
JUDICIAL GOVERNANCE OF RELIGION IN INDIA AND INDONESIA: ESSENTIAL PRACTICES, PANCASILA, AND CONSTITUTIONAL COURTS

David Pradhan¹ & Chandan Panigrahi²

ABSTRACT

This review article examines the judicial governance of religion in India and Indonesia. It posits that constitutional courts in both jurisdictions go beyond mere resolution of disputes over religious freedom. Through their decisions, judges constitutively define the legal meaning of religion, circumscribe the limits of constitutional protections, and mediate the relationship between public order, equality, conscience, community, and State authority. India and Indonesia are useful for comparison because both postcolonial constitutional democracies are deeply religiously diverse, but speak different constitutional vocabularies. India uses the language of secularism, freedom of conscience, denominational autonomy, equality and the basic structure. Indonesia uses Pancasila, belief in the One and Only God, religious harmony, public order, and administrative recognition of religion and belief. In India, the essential religious practices doctrine has allowed courts to protect religious autonomy, but it has also placed judges in the difficult position of deciding what a religion truly means and comprises of. In Indonesia, the Constitutional Court has interpreted Pancasila and Article 29 of the 1945 Constitution in ways that preserve the regulated religious order, while also opening limited space for excluded belief communities. The blasphemy law decision and the indigenous beliefs decision reveal this dual character. The article concludes that judicial governance of religion should be assessed through recognition, regulation, and restraint. Courts must recognise plurality without converting recognition into hierarchy, permit regulation only through disciplined constitutional reasons, and restrain both State power and judicial theological overreach.

Keywords: Judicial governance, essential practices, Pancasila, Constitutional Courts, Religious freedom.

¹ Researcher, Department of Law, Manipur International University, Imphal, Manipur. Orcid Id: <https://orcid.org/0000-0002-4448-8293>.

² Assistant Professor, Department of Social Sciences, Fakir Mohan University, Balasore, Odisha. Orcid Id: <https://orcid.org/0000-0001-8890-9179>.

1. Introduction

The constitutional relation between law, the State, and religion is rarely settled by text alone. A constitution may refer to secularism or religious freedom, equality, public order or national harmony. Until the courts rule on a specific controversy, these words have no practical effect. When assessing religious claims, courts tend to make threshold determinations as to whether internal disputes belong to protected conscience, institutional autonomy, civil law, public order or political mobilisation. They determine whether the practice is religious, whether it is essential, whether it can be regulated, and whether equality or dignity justifies constitutional intervention. In that limited but powerful sense, constitutional courts govern religion.

This judicial governance is especially visible in India and Indonesia. Both countries are large postcolonial republics. Both contain deep religious diversity. Both inherited legal pluralism and religious classification from colonial rule. They both also built democratic constitutional orders in which religion remained publicly significant. However, the two jurisdictions have different adopted grammars in their constitutional documents. The Constitution of India articulates the nature of the State through conceptual lens of secularism and, thereby, protects as fundamental the freedom of conscience, the right to profess, practise, and propagate religion, not just religious but even denominational autonomy, and the concomitant right to cultural and educational development, equality, dignity, and personal liberty. Indonesia does not identify itself constitutionally as secular in the classical Western sense. The nation's constitutional order is based on Pancasila, especially Pancasila I which is belief in the One and Only Almighty God, and article 29 of the 1945 Constitution guarantees freedom of worship according to one's religion or belief.

This difference makes the comparison useful. India is not a strict separationist State. The Constitution permits the State to regulate secular aspects of religious activity and to legislate for social welfare and reform. Indian courts therefore adjudicate religion through a framework in which autonomy, reform, and equality are in constant tension. Indonesia is not a theocracy. Pancasila prevented the formal establishment of an Islamic State and has allowed a national ideology of plural religious belonging. At the same time, Indonesian law treats religion as central to public morality, identity documentation, education, religious harmony, and national order. The State recognises and regulates religion rather than leaving it entirely to private conscience.

The central question in this article is not whether courts should deal with religion. In both countries they already do so. The more exact question is how they govern religion and whether their methods preserve equal citizenship. In India, the Supreme Court over a period of time, and in a progressive manner from *The Commissioner, Hindu Religious Endowments, Madras v. The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, jurisprudentially developed the essential religious practices doctrine. The doctrine initially protected religious practice from an unduly narrow understanding of religion. Over time, however, this has resulted in the courts appropriating the authority to identify what comprises the practices which are essential to a faith and therefore protected, as distinct from associated secular practices which are amenable to executive regulation. The usurpation of authority by the Judiciary has moulded the path that cases concerning places of worship, intra religious denominational conflicts, aspects of religious dress and food, practices of gender exclusion, religious and secular education, applicable religious personal law, and public order have taken.

Indonesia presents a different but comparable pattern. The Constitutional Court of the Republic of Indonesia does not usually ask whether a practice is essential to religion in the Indian sense. It interrogates if law and State action cohere within Pancasila, Article 29, religious harmony, public order, and the limitation clause in Article 28J. In Decision No. No. 140/PUU-VII/2009, the Court upheld the validity of the Blasphemy Law and held that the protection of religion and religious harmony are issues of constitutional importance. In Decision No. 97/PUU-XIV/2016, it held that adherents of native Indonesian indigenous beliefs should not be falsely identified as practitioners of the recognised religions only for census identification for population administration. The same constitutional vocabulary, therefore, has been used both to preserve regulated orthodoxy and to correct recognitional exclusion.

The argument advanced here is that Indian and Indonesian courts govern religion through three connected functions. First, they recognise religion by deciding which beliefs, practices, institutions, and identities become legally visible. Secondly, they regulate religion by defining the extent to which the State may control institutions, doctrine, personal law, religious identity, public expression, and religiously inflected public order. Thirdly, they restrain religion and the State by setting constitutional limits on coercion, exclusion, majoritarian sentiment, and administrative control. These functions are not always performed consistently. Recognition can harden into classification. Regulation can become domination. Restraint can become selective

deference to powerful communities or State interests.

The article is written as a doctrinal and comparative review. It does not provide an exhaustive history of religion in India and Indonesia. It concentrates on judicial reasoning because courts are the institutional site where constitutional language is made operational. The broader claim is simple but demanding. Courts must engage religion without becoming theologians. They must preserve public order without converting majority anxiety into constitutional reason. They must respect community autonomy without abandoning persons located within communities, particularly women, dissenters, converts, heterodox believers, indigenous communities, and non-believers.

2. Method and Scope of Review

This review article follows a comparative, doctrinal, and contextual methodology. Doctrinally, it analyses the provisions of the constitutions, statutory legislations, and judicial decisions from both the jurisdictions of India and Indonesia. Comparatively, it does not treat India as the secular norm and Indonesia as the religious exception. Such a binary would misdescribe both jurisdictions. India formally adopts secularism but permits extensive State engagement with religion. Indonesia adopts a theistic national philosophy but rejects formal theocracy. Contextually, the review reads judicial decisions as institutional acts shaped by history, nationhood, social hierarchy, and religious politics.

The focus is not on every question of law and religion. For India, the article concentrates on Article 25, Article 26, secularism as basic structure, the essential religious practices doctrine, individual conscience, gender equality, religious dress, personal law, and public order. For Indonesia, it concentrates on Pancasila, Article 29, Article 28J, the Blasphemy Law decision, the indigenous beliefs decision, religious recognition, and Aceh's regional Islamic criminal law as a pressure point in constitutional pluralism. These themes are sufficient to show how courts make religion legally legible. A review article must also be careful about the kind of claim it makes. The article refrains from asserting that courts alone may determine the ambit of religion in public life. It acknowledges that other stakeholders and actors such as the Legislatures, ministries, local administrations, political movements, police authorities, religious councils, and civil society actors, all have a constructive and constitutive role. The narrower claim is that courts have a particular authority to convert these struggles into constitutional categories. A Court may not create a religious conflict, but it may decide whether that conflict is framed as

conscience, order, equality, culture, offence, or orthodoxy.

The method, therefore, rejects both romantic pluralism and mechanical secularism. It does not assume that all religious autonomy is emancipatory. It also does not assume that every State intervention into religion is hostile to freedom. A court may need to protect religious institutions from arbitrary State control. It may also need to protect individuals against exclusion within religious institutions. The quality of adjudication depends on whether the court uses constitutional reasons with evidentiary care, doctrinal discipline, and institutional restraint.

The comparative frame is assisted by the distinction drawn by Sezgin and Künkler (2014) between judicialisation and bureaucratisation. They argue that India has often delegated religious questions to the Courts, while Indonesia has frequently handled religious matters through bureaucratic structures such as the Ministry of Religious Affairs. The distinction is not absolute, because Indonesian courts also decide constitutional questions, and Indian administrations also classify and regulate religion. It nevertheless helps explain why Indian litigation often turns on judicial tests, while Indonesian disputes often arise from State recognition, identity documents, administrative permits, and official religious categories. The present article builds on that insight but narrows the focus to Courts. Its concern is not whether judicialisation is better than bureaucratisation. Its concern is how Courts respond once religious classification, religious harm, or religious recognition is brought before them.

3. Courts and the legal production of religion

Courts cannot decide religious cases without defining religion for legal purposes. A claimant may describe a practice as sacred. The State may call it secular, optional, harmful, political, or disorderly. A community may claim autonomy. A woman within that community may claim equality. A minority congregation may ask for protection. A local majority may present the same claim as a threat to harmony. The court must then translate lived religious conflict into a legal category. This translation is never neutral. It determines what kind of religion the Constitution can see.

Talal Asad's work is helpful because it shows that secular law does not simply separate religion from politics. It helps in producing religion as an object of regulation (Asad, 2003). Once a court asks whether something is religious, essential, reformable, public, private, harmful, or

merely cultural, it participates in the making of religion as a legal object. Robert Cover's account of law as nomos and narrative similarly reminds us that legal interpretation orders normative worlds rather than merely resolving technical disputes (Cover, 1983). In religious cases, this ordering can affect how communities understand themselves and how the State treats them.

Modern constitutional law often begins from conscience. Liberal theory asks whether the individual should be protected from coercion in matters of ultimate belief. This remains important, but it is incomplete in postcolonial societies. Religion appears not only as inward belief, but also as family law, community status, caste location, religious education, temple management, public symbols, local administration, and electoral rhetoric. A purely private conception of religion, therefore, cannot explain why Courts in India and Indonesia are repeatedly drawn into the field. Judicial governance may be rights-protective. A court may restrain the State from suppressing unpopular conscience. *Bijoe Emmanuel v. State of Kerala* is the classic Indian illustration. A Court may also correct administrative exclusion, as the Indonesian Constitutional Court did in Decision No. 97/PUU-XIV/2016. Judicial governance may also be controlling. A court may narrow religion to a judicially approved core, or uphold a legal regime that protects recognised religion against alleged deviation. This dual character makes religious freedom adjudication institutionally delicate. The difficulty lies in standards. If Courts defer entirely to religious communities, constitutional law may leave women, dissenters, converts, and internal minorities without remedy. If Courts decide matters of doctrine too readily, they risk becoming theological authorities. If Courts uphold every restriction justified by public order, hostile groups may learn that disorder is an effective veto. If Courts reject public order altogether, the State may be disabled from preventing real violence. A disciplined judicial method must therefore separate religious truth from constitutional harm. Courts need not decide whether a doctrine is metaphysically correct. They must decide whether the State has a constitutionally valid reason to restrict or protect a practice.

Comparative constitutional theory is useful here because it resists the temptation to treat national cases as isolated curiosities. Hirschl (2014) argues that comparison must attend to institutions, context, and constitutional migration rather than to formal similarity alone. Applied to religion, this means that Article 25 of the Indian Constitution and Article 29 of the Indonesian Constitution cannot be compared as if they were identical religious freedom clauses. Their surrounding vocabularies differ. India uses secularism, reform, equality, and

denominational autonomy. Indonesia uses Pancasila, religious values, beliefs, and harmony. Yet both systems require courts to decide how much constitutional space religion may occupy.

Mahmood (2016) adds another caution. Minority claims are often shaped by the very legal categories that promise to protect them. A minority must present itself in terms that the State and Court can recognise. This is evident in both jurisdictions. In India, a practice is safer if it can be shown to be essential, denominational, or conscience-based. In Indonesia, a belief is safer if it can be registered, named, and reconciled with the Pancasila order. Legal protection therefore often arrives through legal translation. That translation may be necessary, but it may also alter the claimant's own vocabulary of faith. This is where India and Indonesia become particularly instructive. India's essential practices test directly asks whether a practice is integral to religion. Indonesia's Pancasila jurisprudence does not usually use that language, but it asks whether religious claims fit within a recognised and harmonious constitutional order. One model risks judicial theologising. The other risks administrative and majoritarian orthodoxy. Both Courts therefore, produce the legal boundaries of religion, although they do so through different idioms.

4. India and the essential religious practices doctrine

Indian constitutional law is built on engagement rather than withdrawal. Article 25 protects freedom of conscience and the right freely to profess, practise, and propagate religion, subject to public order, morality, health, and other fundamental rights. It also permits regulation of secular activities associated with religious practice and laws for social welfare and reform. Article 26 protects religious denominations in matters of religion. Articles 29 and 30 protect cultural and educational rights of minorities. Articles 14, 15, 19, and 21 place religion within a broader rights structure of equality, expression, dignity, and liberty.

The essential religious practices doctrine emerged in this setting. In *Shirur Mutt*, the Supreme Court held that religion includes not only belief but also practices regarded by a religious community as integral to its religion. The decision was initially protective. It resisted an impoverished view in which religion was confined to inward belief and ritual autonomy could be treated as mere administration. It recognised that religious institutions may have constitutionally protected spheres. Bhargava's (2010) account of Indian secularism as principled distance helps explain why the Court did not adopt strict separation. The Constitution permits engagement with religion, but that engagement must be justified by

liberty, equality, reform, and institutional fairness.

The later line of cases narrowed and complicated that promise. In *Ratilal Panachand Gandhi v. State of Bombay*, the Court again recognised that religious practice could not be reduced to abstract belief. Yet in *Durgah Committee, Ajmer v. Syed Hussain Ali*, the Court suggested that courts could exclude practices considered superstitious, accretive, or extraneous. This shifted the inquiry from whether a community regarded a practice as religious to whether the court regarded it as essential. The doctrinal movement appears subtle, but it is constitutionally significant. It changed the judge from protector of religious autonomy into an assessor of religious authenticity. The move from protection to assessment has never been entirely stable. *Shirur Mutt* placed weight on the understanding of the religious denomination. *Durgah Committee* gave greater confidence to judicial correction of allegedly non-essential accretions. Later cases moved between these poles without producing a clear judicially manageable standard. The test, therefore carries two impulses at once. It protects religion from being reduced to secular administration, and it also allows judges to rationalise religion by stripping away what they regard as peripheral. Sen (2010) rightly shows that this gives the Supreme Court an unusual role in shaping the public meaning of religion.

The Dawoodi Bohra excommunication case, *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*, shows the older tension between group autonomy and individual civil status. The majority protected denominational authority, while Justice Sinha's dissent insisted that practices producing civil exclusion cannot be immunised merely because they are religious. Bhatia (2016) uses this dissent to build an anti-exclusion principle. That principle does not require courts to decide what a religion truly teaches. It asks whether a practice excludes individuals from basic social, economic, or civic goods in a manner inconsistent with constitutional dignity.

This alternative is important because essentiality is an unstable doctrinal threshold. It may protect a practice once the court is satisfied that it is central. It may also deny protection without serious engagement with the actual burden imposed on the claimant. In *A. S. Narayana Deekshitulu v. State of Andhra Pradesh*, temple administration and hereditary claims were treated through a distinction between religious matters and secular regulation. Such cases show why the Constitution permits State intervention. Religious institutions often control property, access, employment, and public functions. Yet intervention must still be justified through

constitutional competence and rights, not merely through judicial preference for rationalised religion. The most attractive Indian counterpoint to essentiality remains *Bijoe Emmanuel*. The Jehovah's Witness children in that case did not refuse respect for the national anthem. They stood silently but did not sing because of conscience. The Court protected them without demanding that their conduct be proved as an essential practice of a large religious tradition. The decision gave independent weight to sincerity, conscience, and non-coercion. It is a better model for many modern controversies because it avoids theological certification and asks whether the State has a sufficient reason to compel conformity.

The Karnataka hijab controversy revealed the continuing cost of essentiality. In *Resham v. State of Karnataka*, the High Court upheld the restriction on wearing the hijab in State pre-university colleges and held that the hijab was not an essential practice in Islam. The judgment gave weight to uniformity, institutional discipline, and the absence of essentiality. In *Aishat Shifa v. State of Karnataka*, the Supreme Court split. One opinion accepted the institutional discipline argument. The other foregrounded choice, dignity, education, and the burden placed on Muslim girls. The unresolved split shows that the essential practices test may displace better constitutional questions. A court should ask whether the restriction pursues a legitimate aim, whether the aim could be achieved through accommodation, whether the burden falls disproportionately on a minority group, and whether exclusion from education is a constitutionally tolerable consequence.

Sabarimala sharpened the same problem in another direction. In *Indian Young Lawyers Association v. State of Kerala*, the Supreme Court held that the exclusion of women of menstruating age from the Sabarimala temple was unconstitutional. The majority relied on equality, dignity, and constitutional morality, and rejected the claim that the devotees formed a separate religious denomination entitled to autonomy under Article 26. Justice Indu Malhotra dissented, warning that courts should not easily interfere in matters of faith unless constitutional injury is clear. Later, in *Kantaru Rajeevaru v. Indian Young Lawyers Association*, the Court referred larger questions concerning essential practices and the scope of judicial review in religion matters. This continuing uncertainty proves that the doctrine has not reached doctrinal settlement.

Sabarimala cannot be resolved by a simple call for intervention or deference. If courts defer entirely, religious autonomy may shield exclusionary practices. If courts intervene through

their own account of true religion, they may erase religious self-understanding. A better route is to ask whether a practice, even assuming its religious character, causes a constitutionally cognisable injury. Gender exclusion, caste exclusion, denial of access, civil disability, and coercion can be assessed without judges deciding the inner truth of faith. Personal law cases raise the question differently. In *Mohd. Ahmed Khan v. Shah Bano Begum*, the Court interpreted maintenance law to protect a divorced Muslim woman, but the political response revealed the sensitivity of judicial intervention into minority personal law. In *Shayara Bano v. Union of India*, the Court invalidated instant triple talaq, though the judges differed in route. These decisions show that Courts govern religion indirectly through family law, gender justice, and statutory interpretation. They also show that rights-protective intervention may be vulnerable to charges of majoritarian interference if the Court does not articulate its reasoning with special care.

Public order forms another branch of Indian judicial governance. In *Ramji Lal Modi v. State of Uttar Pradesh*, the Supreme Court upheld Section 295A of the Indian Penal Code, which penalises deliberate and malicious acts intended to outrage religious feelings. The judgment reflected concern for public peace in a society marked by religious conflict. Yet the public order rationale is dangerous when it rewards anticipated hostility. If a religiously offended group threatens disorder, and the State restricts the speaker or minority claimant rather than the threat, public order becomes a majoritarian veto. *Rev. Stainislaus v. State of Madhya Pradesh* illustrates another version of this problem. The Court held that Article 25 protects propagation but not a right to convert another person. Regulation of fraud, force, or inducement is legitimate. The difficulty arises when voluntary persuasion is treated with suspicion because it alters community demography or unsettles local majorities.

Secularism as basic structure offers a higher constitutional safeguard, but it does not cure every methodological defect. In *S. R. Bommai v. Union of India*, the Supreme Court held that secularism is part of the basic structure. The State cannot identify itself with one religion. *Kesavananda Bharati v. State of Kerala* supplies the doctrinal foundation for basic structure review. *Bommai* gives secularism a structural status tied to democracy, equality, and federalism. Yet a court can affirm secularism in principle while applying essentiality, public order, or institutional discipline in ways that burden minorities. The Ayodhya decision in *M. Siddiq v. Mahant Suresh Das* further shows the challenge of judicial governance in a dispute saturated with religious symbolism. The Court decided title through evidence, property law,

and remedies, while acknowledging the illegality of the demolition of the mosque. Yet the case also demonstrates how courts may be required to decide disputes whose legal surface cannot be separated from civilisational memory and political mobilisation. The judicial craft lies in preventing the symbolic force of majority religion from silently directing the legal result. The Indian experience therefore reveals a dense and ambivalent model. Courts protect religious freedom, define religious essence, regulate institutions, mediate public order, apply equality, and sometimes absorb political anxieties into doctrine. The essential religious practices doctrine remains the clearest expression of this ambivalence. It gives courts a tool to separate protected religion from regulable activity. It also gives them a power they are institutionally unsuited to exercise, namely the power to decide what a religion truly requires.

5. Indonesia, Pancasila, and Constitutional Court review

Indonesia's constitutional order begins from a different place. Pancasila, the foundational State philosophy, affirms belief in the One and Only God as its first principle. Article 29 of the 1945 Constitution declares that the State is based upon that belief and guarantees freedom of worship according to religion or belief. The constitutional settlement rejected a formal Islamic State, particularly after the deletion of the Jakarta Charter's seven words. It also rejected a secular public order that would treat religion as merely private. Indonesia's model is therefore not secular in the Western separationist sense, but neither is it theocratic.

This constitutional form is often described as a religiously inflected national compromise. Butt and Lindsey (2012) exhibit that Indonesian constitutionalism after Reformasi is marked by the interaction of Pancasila, democracy, rights, and State authority. Menchik (2014) describes the political culture through the language of godly nationalism, where public citizenship is expected to be religious even when the State is not formally Islamic. Bagir (2018) demonstrates that religious governance in Indonesia has long operated through recognition, harmony, and administrative management. These accounts help explain why Indonesian courts reason differently from Indian courts. The main question is not essential. It is whether religious freedom can be exercised within Pancasila, harmony, recognised belief, and public order. The Constitutional Court is central to this order. It reviews statutes against the Constitution and has become an important post-Reformasi institution. Its authority, however, does not replace all other forms of judicial review. The Supreme Court exercises material review over regulations below statutes, including certain regional regulations. This distinction matters because Aceh's

regional Islamic legal regime is not simply a Constitutional Court problem. It is part of a wider system in which national statutes, regional autonomy, qanun, religious courts, and Supreme Court review interact. Feener (2007) shows that modern Indonesian Islamic legal thought has been shaped by State institutions, reformist movements, and legal modernisation rather than by classical doctrine alone. Crouch's (2014) study of conflict and courts in West Java also shows that local religious disputes often reach law through administrative permits, policing, and court processes. The Indonesian Constitutional Court must therefore be read within a broader institutional ecology. The Court may deliver a constitutional judgment, but the everyday governance of religion is often carried by identity offices, local administrations, ministries, police authorities, religious councils, and regional governments.

Decision No. 140/PUU-VII/2009 on the Blasphemy Law remains the most important Indonesian Constitutional Court decision for this article. The petitioners challenged Presidential Decree No. 1/PNPS/1965 on the Prevention of the Misuse and/or Defamation of Religion, which was later given statutory status by Law No. 5 of 1969. They argued that the law violated freedom of religion, equality, expression, legal certainty, and the rights framework in the amended Constitution. The Court rejected the challenge. It accepted that Indonesia is not a secular State in the sense of excluding religion from public authority. It treated Pancasila and Article 29 as requiring the State to protect religion and preserve harmony. Article 28J, which permits limitations by law in order to respect rights, morality, religious values, security, and public order, gave constitutional support to regulation.

Crouch (2012) argues that the decision shows how the Court constructed religion as a public good to be protected by the State. This is not an individualistic model of religious freedom. It is a communitarian and harmony-based model. Religion is protected, but recognised religion and orthodox boundaries receive special protection. The legal problem is clear. If the State must protect religion from misuse or defamation, it must also decide what counts as misuse, who represents a religion, and when heterodoxy becomes unlawful deviation. Such questions may be presented as public order concerns, but they often involve theological and majoritarian assumptions.

The Court's use of Article 28J is particularly important. The provision allows statutory limitation of rights to secure recognition and respect for the rights and freedoms of others, and to meet demands based on morality, religious values, security, and public order in a democratic

society. The phrase “religious values” gives Indonesian limitation analysis a distinctive complexion. In a liberal proportionality model, limitation usually turns on public order, public health, rights of others, or similar secular justifications. In Indonesia, religious values themselves can become part of the constitutional justification for restriction. That does not automatically defeat religious freedom, but it changes the terrain. The claimant must argue within a constitutional order where religion is not only protected against the State but also used by the State as a source of public limitation.

The consequences for minorities have been serious. Human Rights Watch (2013) documented abuses against religious minorities in Indonesia, including Ahmadiyah followers, Shia communities, Christians, and smaller groups. Blasphemy law does not operate alone. It interacts with local administration, policing, the Ministry of Religious Affairs, the Indonesian Ulema Council, local pressure groups, and the politics of recognised religion. The formal judgment may speak of harmony. On the ground, harmony may become a demand that minorities reduce their visibility or modify their beliefs.

Bagir, Asfinawati, Suhadi, and Arianingtyas (2020) explain this through the Indonesian limitation framework. After constitutional reform, rights language became more prominent. Yet the older governance of religion retained limited pluralism and harmony as organising principles. The addition of “religious values” as a limitation ground in Article 28J makes Indonesia distinctive. It allows public order and public morals to be read through respect for religion. That may preserve social peace, but it can also narrow freedom of religion or belief where the claimant does not fit dominant expectations. Decision No. 97/PUU-XIV/2016, however, shows another possibility. The case concerned provisions of Law No. 23 of 2006 on Population Administration, as amended by Law No. 24 of 2013. Adherents of indigenous beliefs, known as *penghayat kepercayaan*, faced administrative exclusion because identity documents did not adequately recognise their belief status. The Constitutional Court held that indigenous belief adherents could not be forced to misidentify themselves under a recognised religion. The decision recognised that civil documentation is not a minor administrative matter. It affects access to rights, services, marriage, education, work, and ordinary citizenship.

This decision is doctrinally important because it shows that Pancasila can be interpreted inclusively. The Court did not abandon the theistic framework of the State. It widened the constitutional understanding of belief so that those outside the older recognised religion

structure could enter public administration without false identification. It moved from closed recognition towards a more inclusive, though still administered, model of religious and belief identity. The limits of that decision must also be stated. It did not constitutionalise atheism or non-belief. It did not abolish State classification. It did not remove the expectation that public identity will be recorded through religious or belief categories. It corrected a specific administrative exclusion. That is valuable, but it remains a recognitional model. Protection still depends on becoming legible to the State.

Aceh tests the outer boundary of Indonesian pluralism. Under special autonomy, Aceh has enacted Islamic norms through regional law. Law No. 11 of 2006 concerning the Governance of Aceh gives the province a particular legal and institutional position within the Republic. Qanun Aceh No. 6 of 2014 on Jinayat Law criminalises conduct such as khamar, maisir, khalwat, ikhtilath, zina, sexual harassment, rape, qadzaf, liwath, and musahaqah, and permits punishments that include caning, fines, and imprisonment. Butt (2010) explains how regional autonomy in Indonesia can generate legal disorder when local regulations proliferate in ways that strain national coherence. Fuad, Darma, and Muhibbuthabry (2022) note that Qanun Jinayat has been criticised as unconstitutional, discriminatory, and difficult to reconcile with national law, and that the judicial review brought before the Indonesian Supreme Court did not succeed.

The relevant Supreme Court material review challenge to Qanun Aceh No. 6 of 2014 was registered as Decision No. 60 P/HUM/2015. The petition was declared inadmissible as premature. This correction is important because the earlier reference to Decision No. 47 P/HUM/2016 would have been inaccurate for Qanun Jinayat. Decision No. 47 P/HUM/2016 concerns a different Aceh matter and should not be used here. The corrected reference also helps clarify the institutional point. The Constitutional Court did not decide the validity of Qanun Jinayat as a constitutional religion case. The challenge moved through the Supreme Court's material review jurisdiction over regulations below statutes, which has its own procedural limits. Aceh is significant because it differs sharply from ordinary personal law accommodation. It converts religious morality into coercive criminal law within a region of the Republic. India has religious personal laws and State regulation of religious institutions, but it does not create a regional religious criminal law regime comparable to Aceh. The Aceh model raises acute questions of equality before law, bodily integrity, gender justice, privacy, proportionality, and the status of non-Muslims within a region governed by special autonomy.

Indonesian judicial governance therefore has two faces. In the blasphemy decision, the Constitutional Court acted as guardian of a regulated religious order, giving strong constitutional weight to religious harmony and public order. In the indigenous beliefs decision, it acted as a limited pluralist corrector, making previously excluded belief adherents administratively visible. Through Aceh, the broader Indonesian judicial system faces the unresolved question of how far regional religious normativity can be incorporated into public law without weakening national constitutional rights.

6. Essentiality and Pancasila compared

Indian and Indonesian courts use different doctrinal vocabularies. Indian courts ask whether a practice is essential to religion, whether it falls within denominational autonomy, whether secular aspects may be regulated, and whether equality or public order justifies intervention. Indonesian courts ask whether a law fits within Pancasila, Article 29, religious values, harmony, and Article 28J. Beneath this difference lies a similar constitutional operation. Both systems filter religion through judicially manageable standards.

In India, the filter is essential. The judicial question often becomes whether a practice is central enough to receive protection. This can prevent every social practice from being shielded under the name of religion. It can also privilege textual, elite, or judicially rationalised versions of faith over lived practice. Sen (2010) shows how the Indian Supreme Court has shaped religion through its own account of rational and reformable religiosity. Bhatia (2016) shows that this comes at a cost to individual rights and internal dissenters. A claimant whose practice is sincere but not deemed essential may lose protection even where accommodation would be possible.

In Indonesia, the filter is recognition and harmony. A belief or practice is safer when it can be located within recognised religion, accepted belief, national unity, and public order. The blasphemy law decision strengthens this filter by treating deviation from recognised religion as a matter of State concern. The indigenous beliefs decision softens the filter by widening recognition. Yet the underlying structure remains classificatory. Belief becomes secure when the State can name it, record it, and fit it within the Pancasila order. Sezgin and Künkler's (2014) contrast between Indian judicialisation and Indonesian bureaucratisation sharpens the comparison. In India, courts often become the place where the State discovers the constitutional character of a practice. In Indonesia, the administrative State often determines whether a belief is recognisable before courts are asked to intervene. Yet the distinction must not be overstated.

Indian courts rely on administrative records, statutory categories, and State claims about order. Indonesian courts, especially after constitutional reform, have become important in reviewing statutes and defining the scope of recognition. The two modes overlap. Both create legal filters through which religious life must pass.

Both models are vulnerable to majoritarian pressure. In India, the majority religion may be described as culture, heritage, civilisation, or national identity, while minority practices are marked as religious assertions requiring scrutiny. This asymmetry is not always written into law, but it can affect public order reasoning, school discipline, temple disputes, conversion regulation, and symbolic conflicts. In Indonesia, majoritarian pressure often appears through the language of harmony, recognised orthodoxy, and local consensus. A minority or heterodox claim may be treated as the source of disorder, even when disorder is threatened by others.

Public order is therefore central to both systems. In India, public order is an express limitation in Article 25. In Indonesia, public order and religious values are woven into Article 28J and harmony-based governance. The constitutional problem is not that public order is irrelevant. No court can ignore real violence. The problem is the burden of adjustment. If the State restricts the claimant because others may react violently, the law rewards coercive hostility. A court committed to equal citizenship must ask who caused the disorder, whether the restriction is necessary, and whether the State has protected the vulnerable claimant before limiting the right.

The two systems also differ in the location of theological authority. Indian Courts risk direct theological inquiry when they decide what is essential to a religion. Indonesian Courts more often avoid detailed theology but endorse a State structure that protects recognised religion against deviance. In India, the judge risks becoming a theologian. In Indonesia, the judge risks becoming the constitutional guardian of an administratively recognised religious order. Both risks are institutionally serious. Individual conscience reveals the contrast most clearly. Article 25 of the Indian Constitution expressly protects freedom of conscience. *Bijoe Emmanuel* shows what a conscience-sensitive approach can look like. Indonesian law protects religion and belief, and Decision No. 97/PUU-XIV/2016 confirms that belief need not be forced into older categories. Yet non-belief and non-legible belief remain more difficult in Indonesia because the constitutional order is theistic and administrative recognition remains central. India also has unresolved problems concerning non-belief and rationalist expression, but its constitutional language gives stronger textual support to conscience as such. A further comparative caution

concerns remedy. Courts may correctly identify a constitutional problem and still choose a remedy that produces fresh forms of exclusion. In India, a declaration that a practice is non-essential may dispose of the case, but it leaves little guidance for future accommodation. In Indonesia, recognition through identity documents may solve one administrative injury while leaving the deeper hierarchy of recognised religion and belief largely intact. Judicial governance must therefore be evaluated not only at the level of doctrine, but also at the level of remedial design. A court that wishes to protect plural citizenship should prefer remedies that lower civic burdens, preserve access to institutions, and require the State to justify exclusion with evidence. This is why proportionality, reasonable accommodation, and anti-exclusion reasoning matter. They do not remove the difficulty of religion cases. They make the difficulty visible in constitutional terms. The comparative lesson is that Courts must be assessed by the constitutional subject they create. A court may protect organised religion while ignoring dissenters inside it. It may protect harmony while silencing minorities. It may protect reform while assimilating minority difference. A rights-based approach must ask whether the court protects persons, communities, institutions, and vulnerable minorities with equal seriousness. It must also ask whether the court has made the State justify regulation through evidence rather than anxiety.

7. Towards Constitutional Restraint

Judicial governance of religion is unavoidable, but judicial overreach is not. The requirement is not judicial silence. Courts must intervene where religious or State power produces coercion, civil exclusion, gender discrimination, caste hierarchy, denial of education, or violence. The requirement is disciplined restraint. Courts must use constitutional reasons rather than theological certainty, majoritarian sentiment, administrative convenience, or abstract invocations of harmony.

For India, this requires a serious reconsideration of the essential religious practice doctrine. Instead of making theological essentiality the first threshold, adjudication should begin with the constitutional burden placed on the claimant. The court should ask whether the asserted practice has a sincere connection with conscience, worship, identity, or community life, and then require the State to identify a legitimate constitutional aim. The next inquiry should concern proportionality, accommodation, and constitutional harm. A religiously grounded practice that excludes, coerces, humiliates, or deprives persons of basic civic goods may still

be restricted. The reason for restriction, however, should be constitutional injury, not judicial disbelief in the religious nature of the practice. For Indonesia, restraint requires a careful distinction between protecting public order and protecting orthodoxy. Pancasila need not be read as a mandate for doctrinal policing. Its plural promise lies in holding together religious and belief communities within one Republic. Decision No. 97/PUU-XIV/2016 shows that an inclusive interpretation is possible. The same constitutional imagination should guide blasphemy, identity, worship, and minority protection. Restrictions should be based on concrete harm, not offence to recognised religious sentiment.

Harmony also needs constitutional discipline. It is valuable when it enables coexistence and prevents retaliatory violence. It becomes constitutionally suspect when it demands silence from those who are already weak. The same point applies to administrative recognition. The State may record identity for lawful purposes, but it should not make dignity, access to services, or civic belonging depend upon a narrow religious category.

Recognition must be widened in both countries. In India, the constitutional treatment of Sarna, Sanamahi, and other indigenous traditions shows that administrative absorption into broader religious categories can erase distinct belief worlds. In Indonesia, *penghayat kepercayaan* communities show how identity documentation can determine whether a citizen is visible to the State. In both systems, non-recognition is not a passive omission. It can produce civic disadvantage. The practical implication is modest but important. Courts should avoid deciding religion cases at the highest level of abstraction. They should ask who is burdened, what evidence supports the restriction, which constitutional value is being protected, and whether less restrictive accommodation is available. This method would still allow the State to prevent fraud, coercion, violence, and genuine disorder. It would also make it harder for State authorities to restrict unpopular conscience merely because it produces discomfort. In India, this would move adjudication away from theological essentiality and towards constitutional justification. In Indonesia, it would move adjudication away from orthodoxy-protection and towards concrete harm.

This also protects judicial legitimacy and prevents constitutional adjudication from becoming an indirect referendum on contested religious truth. Religion cases often arrive before courts with political heat already attached to them. A judgment that speaks in the language of theological certainty can make the court appear aligned with one understanding of faith. A

judgment that speaks through burden, justification, evidence, and constitutional injury is less grand, but more defensible. It explains why a right is limited or protected without pretending that judges can settle the inner meaning of belief. Finally, religious freedom should be understood as a right of both persons and communities. Community autonomy matters, especially for minorities. Yet individuals within communities also possess dignity, equality, and conscience. Women, converts, internal dissenters, indigenous believers, heterodox sects, atheists, agnostics, and rationalists may experience religious governance differently from dominant institutional voices. A Court that hears only the organised community may miss the constitutional subject most in need of protection.

8. Conclusion

India and Indonesia exhibit that constitutional Courts are central actors in the governance of religion. They do not merely apply religious freedom clauses. They construct the legal meaning of religion, decide the conditions of recognition, and mediate between religious autonomy, State power, public order, equality, and citizenship. In India, this governance occurs through essential practices, secularism as the basic structure, equality review, conscience, and public order. In Indonesia, it occurs through Pancasila, Article 29, Article 28J, religious harmony, blasphemy regulation, administrative recognition, and the limits of regional religious law.

The comparison does not produce a simple ranking. Indian adjudication is not superior merely because it speaks in the language of secularism, and Indonesian adjudication is not illiberal merely because it speaks through Pancasila. Each system contains resources for plural citizenship and each carries institutional risks. The Indian model can protect conscience, but it can also reduce faith to a judicially approved core. The Indonesian model can widen recognition, as Decision No. 97/PUU-XIV/2016 shows, but it can also treat harmony as a reason for disciplining heterodoxy. The difference is one of constitutional method, not of civilisation. A more defensible approach would rest on recognition, regulation, and restraint. Recognition must include minorities, dissenters, indigenous believers, and forms of conscience that do not fit dominant categories. Regulation must be justified by constitutional harm, equality, dignity, proportionality, and concrete public order. Restraint must operate against State power, religious coercion, majority pressure, and judicial ambition. Courts should protect religion without becoming theologians. They should preserve peace without giving constitutional force to hostility. They should respect communities without abandoning persons

within them.

The comparative claim is therefore deliberately cautious. It does not ask either court to imitate the other. Indian law would not be improved by importing a Pancasila vocabulary, and Indonesian law would not be resolved by adopting the essential practices test. What both systems need is a more candid judicial language of burden, justification, and institutional limits. Such language would allow courts to protect sincere religious and belief claims without pretending that constitutional judges can finally determine the content of faith. It would also allow courts to scrutinise State action without treating every assertion of order or harmony as constitutionally sufficient. The future of judicial governance of religion in India and Indonesia will depend on whether courts can hold this balance. Religion cannot be banished from constitutional life in either country. It should not be allowed to capture public law either. The task is harder and more modest. Courts must engage religion with legal discipline, evidentiary care, and moral humility, while keeping equal citizenship at the centre of constitutional adjudication.

References

- Asad, T. (2003). *Formations of the secular: Christianity, Islam, modernity*. Stanford University Press.
- Bagir, Z. A. (2018). The politics and law of religious governance in Indonesia. In R. W. Hefner (Ed.), *Routledge handbook of contemporary Indonesia* (pp. 284-295). Routledge.
- Bagir, Z. A., Asfinawati, Suhadi, & Arianingtyas, R. (2020). Limitations to freedom of religion or belief in Indonesia: Norms and practices. *Religion and Human Rights*, 15(1-2), 39-56. <https://doi.org/10.1163/18710328-BJA10003>
- Bhargava, R. (2010). *The promise of India's secular democracy*. Oxford University Press.
- Bhatia, G. (2016). Freedom from community: Individual rights, group life, State authority and religious freedom under the Indian Constitution. *Global Constitutionalism*, 5(3), 351-382.
- Butt, S. (2010). Regional autonomy and legal disorder: The proliferation of local laws in Indonesia. *Sydney Law Review*, 32(2), 177-191.
- Butt, S., & Lindsey, T. (2012). *The Constitution of Indonesia: A contextual analysis*. Hart Publishing.
- Cover, R. M. (1983). Nomos and narrative. *Harvard Law Review*, 97(1), 4-68.
- Crouch, M. (2012). Law and religion in Indonesia: The Constitutional Court and the blasphemy law. *Asian Journal of Comparative Law*, 7(1), 1-46. <https://doi.org/10.1017/S2194607800000582>
- Crouch, M. (2014). *Law and religion in Indonesia: Conflict and the courts in West Java*. Routledge.
- Feener, R. M. (2007). *Muslim legal thought in modern Indonesia*. Cambridge University Press.
- Fuad, Z., Darma, S., & Muhibbuthabry, M. (2022). Wither Qanun Jinayat? The legal and social developments of Islamic criminal law in Indonesia. *Cogent Social Sciences*, 8(1), Article 2053269. <https://doi.org/10.1080/23311886.2022.2053269>

Hirschl, R. (2014). *Comparative matters: The renaissance of comparative constitutional law*. Oxford University Press.

Human Rights Watch. (2013). *In religion's name: Abuses against religious minorities in Indonesia*. Human Rights Watch.

Mahmood, S. (2016). *Religious difference in a secular age: A minority report*. Princeton University Press.

Menchik, J. (2014). Productive intolerance: Godly nationalism in Indonesia. *Comparative Studies in Society and History*, 56(3), 591-621. <https://doi.org/10.1017/S0010417514000267>

Sen, R. (2010). *Articles of faith: Religion, secularism, and the Indian Supreme Court*. Oxford University Press.

Sezgin, Y., & Künkler, M. (2014). Regulation of religion and the religious: The politics of judicialization and bureaucratization in India and Indonesia. *Comparative Studies in Society and History*, 56(2), 448-478. <https://doi.org/10.1017/S0010417514000103>

Legal and Constitutional instruments

Constitution of India, 1950.

Constitution of the Republic of Indonesia, 1945.

Indian Penal Code, No. 45 of 1860, India Code.

Law No. 11 of 2006 concerning the Governing of Aceh, Republic of Indonesia.

Law No. 23 of 2006 concerning Population Administration, Republic of Indonesia.

Law No. 24 of 2013 amending Law No. 23 of 2006 concerning Population Administration, Republic of Indonesia.

Law No. 5 of 1969 concerning the stipulation of various presidential decrees and regulations as laws, Republic of Indonesia.

Presidential Decree No. 1/PNPS/1965 on the Prevention of the Misuse and/or Defamation of

Religion, Republic of Indonesia.

Qanun Aceh No. 6 of 2014 concerning Jinayat Law, Republic of Indonesia.

Indian case law

A. S. Narayana Deekshitulu v. State of Andhra Pradesh, (1996) 9 S.C.C. 548.

Aishat Shifa v. State of Karnataka, (2023) 2 S.C.C. 1.

Bijoe Emmanuel v. State of Kerala, (1986) 3 S.C.C. 615.

Durgah Committee, Ajmer v. Syed Hussain Ali, A.I.R. 1961 S.C. 1402.

Indian Young Lawyers Association v. State of Kerala, (2019) 11 S.C.C. 1.

Kantaru Rajeevaru v. Indian Young Lawyers Association, (2020) 2 S.C.C. 1.

Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225.

M. Siddiq (D) Thr. LRs v. Mahant Suresh Das, (2020) 1 S.C.C. 1.

Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 S.C.C. 556.

Ramji Lal Modi v. State of Uttar Pradesh, A.I.R. 1957 S.C. 620.

Ratilal Panachand Gandhi v. State of Bombay, A.I.R. 1954 S.C. 388.

Resham v. State of Karnataka, 2022 S.C.C. OnLine Kar. 315.

Rev. Stainislaus v. State of Madhya Pradesh, (1977) 1 S.C.C. 677.

S. R. Bommai v. Union of India, (1994) 3 S.C.C. 1.

Sardar Syedna Taher Saifuddin Saheb v. State of Bombay, A.I.R. 1962 S.C. 853.

Shayara Bano v. Union of India, (2017) 9 S.C.C. 1.

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha

Swamiar of Sri Shirur Mutt, A.I.R. 1954 S.C. 282.

Indonesian Case Law

Constitutional Court of the Republic of Indonesia, Decision No. 140/PUU-VII/2009, concerning judicial review of Presidential Decree No. 1/PNPS/1965 on the Prevention of the Misuse and/or Defamation of Religion.

Constitutional Court of the Republic of Indonesia, Decision No. 97/PUU-XIV/2016, concerning judicial review of provisions of Law No. 23 of 2006 and Law No. 24 of 2013 on Population Administration relating to indigenous belief adherents.

Supreme Court of the Republic of Indonesia, Decision No. 60 P/HUM/2015, concerning material review proceedings relating to Qanun Aceh No. 6 of 2014 on Jinayat Law.