

Freedom of Religion: A Right or Myth?

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Abstract

This Article offers a critical exploration of religious freedom as outlined in the Indian Constitution, evaluating its theoretical promise against its practical application through judicial interpretations and societal dynamics. Declaring India a secular nation, the Constitution envisions a harmonious coexistence of diverse religious beliefs under the principles enshrined in Articles 25-28. These articles safeguard the right to profess, practice, and propagate religion, subject to public order, morality, and health.

The discussion analyzes foundational judicial rulings, which delineated the distinction between propagation and conversion, and which reinforced individual autonomy in religious expression. Landmark cases were scrutinized for their broader implications on gender justice, religious practices, and constitutional guarantees.

The article delves into contemporary debates, including the hijab ban and its intersection with the principles of secularism and cultural diversity. Judicial perspectives in certain cases highlight the tensions between institutional norms and personal faith. These cases underscore the judiciary's pivotal role in maintaining the balance between constitutional ideals and the pluralistic ethos of Indian society.

By reflecting on these judgments, the article sheds light on the intricate relationship between individual rights, societal harmony, and cultural traditions. It posits that true religious freedom requires a judicious equilibrium, respecting constitutional mandates while preserving the rich cultural and historical identity of the nation. The conclusion advocates for a holistic approach that reconciles competing interests to uphold India's secular and democratic framework.

Keywords: Religion, Secular, Propagate, Anti-Conversion, Essentiality Test

Introduction

The Preamble of the Indian Constitution explicitly declares India to be a secular nation, emphasizing that the country upholds the principle of secularism in all its actions and governance. This commitment to secularism existed even before the term "secular" was formally incorporated into the Preamble through the 42nd Amendment in 1976. From the very inception of the Constitution, the framers sought to implement secular principles through various provisions and Articles. Their intent is evident in the Fundamental Rights, particularly where it is explicitly stated that "No person shall be discriminated against based on religion."

Further, Articles 25 to 28, grouped under the "Right to Freedom of Religion," provide individuals with the freedom to profess, practice, and propagate their religion, subject to public order, morality, and health. These provisions showcase the framers' dedication to fostering an environment where diverse religious practices can coexist harmoniously.

It is, however, well-recognized that these Fundamental Rights are not absolute. Reasonable restrictions are imposed to ensure that the exercise of one person's rights does not infringe upon the rights of others

or disrupt societal peace and harmony. The rationale behind such restrictions is grounded in the idea that unchecked liberty can undermine the very core principles for which these rights were established. The restrictions are designed to balance individual freedoms with collective well-being, thereby preventing the misuse of rights and preserving social order.

While the Constitution clearly delineates these boundaries for individuals, a pertinent question arises: do similar limitations apply to the judiciary when adjudicating cases related to religion and customs? It is undeniable that the judiciary, like any other human institution, is not infallible. Instances like the controversial decision in the *ADM Jabalpur v. Shivkant Shukla* case, often referred to as a "black day in Indian judiciary," serve as reminders of potential judicial fallibility. This case remains a subject of criticism for its failure to uphold fundamental rights during a time of crisis.

In light of such episodes, it is crucial for the judiciary to exercise prudence and foresight when dealing with sensitive issues, particularly those involving religion and cultural practices. Judicial decisions in such matters must aim to benefit the larger society without undermining its cultural and historical fabric. At the same time, it is equally important to consider the historical and social context of customs and practices. Disregarding this context risks creating a void in the societal progress achieved over time, potentially destabilizing the delicate balance between tradition and modernity.

Ultimately, the judiciary must tread carefully, ensuring that its decisions reflect a nuanced understanding of both constitutional principles and societal realities. Only through such a balanced approach can justice be served without compromising the nation's secular ethos or its rich cultural heritage.

Judicial rulings towards Religious freedom

In *Rev. Stainslaus Vs State of Madhya Pradesh*, The Court drew a clear distinction between the right to propagate a religion and the right to convert others to a religion, emphasizing their different legal and constitutional implications. It held that the right to propagate one's religion is protected as a fundamental right under Article 25(1) of the Indian Constitution, ensuring that individuals have the freedom to share, explain, and promote the tenets and beliefs of their faith. However, the Court categorically stated that this right does not extend to converting others to one's religion, as forced or involuntary conversions are not protected under the constitutional framework. Furthermore, the Court elaborated that the term "propagate," as used in Article 25(1), is limited to the act of spreading or transmitting one's religious views through peaceful means, such as teaching and public discussion, without coercion or undue influence. This interpretation underscores the delicate balance between the freedom of religion and the rights of others to practice their own beliefs without interference. By doing so, the Court upheld the secular and pluralistic ethos of the Constitution, ensuring that religious freedom does not infringe upon the rights of others or disrupt public order.

In *Bijoe Immanuel Vs State of Kerala*, This case is widely recognized as a landmark decision because of its pivotal role in upholding and emphasizing the constitutional guarantee of religious freedom in India. The judgment underscored the fundamental importance of protecting individuals' rights to practice, profess, and propagate their religion without interference. By affirming that individuals have the right to abstain from activities that contravene their religious beliefs, the Court reinforced the principle that the State must respect and accommodate diverse faiths and practices. This decision set a significant precedent in ensuring that personal convictions rooted in religion are safeguarded from undue coercion or compulsion, thereby strengthening the broader framework of religious liberty enshrined in the Indian Constitution.

In the landmark *Shayara Bano v. Union of India* case, the Supreme Court of India made a bold and historic decision by declaring the practice of Talaq-e-Biddat (instant triple talaq) unconstitutional. This ruling marked a significant step forward in the fight for gender justice and equality, particularly for Muslim women, as the practice was widely regarded as discriminatory and detrimental to their dignity and fundamental rights. Talaq-e-Biddat allowed a Muslim man to unilaterally and irrevocably divorce his wife by pronouncing the word "talaq" three times in one sitting, leaving women vulnerable and marginalized in their marital relationships. The Court held that this practice was not protected under the Right to Freedom of Religion enshrined in the Indian Constitution, as the said right is not absolute but subject to reasonable restrictions. Article 25 of the Constitution guarantees the freedom to profess, practice, and propagate religion; however, this freedom is circumscribed by considerations of public order, morality, and health, as well as other fundamental rights. The Court emphasized that no religious practice, no matter how deeply rooted, could be permitted to violate constitutional principles of equality, dignity, and non-discrimination.

To arrive at its decision, the Court conducted a comprehensive examination of the origins and practice of Talaq-e-Biddat. It referred to Islamic sources, including the Holy Quran and Hadith (sayings and actions of Prophet Muhammad), to understand the theological and historical context. Additionally, the Court analyzed the status of this practice in Islamic countries, noting that many of these nations, including Pakistan and Bangladesh, had already abolished or reformed the practice, deeming it inconsistent with the principles of justice and fairness advocated by Islam itself. After this detailed analysis, the Court concluded that Talaq-e-Biddat lacked Quranic sanction and violated the principles of Islamic jurisprudence. It deemed the practice manifestly arbitrary, as it allowed men an unfettered power to terminate a marriage without providing any reasonable justification or opportunity for reconciliation. The Court further declared that such arbitrariness was incompatible with the constitutional guarantees of equality and the rule of law.

By invalidating Talaq-e-Biddat, the Supreme Court not only upheld the constitutional values of dignity and equality but also reaffirmed its commitment to ensuring that personal laws, while rooted in religion, must align with the overarching framework of fundamental rights. This judgment became a significant milestone in advancing gender justice and ensuring that religious practices do not override basic human rights in a secular, democratic India.

In the contentious "Hijab Ban" case, the primary issue revolved around whether wearing a hijab in schools violated the secular principles upheld by educational institutions. Schools with strict uniform policies argued that such rules were designed to promote equality and prevent any form of discrimination among students. However, this posed a significant question about the balance between enforcing uniformity and respecting individual religious and cultural identities, particularly in a pluralistic society like India. The judiciary's obligation in such cases extends beyond simply enforcing laws. It must interpret the law in a manner that serves the larger public good and aligns with the intent of the Constitution, while also acknowledging the struggles that have shaped the social fabric of the nation. A nuanced approach is essential when dealing with marginalized groups, especially in contexts where historical disadvantages continue to impact their access to opportunities.

In the context of Muslim girls, who are recognized as part of India's religious minority community, it is important to consider the unique challenges they face. Unlike their counterparts from majority religious communities, Muslim girls have historically faced significant social and cultural barriers to accessing education. It has taken decades of effort and advocacy for many families within this community to allow

their daughters to attend schools. This progress has been achieved largely by ensuring that their educational journey does not require them to compromise on deeply held religious beliefs or cultural practices, including wearing the hijab. Imposing restrictions on the hijab under the pretext of enforcing uniformity could potentially reverse this progress. Such restrictions could alienate Muslim girls, discouraging them from pursuing education and thereby hindering their social and economic empowerment. The hijab, for many, is not merely a religious symbol but a personal choice and a source of comfort that enables them to navigate societal spaces, including educational institutions. Denying them this choice risks perpetuating systemic inequalities rather than addressing them.

Importantly, this case does not necessarily warrant the application of the “essentiality test”—a judicial tool used to determine whether a particular practice is an integral part of a religion. While not all Muslim girls or women choose to wear the hijab, the decision to do so must remain a matter of individual choice, as it encompasses both religious expression and personal agency. The hijab, for those who wear it, represents a sense of identity and serves as a protective shield that allows them to engage with society, pursue education, and access employment opportunities without feeling compromised in their faith or dignity.

If schools enforce a blanket ban on the hijab in the name of uniformity, they risk obstructing the educational aspirations of Muslim girls. Such a move would disproportionately impact a community that has only recently begun to bridge the gap in educational attainment. Rather than fostering inclusivity, such restrictions could widen existing inequalities and delay the community’s progress toward empowerment through education and socio-economic development. The judiciary must therefore adopt a holistic and empathetic approach, ensuring that its decisions uphold constitutional values while also accommodating the diverse realities of India’s multicultural society. Only by protecting individual freedoms and respecting cultural diversity can true equality and inclusivity be achieved.

The Indian Constitution enshrines the principles of Equality, Fraternity, and Secularism, treating them as foundational values of the nation’s democratic framework. These principles are neither subordinate to one another nor placed in a hierarchy; they are interdependent and must be upheld with equal vigor to maintain the delicate balance of rights and responsibilities in a pluralistic society. While individual rights to religion and belief are guaranteed, they must coexist with the broader goals of unity and equality. It is recognized, however, that certain religious practices may conflict with fundamental rights or undermine human dignity. In such situations, the judiciary often applies the essential religious practices test to determine whether the disputed practice constitutes an integral part of a religion and, if so, whether it should be protected or declared void. Nonetheless, it is important to note that not all religious practices are essential; some are optional or discretionary, and the choice to follow them should rest solely with the individual.

Under Article 25 of the Indian Constitution, individuals are guaranteed the freedom to profess, practice, and propagate their religion, as well as to exhibit their religious beliefs openly and without fear. This includes the wearing of religious symbols, such as the hijab. The mere act of wearing a hijab, or any other religious marker, does not, in itself, violate the secular principles that underpin India’s constitutional structure. On the contrary, such expressions of faith coexist with secularism, as secularism in the Indian context is rooted in the idea of tolerance and acceptance of all religions rather than the exclusion of religious expression from public life. The argument that wearing a hijab or displaying other religious symbols undermines the secular nature of school uniforms is both reductive and contradictory. Muslim girls who wear the hijab are not seeking any special privileges or exemptions that would disrupt the uniformity or discipline of the school environment. Instead, they are simply exercising their

constitutionally guaranteed right to express their faith. The idea of secularism is premised on fostering a society that respects diversity and allows individuals to practice their faith without fear of discrimination. By this logic, asking students to conceal or abandon their religious markers in the name of secularism contradicts the very essence of tolerance and acceptance that secularism seeks to promote.

Equality, as envisioned by the Constitution, does not mean erasing differences but embracing them without discrimination. True equality is achieved by acknowledging and respecting the diverse cultural, linguistic, and religious identities that make up the fabric of Indian society. A secular education system should not seek to homogenize students but rather create an environment where all students, regardless of their religion or beliefs, feel valued and included.

The concern that the mere act of wearing a hijab or displaying a religious symbol could disrupt the harmony of schools or society reflects a misunderstanding of secularism. Secularism is not about erasing visible markers of religion but about ensuring that such markers do not lead to discrimination or inequality. For secularism to thrive, society must encourage tolerance and acceptance of differences. If religious markers are hidden or suppressed, how can individuals learn to coexist and appreciate the diversity that defines India? The idea of secularism and equality in the Indian context is inherently tied to the celebration of diversity. Uniformity in schools should not mean uniformity in personal beliefs or cultural expression. It should instead signify a shared commitment to education and equality, free from discrimination or prejudice. By respecting individual choices—whether to wear a hijab or any other religious symbol—schools can nurture an environment that reflects the true spirit of constitutional values: one of inclusion, respect, and harmony.

In this context, it is pertinent to recall the Supreme Court's judgment in *Mohd. Fasi v. Superintendent of Police*, a case that raised significant questions about the interplay between individual religious expression and workplace regulations. The case involved a Muslim man employed at the Kerala High Court who challenged a rule prohibiting him from growing facial hair. The petitioner argued that sporting a beard was a fundamental aspect of his faith, deeply rooted in the teachings and traditions of Islam.

Islamic jurisprudence and primary sources emphasize the importance of maintaining a beard for Muslim men. According to Islamic teachings, growing a beard is viewed as an adherence to the tradition (Sunnah) of Prophet Muhammad, who not only practiced but encouraged this among his followers. Some Islamic scholars go further to classify shaving the beard as haram (forbidden), interpreting it as an act of "altering the creation of Allah." This perspective is supported by Quranic injunctions and the Hadith, which urge Muslims to emulate the Prophet in both practice and appearance. For many adherents, keeping a beard is not merely a personal preference but a demonstration of religious piety and submission to divine will.

Numerous authoritative sources reinforce the religious significance of this practice. For example, the Islamic Labour Code notes the emphasis Islamic law places on outward expressions of faith, such as maintaining a beard. Similarly, the Australian National Imams Council highlights the beard as a "highly recommended" practice within Islam, advocating its observance by male Muslims. Furthermore, the Quran itself underscores the importance of obedience to the Prophet as a form of obedience to Allah, stating: "He who obeys the Messenger has indeed obeyed Allah." Despite these religious considerations, the Supreme Court dismissed the petitioner's plea, relying on reasoning that did not fully engage with the theological and cultural aspects presented. The Court observed that several prominent Muslim leaders, including those in public and political life, did not sport beards. It also noted that the petitioner himself had not consistently maintained a beard in prior years. Based on these observations, the Court concluded that the petitioner's

claim lacked merit, treating the issue as a matter of personal practice rather than a binding religious obligation.

Critics of the judgment argue that the Court failed to engage meaningfully with the primary sources of Islamic law or the broader religious significance of maintaining a beard. Instead, the ruling appeared to hinge on anecdotal evidence and generalizations about practice within the Muslim community, without the benefit of comprehensive or scientific research into the doctrinal basis of the petitioner's claim. This approach overlooked the nuanced theological framework within which the practice of maintaining a beard is embedded, reducing the issue to a subjective matter of preference rather than acknowledging its deeper religious implications.

The case underscores the challenges courts face in adjudicating matters that intersect with religious practices, particularly in a secular legal system where the boundaries between personal faith and institutional regulations are often contested. While the Court's decision was rooted in considerations of workplace uniformity and discipline, its dismissal of the petitioner's arguments highlights the tension between secular law and religious expression, raising broader questions about how such conflicts should be navigated in a pluralistic society.

The Sabarimala verdict by the Supreme Court of India addressed the contentious issue of gender-based discrimination in the context of constitutional rights, particularly the Right to Equality under Article 14 and the Right Against Untouchability under Article 17. The Court ruled that the age-based exclusion of women between 10 and 50 years from the Sabarimala temple was discriminatory and unconstitutional. However, this decision has sparked widespread debate, as it arguably overlooked the constitutional protection afforded to religious beliefs and practices under Articles 25 and 26, which can only be curtailed in cases where such practices threaten public order, health, or morality.

The exclusion of women from the Sabarimala temple was not a recent development but a centuries-old practice deeply rooted in the traditions and beliefs associated with Lord Ayyappa, the deity of the temple. Unlike other Ayyappa temples across India, Sabarimala holds a unique position in Hindu religious tradition. The temple is dedicated to a celibate deity, and the restriction on women of menstruating age was historically tied to the belief that it helped maintain the sanctity of the deity's celibacy. This was a practice that the temple's devotees—both men and women—had widely accepted and revered as an integral part of their faith.

The Court's judgment, while emphasizing equality, failed to adequately account for the deeply held religious sentiments of the devotees. It treated the practice as a case of gender-based discrimination, sidelining the fact that the restriction was specific to Sabarimala and not imposed uniformly across all Ayyappa temples. By doing so, it arguably ignored the diversity of religious practices within Hinduism, where temples often have unique customs and rituals tailored to their specific deities.

Moreover, the verdict did not appear to resonate with the sentiments of the temple's devotees. The practice of restricting women from entering Sabarimala was not perceived by its followers as an act of discrimination but as a matter of religious faith and tradition. Devotees, including many women, have argued that the restriction was not intended to demean or exclude women but to uphold the unique customs of the temple. They viewed the practice as an essential component of their worship, handed down through generations.

Critics of the judgment also point out that the verdict has inadvertently caused more societal discord than harmony. By declaring the practice unconstitutional, the Court opened the door to protests, counter-protests, and legal challenges, leading to widespread unrest. Rather than fostering equality, the judgment

has been seen by many as an imposition on religious freedom, disrupting the delicate balance between constitutional rights and deeply held religious practices. While the Constitution upholds the principles of equality and non-discrimination, it also recognizes the right to freely practice and manage religious affairs, as long as such practices do not interfere with public order, health, or morality. The exclusion of women at Sabarimala, though controversial, did not directly threaten these concerns. Instead, it reflected a unique religious belief specific to that temple, which many argue should have been respected under the principle of religious autonomy.

Ultimately, the Sabarimala verdict has highlighted the complex intersection of constitutional rights and religious freedom in a pluralistic society like India. While the judiciary's intent to uphold gender equality is commendable, the ruling raises important questions about the extent to which courts can and should intervene in matters of faith and tradition. Striking a balance between these competing interests remains one of the most challenging aspects of constitutional jurisprudence in a diverse and deeply religious country.

Conclusion

The exploration of religious freedom within the framework of the Indian Constitution reveals the multifaceted challenges of balancing individual rights, societal norms, and cultural diversity in a secular democracy. While the constitutional provisions under Articles 25-28 enshrine the right to religious freedom, judicial interpretations and societal realities often shape the practical contours of this right. Through landmark judgments, the judiciary has played a pivotal role in safeguarding individual autonomy while addressing the broader societal implications of religious practices.

The above mentioned cases exemplify the judiciary's efforts to harmonize constitutional ideals with the complexities of a pluralistic society. However, emerging controversies, including debates over the hijab ban and religious conversions, underscore the ongoing tension between the need for uniformity in public policy and the preservation of cultural and religious diversity.

This analysis highlights that religious freedom in India is neither absolute nor illusory; instead, it is conditional and contingent upon the interplay of individual liberties, societal harmony, and constitutional principles. To ensure the continued vibrancy of India's secular ethos, it is essential to adopt a balanced approach—one that upholds constitutional values while embracing the nation's rich tapestry of traditions and beliefs.

Ultimately, the true test of religious freedom lies in fostering an inclusive environment where individual rights and collective aspirations coexist, contributing to a resilient and equitable democratic society.

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