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# The stakes are high in the Sabarimala matter


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As the Supreme Court hears the *Sabarimala* reference, an old idea has returned to centre stage: Constitutional morality, the conscience that allows courts to navigate difficult terrain. But, like all consciences, it speaks more loudly in some moments than others.

The Constitution permits restrictions on certain rights (including the freedom of religion) on grounds of morality. The immediate question is, whose morality? Constitutional morality answers that by pointing inward, requiring courts to draw upon the values embedded in the Constitution itself, such as equality, dignity, and liberty. It requires that fundamental rights do not rise and fall with political or majoritarian sentiment.

The force of this idea is seen in *Kesavananda Bharati vs State of Kerala* (1973) — Justices KS Hedge, JM Shehlat and AN Grover paid for their commitment to constitutional limits by being wrongfully superseded. Four years later, Justice HR Khanna received the same treatment for his refusal to dilute constitutional promises during the Emergency. More recently, delayed elevations and unexpected transfers have followed judges whose rulings defy majoritarian demands.

Fidelity to the Constitution, then, has not always come without cost. But as a living document, the Constitution demands interpretation that carries its values into modern contexts — whether in decriminalisation of homosexuality and adultery, recognising privacy as a fundamental right or dismantling harmful practices. But, in matters of religion, that voice has not always been so steady.

Often, the Court has relied on doctrinal tools that have not always yielded consistent outcomes, chief among them the “Essential Religious Practices” (ERP). This stress was most visible in the Ayodhya line of cases beginning with *Ismail Farooqui v Union of India* (1994). Although rooted in a title dispute, the case was adjudicated through its religious dimension, which came to overshadow the question of title. In doing so, the Court entered theological terrain, where the majority judgement declared mosques not essential to the practice of Islam — a view that continues to cast a long shadow over religious freedom jurisprudence.

Interestingly, the belief in Lord Ram's birthplace at the disputed site remains to date constitutionally unexamined as essential to Hindu practice, the possessory claim being viewed through a doctrinal lens of "particular significance". Historically, ERP has shifted between scripture, history, and lived practice with no settled methodological framework to guide its use. The current Sabarimala hearings may force a choice.

One set of arguments seeks to dismantle the test on the ground that courts cannot decide what is essential to a religion. Another seeks to replace constitutional morality with societal morality. Taken together, these arguments would leave the courts with neither the authority to examine religious practices nor the tools to limit them. If ERP is to remain, it will need far greater discipline. But the truth is that ERP may never fully yield to consistency, because the idea of "essential religion" itself is inherently contested. That pushes the Court back towards constitutional morality.

But here too, certainty is elusive. It is necessary because it checks majoritarian prejudice, yet its application often depends on how individual judges read constitutional values in different cases. This complexity is only likely to deepen as hearings progress. Conflicting precedents of *Shirur Mutt* and *Durgah Committee* are already being examined.

Questions of personal laws within fundamental rights too will almost certainly surface, bringing *Narasu Appa Mali* (which held that personal laws are not subject to fundamental rights review), into the conversation. The real challenge, then, is not whether constitutional morality should guide the Court, but how it can be applied in a principled and balanced way.

What began as a dispute over women's entry into the Sabarimala temple has expanded into a wider inquiry into essentiality, equality, and the limits of judicial intervention that are not confined to one faith. This means the Court is no longer resolving a localised dispute but laying down a meta-framework for how religious practices will be tested across faiths, one that could reshape the architecture of religious freedom jurisprudence. All eyes are now turned to the Court.

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