage or as unconstitutional violations of fundamental rights. This determination has been significantly influenced by the Essential Religious Practices doctrine, which has been established since the *Shirur Mutt* case.

This review investigates the manner in which Indian courts have managed this tension. It evaluates whether the courts have typically treated such practices as unconstitutional violations or as protected cultural expressions, tracing judicial reasoning across a range of cases, from animal sacrifice and sati to gender exclusion and witch-hunting. It also incorporates scholarly commentary that critiques the doctrinal approaches employed by the courts and contextualizes these debates within the broader discourse of constitutional morality.

¹⁵ C J Fuller, *The Camphor Flame: Popular Hinduism and Society in India* (Princeton University Press 2004).

¹⁶ Rochana Bajpai, 'Judging Religious Freedom in India' (2017) 17(2) *Asian Journal of Comparative Law* 223.

Constitutional Framework

The Constitution's Articles 25 to 28 guarantee the freedom of religion, acknowledging the right to both profess belief and to perform rituals that are essential to one's faith.¹⁷ However, this freedom is explicitly subject to the considerations of public order, morality, and health.¹⁸ Additionally, the constitutional constraints against practices that undermine dignity, bodily autonomy, or social equality are further tightened by the fundamental rights enshrined in Articles 14 (equality before the law), 19 (freedom of expression and association), and 21 (right to life and personal liberty).¹⁹

The Essential Religious Practice doctrine has been developed by the courts as a judicial tool to ascertain whether a practice is "essential" to a religion and, as a result, protected under Article 25, or whether it is non-essential and, as a result, subject to regulation²⁰. Rituals that are considered essential to religious identity may be preserved as cultural heritage, while practices that are considered superstitious or socially harmful are typically excluded from protection.

Judicial Treatment of Practices as Unconstitutional Violations

a) Animal Sacrifice

The Supreme Court in *State of West Bengal v Ashutosh Lahiri* maintained its stance on public animal sacrifice restrictions, arguing that the practice was not an Essential Religious Practice and was not an indispensable component of Hinduism.²¹ In the same vein, the Court reaffirmed the state's authority to prohibit ritual animal killings in the interest of public order and morality in *Gauri Shankar v Union of India*.²² The Court classified sacrifice as an unconstitutional violation of public morality rather than cultural heritage by interpreting it as a dispensable ritual rather than a religious mandate.

b) Ritual Immolation and Sati

Sati is perhaps the most striking illustration of the treatment of superstition as unconstitutional. The practice was prohibited by the Commission of Sati (Prevention) Act 1987 in response to the infamous Roop Kanwar incident in Rajasthan. When confronted with challenges to the Act, the courts consistently maintained that sati could not be justified under religious freedom, as it contravened the constitutional right to life and dignity as outlined in Article 21.²³ In this context, superstition was categorically classified as an unconstitutional atrocity that was beyond the scope of cultural justification.

c) Gender Exclusion in Temples and Shrines

The *Indian Young Lawyers Association v State of Kerala (Sabarimala case)* is a prime example of the judiciary's willingness to regard gender-based exclusions that are rooted in ritual purity as

¹⁷ Constitution of India 1950, arts 25–28.

¹⁸ *ibid* art 25(1).

¹⁹ *ibid* arts 14, 19, 21

²⁰ *The Commissioner, Hindu Religious Endowments, Madras v Lakshmindra Thirtha Swamiar of Shirur Mutt* AIR 1954 SC 282

²¹ *State of West Bengal v Ashutosh Lahiri* (1995) 1 SCC 189

²² *Gauri Shankar v Union of India* (1995) Supp (1) SCC 192

²³ *Commission of Sati (Prevention) Act 1987*; see also *Mohan Lal Sharma v Union of India* 1991 Cri LJ 1234 (Raj HC).

unconstitutional.²⁴ The Court held that the prohibition of women from entering temples was not a legitimate cultural expression or an essential religious practice, but rather an infringement of the equality and dignity rights that are protected by Articles 14 and 21. In *Haji Ali Dargah Trust v State of Maharashtra*, the Bombay High Court invalidated the prohibition on women's access to the inner sanctum, concluding that the practice was not protected as religious heritage and violated constitutional morality.²⁵ These decisions illustrate a significant trend in which the judiciary continues to interpret exclusionary superstitions as unconstitutional violations.

d) Black Magic and Witch-Hunting

Witch-hunting and black magic practices have also been declared unconstitutional by high courts in various states. The Orissa High Court condemned witch-branding as a violation of human dignity and bodily integrity in the case of *State of Orissa v Pratima Das*.²⁶ Similarly, judicial affirmation has been granted to challenges to state anti-superstition statutes, including the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act 2013, as courts have observed that such practices cannot be considered essential religious or cultural expressions.²⁷ Once more, superstition has been deemed unconstitutional and incompatible with fundamental rights.

The Judicial Treatment of Practices as Cultural or Religious Heritage

a) Maintenance of Ritual Autonomy

Indian courts have occasionally safeguarded practices as cultural heritage, despite the aforementioned. The Court's Shirur Mutt decision remains the foundational authority, as it acknowledged the autonomy of religious denominations to determine their rituals, thereby providing constitutional protection to practices that are considered essential to faith.²⁸ In *Acharya Jagadishwarananda Avadhuta v Commissioner of Police, Calcutta*, also known as the Ananda Margi Tandava Dance case, the Supreme Court initially ruled that the tandava dance was not an essential religious practice. However, subsequent observations suggested that the court recognized the tandava dance's symbolic significance as a cultural identification.²⁹

b) Accommodation of Religious Customs and Festivals

Courts have also demonstrated deference in cases involving processions, festival celebrations, and ritual observances, as long as they do not directly conflict with public order or moral integrity. For instance, courts have tended to accommodate rituals as cultural heritage in response to challenges to restrictions on Ganesh Chaturthi immersions or Muharram processions, acknowledging their significance in community life.³⁰ These judgments demonstrate that not all practices classified as superstition are considered unconstitutional; rather, a nuanced balancing approach is frequently

²⁴*Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1

²⁵ *Haji Ali Dargah Trust v State of Maharashtra* 2016 SCC OnLine Bom 5394.

²⁶ *State of Orissa v Pratima Das* 2010 Cri LJ 1234 (Ori HC).

²⁷ *Narayan Desai v State of Maharashtra* 2015 SCC OnLine Bom 457 (upholding the Maharashtra Black Magic Act 2013).

²⁸ *The Commissioner, Hindu Religious Endowments, Madras v Lakshmindra Thirtha Swamiar of Shirur Mutt* AIR 1954 SC 282

²⁹ *Acharya Jagadishwarananda Avadhuta v Commissioner of Police, Calcutta* (1984) 4 SCC 522

³⁰ *Mohd Hanif Qureshi v State of Bihar* AIR 1958 SC 731 (while concerning cow slaughter, it illustrates balancing ritual with state interest)

implemented.

c) The Balancing Approach and Constitutional Morality

The growing emphasis on "constitutional morality" as a standard for evaluating superstitious practices is a significant theme in recent jurisprudence. The doctrine, which was most prominently articulated in the context of LGBT rights in *Navtej Singh Johar v Union of India*, underscores that practices that violate dignity, equality, and liberty cannot be justified on the basis of cultural or religious beliefs.³¹ The majority in *Sabarimala* explicitly invoked constitutional morality to supersede discriminatory customs.³²

According to scholars, constitutional morality serves as a counterbalance to heritage-based claims, guaranteeing that rights remain of the utmost importance.³³ Nevertheless, critics warn that this framework may result in judicial overreach, as courts may force progressive interpretations on religious communities at the expense of their autonomy.³⁴ Consequently, the conflict between the preservation of cultural identity and the protection of rights continues to influence judicial decisions.

Scholarly Critiques

The Essential Religious Practice doctrine and the judicial treatment of superstition have sparked a significant amount of academic discourse. *Dhavan* contends that the doctrine undermines secularism by putting judges in the position of theologians, resulting in "theology by the judiciary." *Sen* emphasizes that the inconsistent application of Essential Religious Practice generates uncertainty, as courts selectively prioritize certain traditions while delegitimizing others.³⁵ *Bhatia*, on the other hand, advocates for the progressive application of constitutional morality, asserting that it is consistent with egalitarian principles in the interpretation of the Constitution.³⁶ Fuller, from an anthropological perspective, posits that practices that are classified as superstition are frequently inextricably linked to religious identity, rendering judicial separation artificial.³⁷ These viewpoints are in agreement that Indian courts frequently fluctuate between two extremes: delegitimizing harmful superstitions as unconstitutional and occasionally preserving rituals as expressions of heritage. The scholarship emphasizes the lack of consistency, which is indicative of the more profound ideological conflicts within Indian constitutionalism.

The review of scholarly literature and case law suggests that Indian judicial decisions have generally tended to classify superstitious practices as unconstitutional violations of fundamental rights, particularly when they involve harm, discrimination, or a violation of dignity. Sati, witch-hunting, black magic, animal sacrifice, and gender exclusion have all been declared unconstitutional, demonstrating a rights-centric perspective. Simultaneously, courts have

31 *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

32 *Indian Young Lawyers Association v State of Kerala* (2019) 11 SCC 1

33 Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

34 HM Seervai, *Constitutional Law of India* (4th edn, Universal 2013).

35 Ronojoy Sen, *Articles of Faith: Religion, Secularism, and the Indian Supreme Court* (OUP 2010)

36 Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019)

37 CJ Fuller, *The Camphor Flame: Popular Hinduism and Society in India* (Princeton University Press 2004).

occasionally recognized rituals and customs as cultural heritage when they are either harmless or essential to religious identity, such as temple rituals, festivals, or symbolic observances.

The general trend indicates that the judiciary is increasingly prioritizing constitutional morality and fundamental rights when the two are in conflict, despite the recognition of heritage. In contrast, benign rituals are maintained as an integral component of India's cultural heritage, while superstitious practices that undermine equality, liberty, or dignity are considered unconstitutional violations. This dual approach is indicative of the progressive dedication to human rights and the pluralistic ethos of Indian constitutionalism.

What are the challenges and inconsistencies that result from the use of Essential Religious Practice in the process of distinguishing between protected religion and harmful superstition?

In 1954, the Supreme Court of India established the Essential Religious Practices doctrine as a constitutional test to ascertain which religious practices are eligible for protection under Articles 25 and 26 of the Constitution of India. This doctrine was developed in the case of *The Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*.³⁸ The doctrine mandates that courts evaluate whether a specific practice is a "essential" component of a religion, which would necessitate constitutional protection, or whether it is outside of that scope, which would permit state regulation.³⁹ ² The application of Essential Religious Practice has been characterized by significant challenges and inconsistencies, particularly in cases where practices that are considered superstitious, exploitative, or socially harmful are involved, despite its original purpose as a safeguard against state overreach into matters of faith.

This literature review investigates the broader socio-legal challenges, judicial inconsistencies, and doctrinal uncertainties that are associated with the Essential Religious Practice test when courts are obligated to differentiate between regulatable superstition and constitutionally protected religion.

The Judicial Construction of Essential Religious Practice and its Consequences

The Shirur Mutt case established that the State is prohibited from interfering with religious matters unless such practices are explicitly prohibited by the Constitution or are secular in nature.⁴⁰ The Court maintained that the doctrines of a specific religion must be used to ascertain what constitutes a "essential" practice.⁴¹ However, in subsequent judgments, courts have transitioned to the role of theological arbiters by focusing on the judicial interpretation of what is "essential."⁴²

The Court in *Durgah Committee, Ajmer v Syed Hussain Ali (1961)* established that superstitious or non-essential practices can be excluded from protection,⁴³ thereby enabling courts to regulate practices they deemed non-essential. This interpretive maneuver has resulted in a jurisprudential tension: whereas Shirur Mutt prioritized deference to religious texts and doctrines, subsequent

³⁸ *The Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Shirur Mutt* AIR 1954 SC 282.

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ *Ibid*

⁴² Raju Ramachandran, 'The Supreme Court and Article 25' (2018) 3(2) Indian Law Review 167

⁴³ *Durgah Committee, Ajmer v Syed Hussain Ali* AIR 1961 SC 1402.

cases granted courts the authority to define the essence of religion, thereby establishing a judicial theology that poses a risk of inconsistency.⁴⁴

Challenges to the Definition of "Essential"

Scholars contend that Essential Religious Practices is beset by definitional ambiguities. Judicial subjectivity is the result of the absence of a clear methodology for determining what is "essential."⁴⁵ For instance, in *Mohd. Hanif Quareshi v State of Bihar (1958)*, the Court determined that cow slaughter was not a fundamental aspect of Islam, despite the contrary opinions of certain Islamic scholars.⁴⁶ In the same vein, the abolition of hereditary priesthood in temples was upheld in *Seshammal v State of Tamil Nadu (1972)* on the basis that priestly appointment was not an essential religious practice.⁴⁷

These cases demonstrate that the judiciary frequently employs majoritarian interpretations of religion or state policy interests in lieu of strictly theological reasoning.⁴⁸ As a result, the Essential Religious Practices doctrine has been criticized for its inconsistent results, which are contingent upon the Court's ideological stance, thereby undermining constitutional protection.⁴⁹

The Judicial Dilemma: Superstition and Essential Religious Practices

In India, the distinction between religion and superstition is particularly complex, as cultural practices frequently combine spiritual beliefs with ritualistic traditions.⁵⁰ In general, the Court has denied constitutional protection to practices that are classified as "regressive" or "superstitious."⁵¹ For example, in *State of Gujarat v Mirzapur Moti Kureshi Kassab Jamat (2005)*, the Court upheld restrictions on cow slaughter but also reinforced a cultural-nationalist interpretation, blurring the lines between religion and socio-political morality.⁵²

In contrast, the Court invalidated the prohibition on women's entry into the temple in *Indian Young Lawyers Association v State of Kerala (2018) (the Sabarimala case)* as a violation of gender equality, asserting that such exclusion was not an essential practice of the Ayyappa faith.⁵³ However, this decision incited controversy and discord, with Justice Indu Malhotra cautioning that courts should refrain from intervening in matters of profound religious significance.⁵⁴

44 Gary Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context* (Princeton UP 2003) 247

45 Suhrit Parthasarathy, 'The Essential Practices Doctrine and Judicial Theology' (2019) 34(3) National Law School of India Review

46 *Mohd. Hanif Quareshi v State of Bihar* AIR 1958 SC 731.

47 *Seshammal v State of Tamil Nadu (1972)* 2 SCC 11

48 Madhav Khosla, *The Indian Constitution* (OUP 2012) 134.

49 *Ibid*

50 Arvind Sharma, 'Religion and Superstition in Indian Constitutional Law' (2016) 22(4) Journal of Law and Religion 456.

51 *Ibid*

52 *State of Gujarat v Mirzapur Moti Kureshi Kassab Jamat (2005)* 8 SCC 534

53 *Indian Young Lawyers Association v State of Kerala (2018)* 10 SCC 1.

54 *Ibid* [12] (Indu Malhotra J, dissenting).

Therefore, Essential Religious Practices jurisprudence is unable to strike a balance between constitutional morality and religious freedom when superstition intersects with faith.⁵⁵

Inconsistencies in Judicial Application

The primary obstacle is the inconsistent criteria that courts employ in Essential Religious Practices adjudication. In certain instances, textual authority is the primary concern, while in others, social reform considerations take precedence.⁵⁶ For instance,

In *Ismail Faruqui v Union of India (1994)*, the Court determined that a mosque is not a necessary component of Islam for the purpose of offering prayers, thereby prioritizing state control over property rights.⁵⁷ In contrast, the Court in *Shayara Bano v Union of India (2017)* invalidated instant triple talaq, partially due to the fact that it was not a fundamental Islamic practice, and partially due to the application of gender justice principles.⁵⁸

This selective application of Essential Religious Practices demonstrates that judicial reasoning frequently fluctuates between textualist, reformist, and pragmatic approaches, resulting in doctrinal instability.⁵⁹

Additional Criticisms of Essential Religious Practices Doctrine

Critics contend that Essential Religious Practices enables courts to intrude excessively into religious affairs by determining theological questions that should be left to religious communities.⁶⁰ *Rajeev Bhargava* observes that this undermines the principle of secular neutrality by transforming judges into "amateur theologians."⁶¹ Some contend that Essential Religious Practices perpetuates state paternalism, in which harmful practices are suppressed through the Court's discretionary evaluation of morality, rather than a coherent doctrinal framework.⁶²

Gautam Bhatia critiques Essential Religious Practices from a constitutional perspective for prioritizing doctrinal essentialism over individual autonomy in belief, arguing that Article 25's guarantee should prioritize individual conscience over institutionalized notions of "essential."⁶³ The outcome is a jurisprudence that is characterized by inconsistency, unpredictability, and selective intervention.⁶⁴

The Essential Religious Practices doctrine, which was designed to differentiate between religion and superstition, has resulted in doctrinal challenges and inconsistencies that call into question its

55 Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019) 214

56 *Ibid*

57 *Ismail Faruqui v Union of India* (1994) 6 SCC 360.

58 *Shayara Bano v Union of India* (2017) 9 SCC 1

59 Tarunabh Khaitan, 'Essential Religious Practice and the Problem of Inconsistency' (2020) 42(2) Delhi Law Review 89

60 Suhrith Parthasarathy, 'The Essential Practices Doctrine and Judicial Theology' (2019) 34(3) National Law School of India Review 45

61 Rajeev Bhargava, *The Promise of India's Secular Democracy* (OUP 2010) 193.

62 Gary Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context* (Princeton UP 2003) 249

63 Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019) 219

64 Madhav Khosla, *The Indian Constitution* (OUP 2012) 136

reliability as a constitutional test. Judicial overreach into theology, the absence of clear criteria, and inconsistent application across cases have resulted in outcomes that frequently depend on the Court's ideological orientation rather than principled reasoning.

In the context of superstition, Essential Religious Practices frequently undermines practices that are perceived as regressive or harmful, but it fails to establish a consistent framework for reconciling constitutional values with religious freedom. The Essential Religious Practices doctrine continues to be a contested and unstable tool in Indian society, as it continues to face tensions between tradition, reform, and rights. This reflects the deeper constitutional struggle between constitutional morality and religious pluralism.

VII. RESEARCH AND ANALYSIS

The judiciary serves as a critical arbiter in the intricate landscape of India, which is characterized by the interplay between superstition, religion, and constitutional law. The application of the Essential Religious Practices doctrine in distinguishing constitutionally protected religious practices from harmful superstitious practices is the subject of this research article. The analysis identifies key patterns, challenges, and inconsistencies that emerge in judicial reasoning by drawing upon case law, scholarly debates, and doctrinal developments. The goal is to comprehend the manner in which Indian courts negotiate the precarious line between the enforcement of constitutional rights, particularly equality, dignity, and public welfare, and the preservation of cultural heritage.

Judicial Approaches to Religion and Superstition

a) Protection of Essential Practices : *Shirur Mutt* established the Essential Religious Practices doctrine, which allows courts to safeguard practices that are considered integral to religion while scrutinizing non-essential rituals. Courts generally prioritize practices that are central to faith and ritual identity, as evidenced by the analysis of cases such as *Indian Young Lawyers Association v State of Kerala (Sabarimala)* and *Haji Ali Dargah Trust v State of Maharashtra*. In these cases, judicial reasoning is based on doctrinal, historical, and textual evidence to ascertain the religious essentiality of a matter.

Case	Year	Practice	Classification (ESSENTIAL RELIGIOUS PRACTICE/ Unconstitutional)	Key Reasoning
Shirur Mutt	1954	Temple rituals	Essential Religious Practices Protected	Court recognized autonomy of religious denomination
Sabarimala	2018	Women exclusion	Unconstitutional	Violates equality and dignity; not essential to faith
Witch-hunting cases	2010	Superstition-based persecution	Unconstitutional	Harmful to health, dignity; not essential
Animal sacrifice	1995	Ritual killing	Unconstitutional	Not integral to religion; public morality concerns
Haji Ali Dargah	2016	Women entry restriction	Unconstitutional	Gender equality; not essential to faith

Table 1 : showing judicial treatment of superstitious practices

Nevertheless, the analysis indicates that courts also incorporate constitutional morality, particularly when religious practices conflict with the rights guaranteed under Articles 14, 19, and 21. For example, the Sabarimala case invalidated gender exclusion by asserting that discriminatory practices cannot be safeguarded under the pretense of religious essentiality. This illustrates a complex balancing act in which courts maintain the integrity of core religious identity while simultaneously regulating practices that erode fundamental rights.

b) Identification of Harmful Superstitions

The research reveals a distinct pattern in the judicial treatment of practices that are classified as superstitious. This approach is consistent in cases involving animal sacrifice, witch-hunting, faith healing, and ritual immolation: courts are likely to classify a practice as unconstitutional if it causes harm, exploitation, or an infringement of dignity. Consequently, the Essential Religious Practice doctrine functions as a framework for distinguishing between regulatable superstitions and legitimate religious practices.

Nevertheless, critical analysis suggests that the distinction between religion and superstition is not always unambiguous. Judicial reasoning frequently involves majoritarian interpretations of faith, social reform considerations, and value judgments. This raises concerns regarding the objectivity and consistency of Essential Religious Practices applications across different cases

Challenges Obstacles and Contradictions

a) The Role of Subjectivity in the Assessment of Essentiality

The subjective nature of determining what constitutes an essential practice is one of the most significant challenges identified in the research. Textual interpretation, historical accounts, and community practices have been employed by courts; however, there is no established methodology. In cases such as *Mohd. Hanif Quareshi v State of Bihar and Seshammal v State of Tamil Nadu*, judicial determinations of essentiality varied based on context, ideology, or policy priorities, resulting in divergent outcomes.

b) The Conflict Between Religious Autonomy and Constitutional Morality

The recurring tension between religious autonomy and constitutional morality is another analytical observation. Essential Religious Practices simultaneously places judges in the position of evaluating religious doctrines, while it empowers courts to strike down harmful practices. This tension is exemplified by cases such as Sabarimala, in which the majority opinion prioritized constitutional rights over religious custom, while dissenting opinions warned against judicial overreach. This emphasizes the inherent inconsistency in Essential Religious Practices' application, particularly when the judiciary is called upon to mediate between modern constitutional values and entrenched beliefs.

c) The Socio-Cultural Complexity of Superstitious Practices

The analysis also demonstrates that judicial evaluation is further complicated by the fact that many practices classified as superstition are deeply embedded in cultural and communal life. Faith healing, ritualistic offerings, and gender-based taboos are frequently associated with historical and social implications that extend beyond religious texts. Courts are compelled to balance the dual role of safeguarding cultural heritage and averting harm, which results in case-specific adjudication rather than universally applicable principles.

Judicial Trend Synthesis

The research identifies key judicial trends by examining the three focal aspects— Essential Religious Practices application, treatment of superstition, and doctrinal inconsistencies:

- I. *Rights-Centric Approach*: In an effort to ascertain whether a practice is discriminatory or harmful, courts are increasingly relying on fundamental rights. Consistently, superstitions that violate health, dignity, or equality are disregarded.
- II. *Contextual Essentialism*: The determination of essentiality is contingent upon the social, historical, and religious contexts of the individual cases. This results in doctrinal unpredictability, as well as flexibility.
- III. *Balancing Act*: The judiciary frequently strikes a balance between constitutional morality and religious freedom, which leads to decisions that safeguard fundamental religious practices while regulating or prohibiting harmful superstitions.

The Indian judiciary's endeavor to reconcile pluralism with rights protection is reflected in these trends, which demonstrate that the Essential Religious Practices doctrine is both a tool of preservation and regulation.

Implications and Analytical Observations

Several critical implications are emphasized by the research:

- I. *Doctrinal Ambiguity*: The absence of clear criteria for essentiality in Essential Religious Practices leads to variability and the potential for judicial subjectivity.
- II. *Progressive Potential*: Essential Religious Practices enables courts to challenge discriminatory or harmful practices, thereby promoting social reform while honoring religious identity.
- III. *Risk of Overreach*: Courts run the risk of imposing majoritarian interpretations of faith and interfering with religious autonomy by defining essentiality.
- IV. *Requirement for Consistency*: It is imperative to establish a systematic framework or guidelines to guarantee the predictable and coherent application of Essential Religious Practices in the adjudication of superstition-related cases.

In conclusion, the research indicates that Essential Religious Practices has enhanced the judiciary's capacity to regulate harmful practices; however, it also generates tensions, inconsistencies, and interpretative challenges that necessitate meticulous management in future jurisprudence.

VIII. SUGGESTIONS AND RECOMMENDATIONS

Several measures are suggested in light of the analysis of judicial trends and the application of the Essential Religious Practices (ERP) Doctrine:

- I. *Standardized ERP Guidelines*: In order to mitigate subjectivity, courts should establish explicit criteria for assessing the necessity of religious practices, which should be achieved by balancing constitutional values with doctrinal evidence.
- II. *Legislative Support*: The protection of legitimate religious expressions while defining harmful practices is possible through the implementation of updated anti-superstition laws.
- III. *Community Awareness*: The promotion of social compliance can be achieved through public education campaigns that elucidate the distinction between harmful superstitions and protected practices.

- IV. *Interdisciplinary Input*: Judicial decisions can be informed and arbitrariness can be reduced through collaboration with sociologists, anthropologists, and religious scholars.
- V. *Rights-Centric Focus*: Courts should prioritize public welfare, equality, and dignity, ensuring that cultural preservation does not justify discrimination or harm.

IX. CONCLUSIONS

The judiciary serves a dual function by ensuring the protection of fundamental rights and religious freedom. While the Essential Religious Practices doctrine has been instrumental in distinguishing constitutionally protected practices from harmful superstitions, its inconsistent application is a result of the absence of uniform standards and subjective interpretation. The endeavor to reconcile cultural heritage with equality, dignity, and public morality is exemplified by landmark cases such as Sabarimala, Shayara Bano, and Shirur Mutt.

Exploitation and social harm persist as a result of superstitious practices. The implementation of effective regulation necessitates public engagement, legislative support, and doctrinal clarity. The protection of India's pluralistic religious fabric and the constitutional guarantees of life, liberty, and equality can be guaranteed by courts through a consistent, rights-centered application of ERP, which is supplemented by statutory and social frameworks.

“ In the whole of the bill, there's not a single word about God or religion. Nothing like that. The Indian constitution allows freedom of worship and nobody can take that away, this is about fraudulent and exploitative practices.”

- *Narendra Dabholkar (Anti-superstition activist)*

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