

# Judicial Interpretation Of Religious Freedom In India

**Anas Jameel\***

Research Scholar, Department of Political Science  
Aligarh Muslim University, Aligarh

**Dr. Rachana Kaushal\*\***

\*\*Research Supervisor, Department of Political Science  
Aligarh Muslim University, Aligarh

## Abstract

This paper examines the judicial interpretation of religious freedom in India with a focus on constitutional provisions under Articles 25 to 28 and landmark judgments. The study traces the historical and constitutional foundations of religious liberty, emphasizing the framers' vision of a secular state that simultaneously respects faith and enables reform. It highlights how the judiciary has engaged with religious freedom through doctrines such as the essential religious practices test and the recognition of secularism as part of the Constitution's basic structure. Key decisions of judiciary illustrate the courts' efforts to balance conscience, minority rights, and state authority.

From a human rights perspective, judicial interventions have at times strengthened dignity and pluralism, particularly in protecting minority beliefs, but they have also constrained religious autonomy by allowing judges to define theological essentials. The analysis underscores inconsistencies in judicial reasoning and reveals the impact of political contexts on religious freedom jurisprudence. The paper concludes that while the judiciary has played a pivotal role in safeguarding secularism and equality, reliance on the essential practices doctrine undermines autonomy and predictability. A shift toward a rights-based framework rooted in constitutional morality and international human rights standards is suggested as the way forward for a more consistent protection of religious freedom in India.

**Keywords:** Religious Freedom, Indian Judiciary, Essential Practices Doctrine, Secularism, Human Rights

## 1. Introduction

Religious freedom is one of the foundational guarantees of the Indian Constitution. Drafted in a society marked by deep religious diversity, the framers of the Constitution recognized the need to safeguard freedom of conscience while simultaneously preserving secular governance.<sup>1</sup> Articles 25 to 28 of the Indian Constitution

<sup>1</sup> Kanan Gahrana, *Right to Freedom of Religion*, South Asian Publisher (New Delhi: South Asian Publisher, 1992).

collectively embody this vision by guaranteeing the right to profess, practice, and propagate religion, while subjecting these rights to considerations of public order, morality, and health.<sup>2</sup>

The judiciary has played a central role in interpreting these provisions. Through its evolving jurisprudence, the Supreme Court of India and various High Courts have attempted to reconcile individual liberty with broader state interests.<sup>3</sup> The judicial engagement with religious freedom has generated significant debates around doctrines such as the “essential practices test,” the principle of secularism as part of the Constitution’s basic structure, and the balance between religious autonomy and social reform.

The research problem that underpins this paper is the inconsistency and contestation surrounding judicial interpretation of religious freedom. While courts have often sought to protect minority rights and uphold constitutional morality, they have also ventured into theological terrain by deciding what constitutes the “essential” elements of a faith. This has raised questions about the judiciary’s role in mediating religion and politics.

This paper critically analyzes the judicial interpretation of religious freedom in India. It adopts a doctrinal method, focusing on constitutional provisions, case law, and secondary literature in political science and human rights scholarship. By examining landmark judgments, doctrinal developments, and their human rights implications, the paper argues that while the judiciary has been instrumental in safeguarding religious liberty, its approaches have often been selective, inconsistent, and shaped by broader political contexts.

## 2. Historical and Constitutional Context

The Constituent Assembly of India extensively debated the scope of religious freedom. Leaders such as B.R. Ambedkar, K.M. Munshi, and Alladi Krishnaswami Ayyar envisioned a model of secularism that respected faith but allowed state intervention to ensure social reform.<sup>4</sup> Unlike the Western notion of strict church–state separation, Indian secularism embraced the idea of “principled distance”, the state could intervene in religion to curb discriminatory practices while refraining from endorsing any faith.<sup>5</sup>

Articles 25 to 28 embody this constitutional compromise.<sup>6</sup> Article 25 guarantees freedom of conscience and the right to profess, practice, and propagate religion, subject to public order, morality, and health. Article 26 grants religious denominations autonomy in managing their own affairs. Article 27 prohibits compulsion to pay taxes for promoting any specific religion, while Article 28 restricts religious instruction in state-funded educational

---

<sup>2</sup> Deepa Das Acevedo, “Secularism in the Indian Context,” *Law & Social Inquiry* 38, no. 1 (2013): 138–67, <http://www.jstor.org/stable/23357741>.

<sup>3</sup> Ronojoy Sen, *Articles of Faith: Religion, Secularism, and the Indian Supreme Court*, Oxford University Press (New Delhi, 2012).

<sup>4</sup> C A D, “Constituent Assembly Debates. Vol.IX” I, no. November 1948 (2009).

<sup>5</sup> Partha Chatterjee, “Secularism and Toleration,” *Economic & Political Weekly* 29, no. 28 (1994): 1768–77, <https://doi.org/papers2://publication/uuid/D791042C-DC41-4438-9DF6-C5C9BFF4F667>.

<sup>6</sup> Rajeev Dhavan, “Religious Freedom in India,” *The American Journal of Comparative Law* 35, no. 1 (February 17, 1987): 209–54, <https://doi.org/10.2307/840167>.

institutions.<sup>7</sup> Together, these provisions outline a vision where individual liberty and denominational rights coexist with state regulation.

Early judicial interpretations reflected this duality. In the *Shirur Mutt* case (1954), the Supreme Court affirmed denominational autonomy but simultaneously carved out space for state oversight by distinguishing between “religious” and “secular” practices.<sup>8</sup> The seeds of the essential practices doctrine were sown here. This interpretive trajectory illustrates how constitutional provisions provided both protection and regulatory scope, enabling the judiciary to define the contours of religious liberty.

### 3. Judicial Approaches: Key Judgments

Over the decades, the judiciary has delivered several landmark rulings shaping the meaning of religious freedom in India. These judgments reveal a shifting balance between protecting minority rights, affirming secularism, and justifying state intervention.

One of the most celebrated decisions is *Bijoe Emmanuel & Ors vs State of Kerala & Ors on 11 August, 1986*, where Jehovah’s Witness students refused to sing the national anthem in school.<sup>9</sup> The Supreme Court held that forcing them to sing violated their freedom of conscience under Article 25. The Court emphasized that genuine religious belief, even if unpopular, deserves protection. This judgment remains a powerful affirmation of minority rights against majoritarian pressure.

In *S.R. Bommai v. Union of India* (1994), the Court held that secularism is part of the Constitution’s basic structure.<sup>10</sup> This case arose in the context of state governments allegedly acting in communal fashion. By affirming secularism as unamendable, the judiciary reinforced its role as the guardian of India’s pluralist order. At the same time, in *Ismail Faruqui v. Union of India* (1994), concerning the Babri Masjid site, the Court took a restrictive view, holding that a mosque is not essential to Islamic practice.<sup>11</sup> This reasoning, heavily criticized by scholars, reflected the Court’s tendency to define the essence of religious practices, thereby entering theological terrain.

The *Commissioner of Police v. Acharya Jagdishwarananda Avadhuta* (2004) case further highlighted judicial regulation. The Court ruled that the performance of the Tandava dance by Ananda Margis was not an essential practice of their faith, thereby justifying restrictions on public performances.<sup>12</sup>

In *Aruna Roy v. Union of India* (2002), the Court upheld the National Curriculum Framework, which included teaching about religions in a non-sectarian way.<sup>13</sup> This judgment reiterated the idea of neutrality while permitting state initiatives to foster understanding of diverse traditions.

---

<sup>7</sup> Durga Das Basu, *Introduction to the Constitution of India*, LexisNexis, 22nd ed. (New Delhi: LexisNexis, 2015).

<sup>8</sup> Ronojoy Sen, “The Indian Supreme Court and the Quest for a ‘Rational’ Hinduism,” *South Asian History and Culture* 1, no. 1 (2009): 86–104.

<sup>9</sup> Dhavan, “Religious Freedom in India.”

<sup>10</sup> M Mohsin Alam, “Constructing Secularism: Separating ‘Religion’ and ‘State’ under the Indian Constitution,” *Australian Journal of Asian Law* 11, no. 1 (2009): 29–55.

<sup>11</sup> Abdul Ghafoor Noorani, *The Muslims of India: A Documentary Record* (Oxford University Press, 2004).

<sup>12</sup> Sen, “The Indian Supreme Court and the Quest for a ‘Rational’ Hinduism.”

These cases reveal the judiciary's oscillation: sometimes protecting conscience and minority rights, sometimes limiting religious claims in the name of secularism or reform.

#### 4. Doctrines and Principles

The most influential judicial tool in religious freedom cases has been the "essential practices" doctrine. Originating in the *Shirur Mutt* case, this doctrine allows the judiciary to determine whether a practice is fundamental to a religion. If deemed essential, it enjoys protection; if not, the state may regulate it.<sup>14</sup>

Critics argue this doctrine places judges in the role of theologians, undermining religious autonomy. For instance, in the *Ananda Margi* cases, courts declared that the Tandava dance was not essential, effectively overriding believers' claims. Similarly, in *Ismail Faruqui*, the declaration that a mosque is not essential to Islam remains deeply contested.

Alongside essential practices, courts have balanced religious freedom against other fundamental rights and state interests. Practices that contravene equality or public health have often been restricted. For example, cases involving temple entry, untouchability, and caste-based discrimination illustrate how the judiciary prioritized constitutional morality over religious autonomy.

Secularism forms another guiding principle. In *Bommai*, the judiciary elevated secularism to a basic feature, ensuring that the state cannot act in a partisan religious manner. Yet, secularism in India is not equidistant neutrality; rather, it permits state intervention to reform religion. This hybrid model distinguishes Indian constitutionalism from Western strict separation.

The interplay of essential practices, balancing tests, and secularism demonstrates the judiciary's active but contested role in defining religion within constitutional limits.

#### 5. Human Rights Perspective

From a human rights standpoint, judicial interpretation of religious freedom raises both achievements and challenges.<sup>15</sup> On one hand, judgments like *Bijoe Emmanuel* exemplify strong protections for freedom of conscience, affirming the dignity of marginalized believers.<sup>16</sup> Such rulings align with international human rights instruments like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which guarantee freedom of thought, conscience, and religion.<sup>17</sup>

On the other hand, the judiciary's approach has often struggled to balance religious freedom with equality and non-discrimination. Women's rights faced tension with religious claims. Cases concerning triple talaq and women's entry into places of worship highlight the ongoing dilemmas, the courts laid the groundwork by

---

<sup>13</sup> Krishna Kumar, "Judicial Ambivalence and New Politics of Education," *Economic and Political Weekly*, 2003, 5163–66.

<sup>14</sup> Shylashri Shankar, "A Juridical Voyage of 'Essential Practices of Religion' From India to Malaysia and Pakistan," *American Behavioral Scientist* 60, no. 8 (2016): 941–65.

<sup>15</sup> Sen, "The Indian Supreme Court and the Quest for a 'Rational' Hinduism."

<sup>16</sup> *Bijoe Emmanuel & Ors vs State of Kerala & Ors on 11 August, 1986*

<sup>17</sup> Anat Scolnicov, *The Right to Religious Freedom in International Law: Between Group Rights and Individual Rights*, Routledge, First (New York: Routledge, 2010), <https://doi.org/10.4324/9780203842638>.

asserting that discriminatory practices could not be justified as essential religious practices, but inconsistencies remained.

Minority rights also form a crucial dimension. Judicial protection of linguistic and religious minorities, such as in *Bijoe Emmanuel & Ors vs State of Kerala & Ors* on 11 August, 1986, illustrates sensitivity to pluralism. Yet judgments like *Ismail Faruqui* revealed the Court's susceptibility to political contexts, undermining minority confidence.

Comparatively, India's jurisprudence diverges from international trends by allowing courts to define theology. While international law defers to religious communities on doctrine, Indian courts assert authority to determine essentials.<sup>18</sup> This creates a distinctive but controversial model of judicial oversight of religion.

## 6. Critical Analysis

The strengths of judicial interpretation lie in its recognition of secularism as a constitutional cornerstone and its willingness to protect conscience in certain contexts. The judiciary has acted as a bulwark against majoritarian pressures, particularly in cases like *Bijoe Emmanuel* and *Bommai*. By embedding secularism into the basic structure, the Court insulated pluralism from constitutional amendments.

However, the essential practices doctrine exposes deep flaws. By assuming the authority to define what is "essential" to a faith, the judiciary risks delegitimizing sincere religious claims and centralizing power in the state. This contradicts the principle of autonomy inherent in human rights discourse.

The inconsistency of judgments further weakens the judiciary's credibility. While minority rights are sometimes upheld, in politically sensitive cases such as *Ismail Faruqui*, the judiciary appeared deferential to dominant narratives. This selective protection undermines faith in constitutional neutrality.

Moreover, the Indian judiciary has often blurred the line between reform and regulation.<sup>19</sup> While interventions to ban untouchability or enable temple entry further equality, the same logic has been used to justify restrictions that dilute minority autonomy. This duality raises questions about whether judicial interpretation genuinely advances human rights or primarily extends state control over religion.

The implications for democratic governance are profound. Judicial interpretation shapes the meaning of secularism in practice, often recalibrating the balance between pluralism, reform, and state power. By acting as both guardian and regulator, the judiciary performs a paradoxical role, protecting rights while curbing autonomy.

## 7. Conclusion

The Indian judiciary's interpretation of religious freedom reflects both the promise and the paradox of constitutional secularism. Through landmark judgments, the courts have elevated secularism to the status of a basic structure, affirmed minority rights, and restricted discriminatory practices. Yet, the reliance on the

---

<sup>18</sup> Michael J Perry, "A Right to Religious Freedom-The Universality of Human Rights, the Relativity of Culture," *Roger Williams UL Rev.* 10 (2004): 385.

<sup>19</sup> Sen, *Articles of Faith: Religion, Secularism, and the Indian Supreme Court*.



essential practices doctrine has often undermined autonomy, leaving the judiciary vulnerable to charges of inconsistency and politicization.

The findings of this paper underscore that judicial interpretation has been central but contested. While courts have preserved India's pluralist fabric in several contexts, they have also constrained religious liberty by venturing into theological judgments. The future of religious freedom in India requires moving toward a rights-based framework that prioritizes dignity and equality without arrogating to judges the role of defining faith.

Aligning judicial interpretation with international human rights standards and constitutional morality can help strike a more consistent balance between religious freedom and social reform. Ultimately, safeguarding religious liberty in India demands not only judicial vigilance but also restraint, ensuring that constitutional secularism nurtures pluralism while protecting fundamental rights.

