

Cover Page



THE RIGHT TO BELIEVE: A LEGAL AND SOCIAL ANALYSIS OF RELIGIOUS FREEDOM

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Abstract:

This article explores the legal and philosophical foundations of the right to freedom of religion, tracing its roots from ancient societies through its enshrinement in modern constitutions and international covenants. Particular emphasis is given to the Indian context, where secularism and pluralism interact within a complex legal framework. Moreover, this study critically examines how the right is interpreted and enforced by courts, and how social, political, and religious tensions often test the boundaries of religious liberty. By analyzing constitutional provisions, judicial decisions, and real-world controversies, this article underscores the dynamic, and often contested, nature of religious freedom in a democratic society.

Key Words: Religious Freedom, Secularism, Indian Constitution, Judicial Interpretation, Human Rights, and Pluralism.

Introduction:

Freedom of religion is not only a personal moral principle but a cornerstone of liberal democratic values. Recognized universally as a fundamental human right, it encompasses the liberty to believe, worship, express, and disseminate one's faith, as well as the right to change or renounce religious belief altogether. This freedom ensures that citizens may live according to their convictions, forming a central component of human dignity and autonomy. Yet, religious liberty is one of the most contested and vulnerable rights, constantly tested by political, social, and ideological pressures.

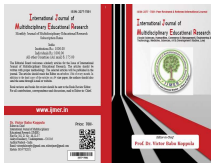
This article provides a comprehensive exploration of the legal, philosophical, and socio-political dimensions of religious freedom. While the global framework offers broad protections, this right is mediated differently across jurisdictions, influenced by cultural norms, historical antecedents, and political systems. Focusing on India as a deeply pluralistic society, this paper interrogates the complex balance between secular governance and religious tradition. It critically evaluates constitutional provisions, landmark judicial decisions, and emerging threats to religious freedom, proposing a path forward grounded in the values of justice, equality, and mutual respect.

Historical and Philosophical Foundations:

The notion of religious freedom is ancient, albeit inconsistently applied. In antiquity, the Achaemenid Empire of Persia permitted conquered peoples to maintain their religious customs. Similarly, the Edict of Milan in 313 CE, promulgated by Roman Emperors Constantine and Licinius, granted religious tolerance within the Roman Empire, particularly for Christians. However, such examples of tolerance were exceptions rather than norms.

The Enlightenment era transformed religious freedom from privilege into principle. Philosophers such as John Locke, Baruch Spinoza, and Voltaire championed the idea that the state must not impose religion. Locke's *A Letter Concerning Toleration* (1689) insisted that civil government is concerned only with civil interests, not souls. He argued for the separation of Church and State and the liberty of individuals to worship without coercion.

This idea was later embedded in revolutionary documents like the First Amendment of the U.S. Constitution (1791) and the French Declaration of the Rights of Man and of the Citizen (1789), both of which articulated the freedom of religious belief



Cover Page



and the limits of state interference. These philosophical underpinnings continue to shape modern human rights discourse and national constitutions.

International Legal Framework:

Religious freedom is strongly codified in international law. The Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, asserts in the Article 18:

"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

This provision was elaborated in the International Covenant on Civil and Political Rights (ICCPR, 1966), which in its Article 18 also protects collective manifestations of religion. Notably, it allows for restrictions only when prescribed by law and necessary to protect public safety, order, health, or the fundamental rights of others.

In addition, various UN declarations and General Comments of the Human Rights Committee provide authoritative guidance on interpreting religious liberty. Regional instruments, such as the European Convention on Human Rights (Article 9) and the American Convention on Human Rights (Article 12), echo these protections.

However, enforcement remains inconsistent. In authoritarian regimes, religious dissent is often criminalized. In democracies, religious minorities may still face indirect restrictions or social hostilities. The freedom to believe is near-universal in theory, but the freedom to practice and propagate is more fragile.

Freedom of Religion in the Indian Constitution:

India, with its unparalleled religious diversity, adopts a distinct form of secularism that respects all faiths without espousing irreligion. Article 25 of the Indian Constitution guarantees:

"All persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion."

This is subject to public order, morality, and health, and to other fundamental rights. Article 26 furthers this by granting religious denominations the right to manage their own affairs, establish institutions, and administer property.

Articles 27 and 28 protect individuals from compulsory taxation for religious promotion and prohibit mandatory religious instruction in state-aided institutions. Together, these provisions embed a robust framework for both individual and collective religious freedoms.

Indian secularism, unlike its Western counterparts, adopts a 'principled distance' approach. The state may intervene in religious affairs to ensure social reform or uphold constitutional values, especially concerning equality, non-discrimination, and human dignity. This engagement has allowed legal reforms such as the abolition of untouchability and sati, and more recently, the banning of instant triple talaq.



Cover Page



Judicial Interpretation and Case Law:

The Indian judiciary has played a decisive role in defining religious freedom. In the landmark case *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (1954), the Supreme Court held that religion includes not only belief but also rituals and observances considered essential by followers.

This led to the development of the ‘essential religious practices’ doctrine. The Court assesses whether a practice is fundamental to a religion, and only then does it merit constitutional protection. While this doctrine aimed to prevent frivolous claims of religious immunity, it has been criticized for allowing judges to decide theological questions.

In *Shirur Mutt*, the Court recognized broad protections. In *Ratilal Panachand Gandhi v. State of Bombay* (1954), it emphasized that the state cannot regulate the administration of religious affairs beyond what is necessary for public order or social welfare.

However, in cases like *Durgah Committee v. Syed Hussain Ali* (1961) and *Mohd. Hanif Qureshi v. State of Bihar* (1958), the Court adopted a more restrictive stance, denying protection to practices not deemed essential. In *Shayara Bano v. Union of India* (2017), the Court invalidated triple talaq, holding it unconstitutional despite its theological sanction.

The *Sabarimala* case (2018) further highlighted the Court’s willingness to uphold gender equality over traditional practices. While the ruling was lauded for promoting women's rights, it also faced backlash for judicial overreach into religious affairs.

Contemporary Challenges:

Despite constitutional safeguards, religious freedom in India faces persistent threats:

- **Communal Violence and Hate Speech:** Sporadic but brutal incidents of communal violence continue to plague the country. Hate speech and religious incitement are increasingly spread via social media and political rhetoric, threatening social cohesion.
- **Anti-Conversion Laws:** Several states have enacted laws ostensibly aimed at preventing “forcible” or “fraudulent” conversions. However, these are often used to harass minority communities and impede voluntary conversions.
- **Mob Vigilantism and Censorship:** Incidents of cow protection vigilantism, bans on beef, and harassment over interfaith marriages reflect the growing influence of religious majoritarianism. Meanwhile, artistic and academic works exploring religious themes often face censorship or threats.
- **Religious Profiling and Discrimination:** The Citizenship Amendment Act (2019) and the proposed National Register of Citizens have sparked fears among Muslims of systemic exclusion. There is growing concern over the misuse of state power to marginalize specific communities.
- **Digital Misinformation and Polarization:** The digital space has amplified sectarian narratives, often leading to real-world violence. Algorithmic echo chambers fuel polarization, spreading intolerance and undermining shared democratic norms.

Balancing Religious Freedom with Other Rights:

The exercise of religious freedom does not occur in isolation. It must be balanced with other constitutional values:

- **Gender Equality:** Courts have struck down practices like triple talaq and menstruation-based exclusions. However, balancing community rights and individual dignity remains contentious.



Cover Page



- **Public Order:** Regulations on religious processions, loudspeakers, and attire often test the limits of Article 25. The state must ensure that restrictions are proportionate and non-discriminatory.
- **Freedom of Expression:** Religious sensitivity can conflict with artistic freedom and academic inquiry. While hate speech must be curbed, legitimate critique of religion must not be stifled.

The Role of Civil Society and Education:

Religious freedom flourishes in a culture of mutual respect. Civil society must play a proactive role in:

- **Interfaith Engagement:** Programs promoting dialogue among different religious groups can reduce stereotypes and prevent conflict.
- **Legal Literacy:** Educating citizens about their rights and the secular ethos of the Constitution helps counter misinformation.
- **Inclusive Education:** Curricula must emphasize shared ethical values across religions and highlight India's syncretic traditions.
- **Media Accountability:** Responsible journalism should avoid sensationalism and uphold the principles of pluralism and accuracy.

NGOs and religious leaders must work together to denounce extremism and promote constitutional values. Schools and colleges should serve as spaces where empathy and critical thinking are nurtured.

Recommendations:

- **Repeal or Amend Discriminatory Laws:** Laws that indirectly target minorities, such as vague anti-conversion laws, should be revisited.
- **Reform the Essential Practices Doctrine:** Courts should avoid theological adjudication and defer to community interpretations unless they violate fundamental rights.
- **Strengthen Independent Institutions:** Bodies like the National Human Rights Commission should be empowered to act decisively against violations of religious freedom.
- **Promote Pluralism in Public Discourse:** Political parties, media houses, and opinion leaders must reject divisive narratives.
- **Digital Regulation:** Misinformation related to religion must be tackled through a blend of regulation, fact-checking, and digital literacy campaigns.
- **Ensure Equal Protection:** Law enforcement agencies must act impartially in protecting all citizens from hate crimes or targeted violence.

Conclusion:

Freedom of religion is not merely a constitutional promise; it is the ethical foundation of a diverse democracy. In India, where faith is deeply interwoven into the fabric of daily life, religious liberty cannot be secured by law alone. It must be nurtured through civic consciousness, political will, and institutional resilience. The state must act as a neutral guarantor of this right, resisting both religious dominance and exclusionary nationalism. Only through a renewed commitment to pluralism, equality, and justice can the right to believe—and not believe—truly flourish.



Cover Page



References:

1. Bader, V. (2007). *Secularism or democracy?: Associational governance of religious diversity*. Amsterdam University Press.
2. Beckmann, S. (2020). Right to sacred places and the meaning of religious freedom. *Global Encyclopedia of Territorial Rights*, 1-6. https://doi.org/10.1007/978-3-319-68846-6_543-1
3. Bindal, A. (2025). *Freedom of religion and constitutional law: Traversing myth and modernity in India*. Taylor & Francis.
4. Blau, J., & Frezzo, M. (2011). *Sociology and human rights: A Bill of Rights for the twenty-first century*. SAGE.
5. Chambers, P. (2017). Secularization: Human rights and sacred texts. *Reading Religion in Text and Context*, 50-64. <https://doi.org/10.4324/9781315245256-4>
6. Goldsworthy, J. D. (2006). *Interpreting constitutions: A comparative study*. Oxford University Press.
7. Jacobsohn, G. J. (2009). *The wheel of law: India's secularism in comparative constitutional context*. Princeton University Press.
8. John, A. V. (2024). Anthropological assumptions, human rights, and the freedom of religion bills. *Indian Secularism and Religious Freedom*, 73-108. <https://doi.org/10.1093/9780198935155.003.0004>
9. John, A. V. (2024). Is there an Indian secularism? *Indian Secularism and Religious Freedom*, 9-46. <https://doi.org/10.1093/9780198935155.003.0002>
10. Lafont, C. (2014). Religious pluralism in a deliberative democracy. *Democracy, Law and Religious Pluralism in Europe*, 46-60. <https://doi.org/10.4324/9781315758800-3>
11. Mancini, S., & Rosenfeld, M. (2014). *Constitutional secularism in an age of religious revival*. Oxford University Press, USA.
12. Martinez-Torron, J. (2014). Religious pluralism. *Democracy, Law and Religious Pluralism in Europe*, 123-146. <https://doi.org/10.4324/9781315758800-7>
13. McNally, M. D. (2020). Religion as Peoplehood. *Defend the Sacred*, 259-294. <https://doi.org/10.23943/princeton/9780691190907.003.0009>
14. Moyn, S. (2019). Too much secularism? Religious freedom in European history and the European court of human rights. *Freedom of Religion, Secularism, and Human Rights*, 95-124. <https://doi.org/10.1093/oso/9780198812067.003.0005>
15. Sen, R. (2017). Secularism and religious freedom. *The Oxford Handbook of the Indian Constitution*, 885-902. <https://doi.org/10.1093/law/9780198704898.003.0049>