



RECONCILING FREEDOM OF RELIGION AND CONSTITUTIONAL MORALITY: CONTEMPORARY CHALLENGES UNDER THE INDIAN CONSTITUTIONAL FRAMEWORK

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ABSTRACT:

Religious liberty and constitutional morality have commonly been described as rival principles in Indian constitutional adjudication. Their harmonization depends upon an appreciation of the litigant claiming constitutional protection, the basis for the legal authority and the relief being sought. Six purposively selected cases decided by the Indian Supreme Court during the period from 2015 to 2024, on topics including priest appointment, instant triple talaq, temple admission, religious attire and minority schooling, are analyzed here. The data include a summary of the main judicial disposition reached and whether there was any disagreement over that disposition. Two decisions strike down a challenged practice or exclusion rule; two make for a regulated compromise; and two reach a procedural decision. Four decisions show disagreement in regard to disposition; two decisions reached are unanimous. Of the six findings, five are underlying disagreements because the Sabarimala merits and merits review decisions are treated separately. These empirical observations do not indicate a pattern in India or confirm the role of constitutional morality in producing that trend. Analysis shows recurring themes: the difficulty of defining the religious interest, the relation between rights and institutions and between neutrality and uniformity. Constitutional morality is able to uphold the conscientious minorities as well as question exclusions by religious organizations. This approach offers an effective mechanism for resolution once the constitutional basis is established, along with the nature of the interference, the conflicts in the right involved, and the adequate remedy. In this case, the paper will explore a rational framework for decision making and administration while detaching history from implementation.

Keywords: Freedom of religion; constitutional morality; secularism; equality; essential religious practices; minority education; judicial remedies; empirical legal research

INTRODUCTION

Claim for religious freedom may come from a worshipper seeking entry, a denomination claiming a religious practice, a student requesting religious dress, or a minority body opposing an oppressive regulation. More than one of these claims could be made on the basis of constitutional morality. It would be too simplistic to pose the conflict between religion and constitutional values as religion versus constitutional values. The more relevant question would be how the Constitution guards belief and institutional pluralism in the face of exclusion, coercion, and inequality.

The approach taken by this paper posits that reconciliation should involve an orderly articulation of the constitutional relationships rather than an assumption that religion must give way to an abstraction of moral principles. Article 25 guarantees freedom of conscience and religion under certain conditions. Article 26 guarantees denominational interests in the terms of a different constitutional guarantee. Equality, personal liberty, minority education rights and legislative competence can each play a role in determining the outcome. Constitutional morality becomes especially relevant to show how these commitments interact in producing a particular outcome.

The main research question is whether there is a pattern in how certain Supreme Court cases reconcile the claims made in terms of religion with those of equality, dignity and limitation of state authority. There are three sub-questions guiding the research process: Who is the relevant rights-holder? Which mechanism of law produces the contradiction? What is the judicial response based on the reasoning behind it? The research distinguishes between disagreement with respect to the outcome and disagreements with the arguments of those who reached the same outcome.

Empirical material includes six decisions in cases involving *Adi Saiva Sivachariyargal*, *Shayara Bano*, *Sabarimala* and its review in *Kantaru Rajeevaru*, *Aishat Shifa* and *Anjum Kadari*. The sample includes institutional worship, personal law and education. This is a selective study of some famous cases

on freedom of religion in India, which is not an exhaustive list of all such decisions in India. Previous judgments help in establishing the legal background, but they do not form part of the numerically-based data collection.

Research Methodology and Scope

Empirical documentary analysis and doctrinal interpretation are used in the research. Decisions are observable instances of institutional reasoning in the form of votes and legal implications. Use of the same set of revealed questions for the decisions provides a framework of comparison to case analysis. Hall and Wright describe how systematic content analysis enables patterns of judicial opinions to be analyzed. Epstein and King emphasize the connection between the data gathered and the conclusions drawn from them. This paper is concerned with methodological issues in this context.

The period for observation goes from 16 December 2015 to 5 November 2024. The condition of inclusion would be having a decision by the Supreme Court during this period on any religious practice, religiously linked institutional arrangement or educational claim which is in conflict with some other constitutional interest. The six decisions have been purposely chosen for having different contexts and remedial attitudes. These were not produced through any systematic search through keywords. The Constitutional Morality would be one point of analysis and not one that should necessarily be found in all the decisions.

Texts of publicly available judgments were identified using case name and year of the decision through Indian Kanoon. Database abstracts and automated annotations and counsel's arguments were not regarded as holdings. The study refers to the dissents, if any, in case of any material divergence of views. Precise citations are used to specify the dissent, since its paragraph numbers are set off separately from the majority. Appendix gives the source of each publicly available text and justification for each of the coded findings made during the research. This study includes decisions as they are delivered but not their full procedural validity and subsequent legislation until October 2026.

The counting unit is the decision made at a particular stage of proceedings. There are six decisions but five dispute cases, since the Sabarimala 2018 case and the review decision made in 2019 are part of the same proceeding. The two have been included in order to establish the distinction between substantive resolution and procedural reconsideration. These two decisions cannot be used to demonstrate the occurrence of a particular stance in different disputes. There is no estimation of population, test for significance or causality model undertaken.

Each ruling is accompanied by one response code. "I" means that the controlling disposition rejects the principal practice or exclusionary rule challenged. "Q" means a qualified or fact-specific settlement that maintains an institutional or regulatory arrangement within constitutional bounds. "P" means that the disposition leaves unresolved the disputed merits at this stage, by means of either a review reference or an evenly divided bench. "Q" is deliberately inclusive and covers the conditional acceptance of the appointment of priests and maintenance of the madrasa act along with the severance of its higher education provision. The Appendix distinguishes between these differences rather than equating them.

A second variable indicates the agreement about the disposition. U denotes unanimous disposition, and S denotes split disposition or evenly divided bench coming out with different suggestions. S does not necessarily mean that there is agreement among the judges who form the numerical majority regarding all arguments. For instance, Shayara Bano's 3 to 2 decision cannot be classified as a three-judge disposition of the same Article 14 argument. Only one coding process was done for this paper, without a second coder. The categories and their frequencies were verified against the orders, but no inter-coder reliability coefficient is provided.

CONSTITUTIONAL AND CONCEPTUAL FOUNDATIONS

This begins with the text itself. Article 25(1) ensures the freedom of conscience and the profession, practice and propagation of religion for all persons, subject to public order, morality, health and other provisions of Part III. Article 25(2) preserves certain regulatory and reformatory powers, including regulation of secular activities in connection with religion and making Hindu religious institutions of a public character accessible to all classes and sections of Hindus. Article 26 guarantees the rights of religious denominations and their sections, subject to public order, morality and health. It does not repeat the specific reference to the other provisions of Part III made by Article 25. The importance of this distinction can only be explained by argument.

Further provisions ensure that the dispute is not limited to Articles 25 and 26 alone. Articles 14 and 15 provide for equality and non-discrimination respectively. Articles 19 and 21 safeguard the rights of freedom of speech/communication and personal liberty in their respective constitutional contexts. Article 28 provides for religious instruction and participation in worship at particular schools, and Article 30 covers minority educational institutions. It is only in cases where a refusal to accept certain persons can be construed to be untouchability that Article 17 may become relevant. Such an invocation of a fresh constitutional context would need adequate justification in law.

These founding cases demonstrate that constitutional protection is not just a question of faith in the abstract. The Shirur Mutt case emphasised the significance of religious customs and divided matters of religion from the secular administrative practices relating to them. The Bijoe Emmanuel case ensured that students could stand up respectfully to the national anthem without singing due to a conscious conscientious objection based on their religion. Relevance to the project of reconciliation is that reverence for the constitution need not exclude a right to refusal.

Constitutional morality has an institutional aspect as well. Ambedkar's speech at the Constituent Assembly on 4 November 1948 is an example of the issue of commitment to constitutional forms and constitutional practices. According to Mehta, there is a possibility of fidelity to the same constitutional order despite differing opinions about the result. Taken together, these views imply that it would be wrong to equate constitutional morality with whatever a judge thinks is socially desirable.

There is also an institutional element in the idea of constitutional morality. The debate of Ambedkar on 4 November 1948 in the Constituent Assembly related to loyalty to constitutional forms and the development of constitutional habits. In Mehta's approach, what one sees is the fact that loyalty can be shown to a common constitutional structure irrespective of any difference regarding consequences. On combining these two aspects together, one is warned about using the concept of constitutional morality as a substitute of whatever a judge finds as socially desirable.

EMPIRICAL FINDINGS

The complete numerical dataset can be found in Table 1. Response codes refer to the type of institutional response rather than to the morality of the decision or strength of religious freedom protection. Agreement code is an independent variable as disagreement on the disposition differs from disagreement on the reasoning. Case names are abbreviated for easier reading; full references and explanation at a passage level can be found in the Appendix.

Table 1 Corpus and coded dispositions

Decision	Year	Principal dispute	Response	Agreement
C1 Adi Saiva	2015	Priestly appointments	Q	U
C2 Shayara Bano	2017	Instant triple talaq	I	S
C3 Sabarimala merits	2018	Temple entry	I	S
C4 Kantaru review	2019	Review and reference	P	S
C5 Aishat Shifa	2022	Religious dress	P	S
C6 Anjum Kadari	2024	Madarsa education	Q	U

Source: Coding of six selected decisions across five disputes. I = principal practice or exclusion set aside; Q = qualified or fact-specific settlement; P = no final merits resolution at that stage. U = unanimous disposition; S = divided disposition. C3 and C4 concern the same litigation.

The response distribution is I = 2, Q = 2 and P = 2. The agreement distribution is U = 2 and S = 4. These counts show variation in how the selected benches dealt with religiously associated conflicts: removal of a practice or exclusion, qualified preservation of an arrangement, and a procedural response without final merits resolution at that stage. The numbers do not establish that religious-freedom disputes generally produce disagreement or that constitutional morality caused any particular result. They describe six chosen decision records, two of which belong to the same litigation.

The Q groups consist of Adi Saiva Sivachariyargal and Anjum Kadari. The former involves the consideration of relevant Agamas and constitutional compatibility in cases where priestly appointments are disputed. The latter maintains the madarsa education law while omitting clauses concerning higher education degrees that are inconsistent with the Union system. While both reject the take-it-or-leave-it approach, they do so through distinct legal means. The common criterion is merely an analytical device rather than a conclusion that the same test applies to appointments and educational laws.

I group consists of Shayara Bano and Sabarimala judgment in 2018. Shayara Bano overturns the talaq-e-biddat through three-to-two ratio decision based on the grounds presented, and the Sabarimala judgment in 2018 overturns the restriction of entry into the temple by four-to-one ratio. P group consists of cases namely, Kantaru Rajeevaru and Aishat Shifa. Decision review in 2019 holds the review petitions pending while determining the issues to be determined by a bigger bench. The hijab judgment of 2022 presents conflicting views ending with an order for consideration by the chief justice to appropriate bench.

The comparative qualitative analysis leads to a more limited conclusion than would seem possible based on the numerical split alone. It is not merely a matter of deciding between religious freedom and equality. The divergence is over the rights-bearer, the nature of the agreement, and the nature of the court's remedy in the situation. These are the issues that require justification before a constitutional conclusion can be reached, and they do not fit on one scale from religious deference to constitutional advancement.

RECONCILIATION IN THE SELECTED DECISIONS

The appointment of priests clearly illustrates the need for factual specification. "Adi Saiva Sivachariyargal" does not grant blanket immunity to any religious requirement simply on the ground that it is an "Agama." Indeed, the instructions contained in the decision make clear that the facts and the constitutional limit are crucial at the very outset. Likewise, the decision does not grant a right to the researcher to proclaim that any trained Hindu will be appointed as priests in all temples.

The analytic lesson is that autonomy of the institution must be defined before it is balanced. A claim about ritual qualification is not a hereditary right or exclusion because of one's caste. Grouping all of them under tradition will avoid the very problem which needs to be solved. Constitutional morality

could call for a justification for an exclusion without presupposing that every difference in the religious position is constitutionally indistinguishable. The suggested approach is to define the qualification, the basis for it and the constitutional provision being tested against.

Shayara Bano highlights another lesson: a similar conclusion might be reached using different lines of justification. Nariman J., speaking for himself and Lalit J., uses manifest arbitrariness of statutory recognition and enforcement of instant triple talaq. Kurian Joseph J. uses the analysis of the relevant religious law and precedent to reach the same conclusion. Khehar C.J. and Nazeer J. reject this approach. To describe the decision as "constitutional morality overcoming religion" will strip it of its internal legal reasoning.

This is important in subsequent argument. The judicial outcome cannot automatically be imputed to the broadest argument made by a single justice of the majority bench. Reconciliation could come through constitutional interpretation, construction of a statute or construal of religion law that does not include the disputed practice. Each of these has distinct repercussions for subsequent litigation. Analysis of these options must therefore be preserved before a normative prescription could be responsibly made on their basis.

Sabarimala highlights an internal tension in religious freedom. The majority argument contains women's right to worship along with the constitutional and statutory objections to exclusion. Malhotra J.'s dissenting judgment focuses on religious pluralism, denominational claims and limitations on adjudication upon petition of the petitioners. Constitutional morality can be seen in diverging accounts about the proper relationship between fundamental rights. An accurate account will have to consider both sides of the argument regarding the claims of participation and institutional protection without pitting them against a constitutionally-based and a non-constitutionally based side.

This comparison also constrains a common shortcut in discourse on equality and religion. The allegation of an excluded worshipper is not necessarily an invitation to give up religious belief; it could be an invitation to engage in it. So too, the allegation made by a denomination involves identifying the institution and its constitutional protection. Constitutional morality does not answer these threshold questions for us. What it accomplishes is forcing the court to articulate the reasons that particular exclusion is protected, unprotected or inconsistent with the relevant rights and laws.

Kantaru Rajeevaru introduces a procedural element. The questions of the majority are about the relationship of religious freedom to other rights, the meaning of morality, and the permissible judicial investigation of religious practice. Nariman J., concurring with Chandrachud J., rejects the review and stresses the necessity of compliance. The judgment shows disagreement on how constitutional uncertainty should be resolved. It does not by itself overrule the 2018 decision on the merits. Confusing review, referral, and reversal will create an inaccurate empirical finding and a distorted analysis of the law.

The opinion by Aishat Shifa demonstrates how the characterization of the setting changes the nature of the inquiry. The opinion by Gupta J. focuses on the power to prescribe uniforms and the discipline of the secular educational institutions. The opinion of Dhulia J. places emphasis on the factors of choice, conscience, dignity and education, raising questions regarding the necessity of using religious essentiality to decide on this matter. There is a dispute in the two opinions as to what the restriction imposes on the students.

The educational context requires sensitivity to the evidence as well. The opinion's description of the burden on the girls in terms of attendance, exclusion or family pressure provides judicial analysis that can be used for purposes of the paper but cannot be a measure itself. If the school administrators contemplate accommodation, they would require evidence about the concrete situation in the classroom, about the proposed variation and about its consequences for other participants instead of an assumption that a standard is necessarily free of inequality.

Anjum Kadari presents yet another case involving issues of religion and education. In rejecting the invalidation of the entire statute establishing the madarasas, the Court distinguishes between the permissible regulation of education and the destruction of the distinctive character of the minority community. On the other hand, the provisions of the statute regarding higher education are unconstitutional where they conflict with the system established by the Union. In doing so, the Court shows that religiously-affiliated schools can coexist with limitations of their public functions. It is neither an exception to educational standards nor a need to erase the religious identity of educational institutions.

In each of these instances, constitutional morality itself has the potential to work in many directions. It might confront exclusion in a religious organization, secure conscience from forced state-conformity, and demand conformity from an organization's activities in light of constitutional and statutory norms. These are textual interpretations, and not measures of any cause-and-effect relationship associated with the concept. Common to both of them is the notion that the starting point should be that of the law itself.

CONTEMPORARY CHALLENGES UNDER THE CONSTITUTIONAL FRAMEWORK

The first is that of balancing the definition of the religious interest without allowing it to settle the whole case. Essential practices analysis can end up being a filter through which the attention shifts away from conscientious belief, expression or exclusion. Conversely, treating all claimed preferences as invulnerable to regulation would render others unprotected. In this regard, the cited texts show how the task of establishing what counts as religion must be distinguished from the determination of whether a limitation on it is constitutional. In the paper, it is suggested that there be explanations as to why theology becomes an essential issue in any given claim before one embarks on it.

The second challenge relates to distinguishing constitutional neutrality from compelled sameness. The same general rule can place different burdens on different beliefs. This is not the basis for the rule being unconstitutional. Rather, it raises a question regarding the purpose, effect and possibility of accommodation, which should be answered in a constitutionally acceptable manner. This involves consideration of the particular accommodation sought and the interest said to be adversely affected by it.

Third, there is the challenge of participation in communities. The protection of pluralism by religious autonomy from overreaching state intervention does not mean that the standpoint of the representative body covers the positions of believers. Women, dissidents, and people who depend on the institution could make equal and religious demands at once. In the adjudication, one cannot assume neither that the representatives express the opinion of each and every member nor that the proposal of reform from outside reflects the preferences of members. An appropriate record and hearing of the affected people are needed.

Fourth, the challenge relates to the distinction between declaration and performance. The corpus documents legal outcomes and procedures rather than compliance. The corpus cannot prove whether the selection process of priests has been altered, whether the worshippers have got real access to religion, whether students stayed in studies, or whether the standards of institutions were enhanced. These issues need the administrative record and the right field study. A paper claiming successful social implementation on the basis of favorable decisions would confuse an observed judicial act with its unobserved effect.

A FRAMEWORK FOR RIGHTS BASED RECONCILIATION

This is a normative prescription drawn out of the comparative process. The prescription is not meant to form a binding test already employed in the six cases under discussion. What this prescription does is ensure that constitutional morality is appropriately restrained through the tying of general considerations to a specific claim, interference and remedy. Each element should be considered within the proper ambit of the constitutional guarantee and relevant precedents and power of the institutions.

Firstly, the rights-holder and the conduct in question should be identified. The judgment should separate individual conscience, worship, denominational control, secular administration, and minority education. It should be made clear what constitutional provision is being engaged and if an institutional characterisation has already been determined. The objective of this point is to prevent the guarantees of Article 25, 26 and 30 from being seen as the same, when they are not necessarily such in every case.

The second step is to clarify the source of law and the nature of the intrusion. A statute, regulation, executive directive and institutional practice create distinct issues regarding jurisdiction and review. The grounds will explain the limitation, the affected individual and evidence of the limitation. When the ground appeals to constitutional morality, the court should explain its relationship to the corresponding constitutional right or limitation. The ground should not function as a further and amorphous exception to the right to religion.

Thirdly, there is the assessment of competing claims and possibility of accommodation with reasons. The decision should consider the most compelling right on both sides of the issue of equality, conscience, religious autonomy, and the regulatory interest. Where the limitation of the right is justified, the grounds should examine whether the extent of the limitation is necessary and if an alternative arrangement is possible for the same regulatory interest. The proportionality-based approach does not mean that every constitutional clause has one test.

Fourth, choose a remedy that fits the proven defect. Whether that be striking down an exclusionary rule, saving a statute by severance, making a specific factual decision, or referring a constitutional question has its own implications. The court should set out what it has finally decided, what remains undecided and why the relevant reasons have majority support. When a procedural disposition defers the decision, it should take account of the possible steps to minimize any unnecessary prejudice within its legal powers. Reasons may not settle disagreements, but they will clarify their implications.

Fifth, make the implementation and the administrative decision-making subject to review. When there is a positive order made, identify the authority responsible and the action needed. When accommodation is sought administratively, document the request, the evidence, the reasons for its acceptance or rejection and the avenue of review. These suggestions will enhance accountability without implying that continuing judicial oversight is necessary in all cases. They will also provide a stronger evidentiary basis for future empirical study.

LIMITATIONS AND FURTHER RESEARCH

The main limitation is that of purposive selection. Six well-known cases cannot be considered as the full approach of the Supreme Court on religious freedom, and the Sabarimala cases are connected. The coding categories make different disputes simple and incorporate two separate methods in Q. One coding session is not enough for ensuring reliability independently. The historical observation period ignores future decisions and does not determine the current state of affairs in the procedures. These limitations prevent the results from going beyond the actions and rationales presented in the paper.

Moreover, the corpus is not balanced in terms of religious context and does not include all the matters related to conversion, religious processions, public health, property, and minority institutions. It would be wrong to generalize the results for each community and to draw any conclusions about the attitudes of regular believers from the records of the litigation. The further research may use a documented database search, exclude some records, code opinions individually and involve independent coders. The implementation study may focus on official instructions and personal experience.

CONCLUSION

The choices made reveal that reconciliation comes in different kinds of legality. Two decisions reverse a practice or exclusion, two uphold an arrangement under constitutional limitations, and two make procedural decisions without reaching a merit decision at that point. While there are four cases that have disagreement as regards the decision, two of these involve the same Sabarimala case. All of these point to a limited understanding of judicial reaction, which cannot be generalized to be a national phenomenon nor is it dictated by constitutional morality.

The constitutional duty is one of safeguarding religious pluralism in the form of beliefs and institutionality, while giving a proper explanation for exclusion, coercion and public power. Constitutional morality could help in this endeavor through demanding reasons drawn from constitutional text and addressing the other right at issue. It needs to take protection of the rights of the minorities with as much seriousness as it does in looking into internal discrimination. The legitimacy of reconciliation becomes easier when the courts identify the rights holder, the legal interference and the limitation in terms of remedies.

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- *Aishat Shifa v. State of Karnataka*, Civil Appeal No. 7095 of 2022 (S.C. Oct. 13, 2022) (India).
- *Anjum Kadari v. Union of India*, 2024 INSC 831 (India).
- The public judgment texts below were consulted on 16 October 2026. References to paragraphs follow the individual opinion identified; an unnumbered common order is labelled accordingly. The records supply the basis of Table 1 rather than a complete summary of each decision. I = setting aside the principal practice or exclusion; Q = qualified or fact-specific settlement; P = no final merits resolution at that stage. U = unanimous disposition; S = divided disposition. C3 and C4 are linked stages of one dispute.
- C1 *Adi Saiva Sivachariyargal*, 16 December 2015. Q/U. Paragraphs 41–44 require identification of the relevant Agamas and conformity with constitutional principles, leaving application to particular appointments. The two judges deliver one disposition. Source: <https://indiankanoon.org/doc/143215272/>
- C2 *Shayara Bano*, 22 August 2017. I/S. The common Order of the Court sets aside talaq-e-biddat by three to two. Nariman J.'s paragraphs 55–57 and Kurian Joseph J.'s paragraphs 24–26 disclose distinct reasons supporting the result; Khehar C.J. and Nazeer J. take a contrary position on invalidation. Source: <https://indiankanoon.org/doc/115701246/>
- C3 *Indian Young Lawyers Association*, 28 September 2018. I/S. Misra C.J.'s paragraphs 144–145 reject the exclusionary practice and rule. Malhotra J.'s paragraphs 16–17 oppose that disposition. This is the four-to-one merits decision, counted separately from its review stage. Source: <https://indiankanoon.org/doc/163639357/>
- C4 *Kantaru Rajeevaru*, 14 November 2019. P/S. Gogoi C.J.'s paragraphs 5–9 identify larger-bench questions and leave the review proceedings pending at that stage. Nariman J., joined by Chandrachud J., would dismiss the review. The three-to-two procedural disposition is not coded as a reversal of C3. Source: <https://indiankanoon.org/doc/120364030/>

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- C5 Aishat Shifa, 13 October 2022. P/S. Gupta J.'s paragraph 198 would dismiss the proceedings; Dhulia J.'s paragraph 84 would allow them to the extent stated. The common order records divergent views and requests an appropriate bench. Neither proposed merits outcome is coded as the Court's final majority ruling. Source: <https://indiankanoon.org/doc/8682191/>
 - C6 Anjum Kadari, 5 November 2024. Q/U. Paragraphs 99–105 preserve the Madarsa Act apart from the provisions concerning higher-education degrees that conflict with the Union framework. This qualified statutory settlement is distinguished from a blanket invalidation or unconditional exemption. All three judges join the disposition. Source: <https://indiankanoon.org/doc/67107476/>