

## FREEDOM OF RELIGION IN INDIA: A LEGISLATIVE FRAMEWORK

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### ABSTRACT

*"In this study, we investigate the intricate legal structure that the Indian government has in place to protect religious liberty. Despite the fact that the Indian Constitution recognises the right to religious freedom as a basic right, the implementation and interpretation of these articles have undergone considerable changes as a result of legislative actions and judicial declarations. The purpose of this study is to investigate the constitutional provisions, anti-conversion legislation at the state level, judicial interpretations, and contemporary obstacles to religious freedom in India. According to the findings of the study, there is a conflict between individual religious liberties and state interests in regulating religious activities that are perceived to be in violation of public order, health, and morality. This conflict persists despite the fact that the constitution provides substantial protections for religious freedom. Following the findings of the research, it is concluded that India's approach to religious freedom represents a delicate balance between plurality and secularism. This delicate balance is something that continues to be fought and negotiated via legislative measures and judicial scrutiny."*

**Keywords:** Religious freedom, Indian Constitution, Anti-conversion laws, Secularism, Fundamental rights

### 1. Introduction

There are various indigenous belief systems in addition to the major religion traditions that are practiced in India, which include Hinduism, Islam, Christianity, Sikhism, Buddhism, and Jainism. India is considered to be one of the most religiously diverse nations in the worldwide community. There are many different religions in this nation, which poses a unique set of issues for the administration of law and government, particularly with regard to the safeguarding of religious liberties. The constitutional and legislative framework that governs religious freedom in India is a reflection of the nation's complicated historical trajectory, which began with colonial control and continued through

partition and its continuous growth into the biggest democracy in the world.

When it comes to religious freedom, India functions within a unique idea of secularism that is notably different from the ones that are prevalent in Western countries. Indian secularism embraces what scholars have referred to as "principled distance" (Bhargava, 2010). This means that the state maintains equal respect for all religions while retaining the authority to intervene in religious matters when it is necessary for social reform or protection of other constitutional values. This is in contrast to the traditional approach of enforcing strict separation between religion and the state.

The constitutional provisions, statutory legislation, judicial interpretations, and state-level regulations that make up India's legal framework for religious freedom are all included in this framework. The purpose of this study is to give a full examination of this framework by analysing its historical development, present problems, and continuous conflicts between individual religious liberties and group societal interests. Special consideration is given to contentious pieces of legislation, such as anti-conversion laws, and the consequences that these laws have for the actual experience of religious freedom in India.

## 2. Constitutional Foundations of Religious Freedom

The right to freedom of religion is recognised as a basic right in the Indian Constitution, which was enacted in the year 1950. This dedication to secular administration is shown in Articles 25–28, which constitute the cornerstone of these guarantees and represent the founders' commitment to secular rule notwithstanding the religious difficulties that characterised India's independence and division.

### 2.1. "Article 25: Freedom of Conscience and Free Profession, Practice and Propagation of Religion"

Article 25(1) ensures that every individual is entitled to "freedom of conscience and the right freely to profess, practise, and propagate religion." On the other hand, this privilege is not unqualified. For the purpose of providing for social welfare and reform, the state is granted the authority to regulate or limit economic, financial, political, or other secular activities that are related with religious practice, as well as to control or restrict these activities. (*Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya*, 1966) The Supreme Court of India has interpreted this section as authorising the state to intervene in religious rituals that are vital for public order, morality, and health. *Muldas Bhudardas Vaishya* was the case that led to this interpretation.

There has been a lot of controversy around the use of the word "propagation" in Article 25. In the case of *Rev. Stainislaus v. State of Madhya Pradesh* (1977), the Supreme Court made a distinction between the freedom to spread one's religion and the right to convert another person. It affirmed that the latter right is not guaranteed by Article 25 of the Constitution. Laws that prohibit conversion have been established by a number of states, and this distinction has provided constitutional support for such laws.

### 2.2. "Article 26: Freedom to Manage Religious Affairs"

The right to form and maintain organisations for religious and philanthropic purposes, to manage its business in areas pertaining to religion, to possess and acquire property, and to administer such property in accordance with the law is granted to every religious group under Article 26. The autonomy of religious groups is safeguarded by this clause; nonetheless, it has also prompted enquiries over the degree to which the state may engage in the operation of religious organisations. The "essential practices test" was devised by the Supreme Court in 1954 in response to the *Sri Shirur Mutt* case. The purpose of this test was to assess which components of religious practice are eligible for constitutional protection. Those acts that are judged fundamental to a religion are the only ones that are afforded complete protection, whereas the state may control practices that are not considered vital. This criterion has been utilised in a variety of contexts, including debates over the management of religious endowments, limitations on temple admission, and the sacrifice of animals.

### 2.3. “Article 27: Freedom from Taxation for Promotion of Religion”

The state is not allowed to compel any individual to pay taxes that are explicitly designed for the promotion or preservation of any particular religion or any sect, as stated in Article 27 of the Constitution. Because it prohibits the state from providing direct money to religious activities, this clause helps to ensure that the Indian state maintains its traditionally secular nature.

### 2.4. “Article 28: Freedom from Religious Instruction in State Educational Institutions”

Religious instruction is prohibited at educational institutions that receive funding from the state, as stated in Article 28. On the other hand, it allows for the provision of religious education in institutions that are run by the state but were created under an endowment or trust that mandates such instruction, provided that attendance is optional. This approach strikes a compromise between allowing for religious education in specific situations and providing protection against the imposition of religious teaching by the state.

## 3. Legislative Developments and State Regulation

The freedom of religion in India is controlled by a variety of legislative instruments at both the national and state levels, in addition to the constitutional provisions that control it. There are frequently difficulties between religious freedom and other societal goals, and these legal changes frequently reflect such tensions.

### 3.1. Personal Laws and the Uniform Civil Code Debate

In India, there is a system of personal laws that governs things such as marriage, divorce, inheritance, and adoption. These laws are controlled by

the religious laws of various groups. The legitimacy of this system, which has its origins in colonial administration techniques, has been defended on the grounds that it safeguards religious variety, but it has also been criticised for its role in maintaining gender inequality and religious segregation.

There is a directive concept that encourages the state to ensure a Uniform Civil Code (UCC) for citizens all throughout India. This principle is included in Article 44 of the Indian Constitution. However, there has been relatively minimal progress made towards a universal family code, with only Goa having implemented a standard family code. There is a basic contradiction in India's approach to religious freedom, which seeks to strike a balance between tolerance for religious plurality and constitutional commitments to equality and reform. The argument around personal laws and the UCC exemplifies this fundamental tension.

In decisions that have gone down in history, such as *Mohd. Ahmed Khan v. Shah Bano Begum* (1985) and *Shayara Bano v. Union of India* (2017), the Supreme Court of India has stepped in to resolve personal law disputes where it was determined that certain practices were in violation of constitutional principles. The intricate relationship that exists between religious autonomy and governmental power in subjects pertaining to family law is brought to light by these interventions.

### 3.2. Anti-Conversion Legislation

One of the most contentious features of India's framework for religious freedom is the growth of anti-conversion legislation at the state level. These laws are formally referred to as "Freedom of Religion Acts." Conversions that are accomplished via coercion, deception,



allurement, or seduction are prohibited by these statutes. At the moment, legislation of this kind is in effect in a number of states, including Odisha (1967), Madhya Pradesh (1968), Gujarat (2003), Chhattisgarh (2000), Himachal Pradesh (2019), Uttarakhand (2018), Uttar Pradesh (2021), and Karnataka (2021).

There are others who believe that these regulations have been utilised to discriminate against religious minorities and to stifle genuine expressions of religious belief. There are worries regarding the potential for misuse of these acts due to the unclear phrasing that is present in many of them, specifically the meanings of "allurement," "inducement," and "force" (Bauman & Leech, 2012). Further criticism has been levelled against the necessity that certain states have for prior notification to local authorities before a person can convert, arguing that this requirement places an unfair burden on religious practice.

*Rev. Stanislaus v. State of Madhya Pradesh* (1977) was the case in which the Supreme Court of India confirmed the constitutional legality of anti-conversion legislation. In this case, the court concluded that the freedom to "propagate" religion did not include the right to convert other people. The court came to the conclusion that the right to practise one's faith without being subjected to undue influence is an essential component of religious liberty.

### 3.3.Places of Worship Legislation

The Places of Worship (Special Provisions) Act, 1991, makes it illegal to convert any place of worship from one faith to another. Additionally, it requires that the religious character of places of worship be preserved in the same manner as it was on August 15, 1947, which is the day when India gained its independence. With the exception of the

Babri Masjid-Ram Janmabhoomi site, which was subsequently decided upon by the Supreme Court in 2019, the statute includes an exception.

This piece of law is an attempt to avert religious conflicts over historical places by putting a stop to the current religious status quo within the religious community. Recent challenges to the legality of this Act, on the other hand, demonstrate that disputes about historical claims to religious places continue to exist (Singh, 2023).

### 3.4. Religious Institutions Regulation

The management of religious establishments, notably Hindu temples, has been subject to a number of administrative laws that have been adopted by the state. There is a large amount of control that the government has over the management of temples and their funds thanks to the Hindu Religious and Charitable Endowments Acts in states such as Tamil Nadu. In light of the fact that these restrictions are largely applicable to Hindu institutions, they have been criticised for being discriminatory (Jois, 2020). This is due to the fact that other religious communities are allowed to have greater autonomy in the management of their institutions.

### 4. Judicial Interpretations and Evolving Standards

There has been a significant contribution made by the judicial system, particularly the Supreme Court of India, in determining the boundaries of religious freedom and interpreting its meaning. In order to show the developing approach of the judiciary to striking a balance between religious liberty and other constitutional principles, some important concepts and instances are presented.

#### 4.1. The Essential Religious Practices Doctrine

The "essential religious practices" approach, which was initially stated in the *Sri Shirur Mutt case* (1954), continues to be the key court instrument for assessing whether religious acts are eligible for constitutional protection. The courts, in accordance with this approach, evaluate what constitutes a "essential" religious activity by analysing religious scriptures and practices, and in some cases by conferring with religious leaders.

Taking this method has been subject to criticism due to the fact that it places judges in the role of religious interpreters and has the ability to impose majoritarian or modernist interpretations of religious traditions (Sen, 2019). Among the most notable applications of this test are cases concerning the entry of women into temples (*Indian Young Lawyers Association v. State of Kerala*, 2018), the sacrifice of animals (*State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, 2005), and the wearing of religious symbols in educational institutions (*Bijoe Emmanuel v. State of Kerala*, 1986).

#### 4.2. Interplay Between Articles 25 and 14

A growing number of judicial decisions have placed an emphasis on the necessity of bringing religious liberty into harmony with other basic rights, notably the right to equality as outlined in Article 14. The practice of triple talaq, often known as quick divorce, in Islam was declared unconstitutional by the Supreme Court of India in the case of *Shayara Bano v. Union of India* (2017). The court determined that the practice breached constitutional ideals of gender equality and dignity. Similarly, in the case of *Indian Young Lawyers Association v. State of Kerala* (2018), the

court ruled that it was a violation of equality standards to restrict women of menstrual age from attending the Sabarimala shrine.

In light of these rulings, there has been a trend towards interpreting religious freedom through the prism of constitutional morality rather than religious doctrine alone. This approach has garnered both acclaim for furthering equality and condemnation for judicial overreach into subjects pertaining to religion.

#### 4.3. Public Order, Morality, and Health Limitations

There are specific provisions in the Constitution that allow for restrictions on religious freedom to be imposed for purposes of public order, decency, and health. There has been a lot of struggles in the courts to determine the extent of these constraints. As a result of economic and agricultural concerns, the Supreme Court of India upheld a prohibition on cow slaughter in the case *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat* (2005). This was done despite the fact that the killing of cows had religious importance for certain communities.

*Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association* (2000) was another case in which the court struck a balance between the protection of religious freedom and the control of noise pollution. In this case, the court decided that religious acts that caused public annoyance might be subject to regulation.

#### 4.4. Secularism as a Basic Structure

During the case of *S.R. Bommai v. Union of India* (1994), the Supreme Court of India held that secularism was a component of the "basic structure" of the Constitution. This meant that Parliament did not have the authority to modify the

Constitution. When asked to describe Indian secularism, the court stated that it was not a rigid separation of religion and state but rather equal respect for all religions along with neutrality on the part of the state.

Through this decision, secularism was established as a constitutional value that serves as a guide for the interpretation of legislation pertaining to religious freedom. The state's power to interfere in situations where governance is carried out along religious lines that are in conflict with secular values was also reaffirmed by this document.

## 5. Contemporary Challenges to Religious Freedom

Recent developments in India have highlighted several ongoing challenges to religious freedom that test the legislative framework and its implementation.

### 5.1. Anti-Conversion Laws and Their Implementation

The recent emergence of more stringent anti-conversion legislation in places such as Uttar Pradesh, Karnataka, and Gujarat has generated worries about the impact these laws would have on religious minorities such as Muslims and Christians. These more recent regulations contain measures that prohibit conversion for the purpose of marriage (referring to the phenomenon known as "love jihad"), levy more severe punishments, and place the burden of evidence on the individual who is being charged (Tyagi, 2022).

There have been occasions when these rules have been exploited to harass interfaith couples or to target lawful religious activities of minority populations, as documented by reports from civil society organisations (Human Rights Watch, 2023). Because of the ambiguous language used in many of these statutes, there is the possibility

that they might be applied arbitrarily, which raises questions about due process.

### 5.2. Religious Expression and Public Order

As a result of the controversy surrounding religious processions, the use of loudspeakers for religious reasons, and religious gatherings during the COVID-19 epidemic, the tension that exists between the expression of religion and the maintenance of public order has been brought to light. When it comes to religious activities that might possibly endanger public health or safety, the courts have typically backed reasonable limits on those activities. At the same time, they have attempted to ensure that such restrictions are implemented in an equitable manner across all religious communities.

The difficulty of striking a balance between concerns about security and freedom of religion is especially obvious in places that are experiencing conflicts between different communities. In situations like these, preventative limitations on religious assemblies or processions may be imposed in accordance with Section 144 of the Criminal Procedure Code. This raises problems concerning the proportionality and equitable application of such measures.

### 5.3. Religious Dietary Practices and Restrictions

The existence of legislation concerning the killing of animals and the use of meat has repercussions for religious communities whose dietary habits involve the intake of particular types of meat. In the case of *Mohd. Hanif Qureshi v. State of Bihar*, which took place in 1958, the Supreme Court has acknowledged the religious importance of cow slaughter for Hindus and has supported some limitations on the slaughter of cows. However, it has also



acknowledged the necessity of striking a balance between these concerns and the dietary traditions and lives of other communities.

Legislation that was recently passed at the state level that restricts the slaughter of cattle and the eating of beef has been criticised for having a disproportionate impact on groups that are predominantly Muslim, Christian, and Dalit and whose traditions involve the consumption of beef. In locations where the religious traditions of many groups are in conflict with one another, these restrictions show the difficulty of governing in matters of this nature.

#### 5.4. Places of Worship and Historical Claims

In spite of the fact that the Places of Worship Act prohibits altering the religious nature of worship places, disagreements over religious locations that have a contentious history continue to surface. Similar allegations have been brought about other sites in the wake of the Ayodhya judgement (*M. Siddiq v. Mahant Suresh Das*, 2019), which calls into question the effectiveness of legal remedies to historical religious issues.

These debates are illustrative of more fundamental problems concerning the manner in which to resolve past grievances connected to religious places while yet preserving modern societal cohesion. When it comes to the legal framework, an attempt is made to strike a compromise between the practical requirement to prevent unending litigation over past wrongs and the respect for historical claims.

#### 6. Comparative Perspectives and International Standards

The approach that India takes to the issue of religious freedom may be better understood when it is placed in the perspective of comparative and international studies. The

implementation of the International Covenant on Civil and Political Rights (ICCPR) displays a different approach to balancing these rights within a pluralistic society, despite the fact that India is a signatory to international treaties that safeguard religious freedom, such as the ICCPR.

##### 6.1. Indian Secularism vs. Western Models

Indian secularism accepts what academics have referred to as "principled distance" (Bhargava, 2010). This difference is in contrast to the "wall of separation" approach that is prevalent in the United States of America or the state church traditions that are prevalent in several European nations. A strategy that entails treating all religions with equal respect while allowing the state to interfere in religious issues when it is required for the sake of social change or the preservation of human rights is referred to as the liberal approach.

It is possible to trace this specific paradigm back to India's historical experience and the necessity of accommodating the great religious variety that exists in the country. It reflects the pragmatic concessions that were necessary throughout the process of establishing the constitution, and it continues to impact legislative approaches to legal matters pertaining to religion.

##### 6.2. International Human Rights Standards

Concerns have been raised by the United Nations Human Rights Committee over certain components of India's framework for religious freedom, namely with relation to laws that prohibit conversion and violence against members of the same community (United Nations Human Rights Committee, 2022). In order to accomplish legitimate goals, the committee has emphasised that limits

on the right to exhibit religion must be strictly required and commensurate to the goals that are being pursued.

In a similar vein, the United States Commission on International Religious Freedom (USCIRF) has recently published reports in which it has expressed concerns regarding religious freedom in India. These studies have focused specifically on the impact of anti-conversion legislation and incidences of violence driven by religious beliefs (USCIRF, 2023). Despite the fact that these worldwide viewpoints provide essential standards, it is important to acknowledge that the implementation of religious freedom must unavoidably reflect the environment of countries.

## 7. Conclusion

The legislative framework for religious freedom in India is reflective of the difficult issue of regulating one of the world's most religiously diverse countries within the framework of a constitutional democracy on the Indian subcontinent. A dynamic tension is created by the constitutional protections of religious freedom, which, when combined with clauses that empower the state to regulate social welfare and public order, creates a dynamic conflict that is regularly negotiated via legislation and judicial interpretation.

Several key observations emerge from this analysis:

- The first thing to note is that India's approach to religious freedom strikes a balance between individual rights, social interests, and the ability of the state to regulate religious practices. Rather than being static, this equilibrium is always shifting as a result of continuing constitutional discussion between the legislative branch,

the judicial branch, and civil society.

- Second, there is a substantial amount of variation in the manner in which religious freedom provisions are implemented for different states and religious communities. Legislation at the state level, particularly laws that prohibit conversion, results in a patchwork of restrictions that have varying effects on religious minorities depending on the location.
- Third, the judicial system plays a significant part in the interpretation of religious freedom. It comes up with notions such as the "essential practices test" that establish whether components of religious practice are protected by the constitution. On occasion, these court interventions have facilitated more religious freedom, while on other occasions, they have restricted it.
- In the fourth place, modern difficulties such as community conflicts, disagreements over sacred sites, and arguments over religion personal laws continue to test the capacity of the present legislative framework to preserve religious freedom while simultaneously ensuring societal cohesion.

The legislative framework that governs religious freedom in India is expected to undergo additional modification as the country continues to manage these difficult challenges. The problem that still exists is to fulfil the constitutional guarantee of religious freedom while also addressing legitimate governmental interests in the areas of preserving public order, promoting equality, and encouraging national unity. As a result of this continual balancing act,



the particular nature of Indian secularism and its approach to the management of religious plurality through the legal system are both captured.

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