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Research Paper

Religious Freedom, Public Order, and Minority Vulnerability in India and Indonesia

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ABSTRACT

This review article examines the relationship between religious freedom, public order, and minority vulnerability in India and Indonesia. It argues that public order is a necessary constitutional value in deeply plural societies, but it becomes dangerous when it is used without evidentiary discipline, proportionality, and attention to unequal social power. India and Indonesia offer a useful comparison because both are postcolonial democracies with deep religious diversity, inherited legal pluralism, and strong constitutional commitments to religious freedom. Yet both also allow religion to be regulated in the name of public order, harmony, morality, reform, and national unity. In India, Article 25 protects freedom of conscience and the right to profess, practise, and propagate religion, while making the right subject to public order, morality, health, and other fundamental rights. In Indonesia, Pancasila, Article 29, and Article 28J produce a framework where religious freedom is protected, but also limited by religious values, public order, and harmony. The article shows that minority vulnerability arises when the State treats minority religious exercise as the source of disorder rather than protecting it from hostile social reaction. It examines Indian cases on religious offence, conversion, conscience, dress, and secularism, and Indonesian jurisprudence on blasphemy, indigenous belief, houses of worship, and Aceh's Islamic criminal law. It concludes that public order must be constitutionally disciplined by evidence, necessity, proportionality, non-discrimination, and protection of the vulnerable claimant.

Keywords: *Religious freedom, public order, minority vulnerability, India, Indonesia*

Religious freedom is most seriously tested when religious practice becomes unpopular, visible, or politically inconvenient. A constitutional order may formally protect freedom of conscience, worship, religious expression, minority institutions, and community autonomy. Yet those protections become fragile when the State invokes public order, harmony, morality, national identity, or administrative convenience to restrict minority practices. The issue is not whether public order matters. It does. No constitutional democracy can ignore real threats of violence, coercion, communal mobilisation, or public disorder. The

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harder question is whether public order is used to restrain those who threaten violence, or whether it is used to discipline those who are already vulnerable.

India and Indonesia are valuable comparative sites for this inquiry. Both are large postcolonial democracies with complex histories of religion, law, community identity, and State formation. Both inherited legal pluralism from colonial rule and both developed constitutional orders in which religion remained publicly significant. India describes itself as a secular republic, protects freedom of conscience, and places religious freedom within a wider structure of equality, dignity, and minority rights. Indonesia does not describe itself as secular in the Western separationist sense. Its constitutional order is grounded in Pancasila, especially belief in the One and Only God, and Article 29 of the 1945 Constitution protects worship according to religion or belief.

The two jurisdictions use different constitutional vocabularies, but they face a similar problem. Religious freedom is recognised, but not absolute. In India, Article 25 expressly subjects religious freedom to public order, morality, health, and other fundamental rights. In Indonesia, Article 28J allows limitations by law to satisfy demands based on morality, religious values, security, public order, and the rights and freedoms of others. The language differs. The structure is comparable. Both systems protect religion and regulate it. Both must decide when a minority claim is an exercise of freedom and when it becomes, or is said to become, a threat to social order. This article argues that public order is not merely a neutral limitation clause. It is a constitutional technique. Used carefully, it enables the State to prevent coercion, violence, forced conversion, religious intimidation, and communal disorder. Used carelessly, it allows majoritarian anxiety to enter law as a constitutional reason. The burden of peace is then shifted onto minorities. A Muslim girl may be told that her dress disturbs discipline. A Christian missionary may be treated as a source of communal tension. A rationalist or non-believer may face prosecution or intimidation for offending religious sentiment. An Ahmadiyah or Shia community in Indonesia may be restricted because its existence is treated as disruptive of harmony. A church may be unable to worship because local approval is withheld.

The focus here is therefore on minority vulnerability. Vulnerability does not mean that minorities are always right or that the State may never regulate religious conduct. It means that constitutional analysis must account for unequal social power. A formally neutral rule can operate asymmetrically where the majority's practices are treated as normal background culture while minority practices are treated as claims requiring justification. Public order review must therefore ask who is being restrained, who is threatening disorder, what evidence supports the State's claim, whether a less restrictive measure is available, and whether the restriction deepens existing vulnerability.

This article is a doctrinal and comparative review. It examines constitutional provisions, cases, statutes, and scholarship from India and Indonesia. It does not claim to present an empirical account of all religious conflict in either jurisdiction. Its narrower purpose is to develop a legal framework for analysing how public order interacts with religious freedom and minority vulnerability. The argument is that public order must be subjected to legal discipline. It cannot be allowed to become a language through which the State avoids protecting unpopular minorities.

METHOD AND SCOPE OF REVIEW

The method is doctrinal, comparative, and legal-theoretical. Doctrinally, the article examines constitutional provisions and judicial decisions that structure religious freedom and public order in India and Indonesia. For India, the relevant materials include Articles 14, 15, 19, 21, 25, 26, 29, and 30 of the Constitution, together with decisions on religious offence, conscience, conversion, secularism, religious dress, gender equality, and minority protection. For Indonesia, the analysis considers Pancasila, Articles 28E, 28I, 28J, and 29 of the 1945 Constitution, the blasphemy law, the population administration framework, the 2006 Joint Regulation on houses of worship, Aceh's Qanun Jinayat, and Constitutional Court decisions on blasphemy and indigenous belief.

The article is comparative but not assimilationist. It does not treat India as the secular model and Indonesia as the religious exception. India is secular, but its State engages deeply with religion through personal law, temple regulation, minority institutions, conversion law, and judicial review. Indonesia is grounded in Pancasila and belief in God, but it rejects formal theocracy and maintains a constitutional vocabulary of rights, plurality, and national unity. The comparison therefore asks how two postcolonial constitutional systems translate religious freedom into legal practice when religious plurality is socially intense and politically charged.

The legal-theoretical frame is built around three ideas. First, religious freedom is not only an individual liberty. It is also connected with community identity, institutional authority, family law, education, caste, indigenous belief, and public belonging. Secondly, public order is not self-defining. It requires evidentiary and doctrinal discipline. Thirdly, minority vulnerability must be treated as a constitutional concern because formally equal restrictions may affect minorities, women, converts, heterodox groups, and non-believers differently. The article draws on scholarship in law and religion, comparative constitutional law, and socio-legal theory. Asad's analysis of secularism is useful because it shows that modern law does not merely separate religion from politics. It also produces religion as an object of governance (Asad, 2003). Bhargava's work on Indian secularism helps explain why the Indian State may sometimes engage religion for constitutionally defensible reasons (Bhargava, 2010). Crouch, Bagir, Butt and Lindsey, and Menchik are central to the Indonesian analysis because they show how Pancasila, religious harmony, recognition, and State regulation shape religious freedom (Bagir, 2018, Butt & Lindsey, 2012, Crouch, 2012, Menchik, 2014).

The article also uses Bhatia's anti-exclusion argument to treat vulnerability as a constitutional concern rather than as a matter of social sympathy alone (Bhatia, 2016). Sen's account of the Indian Supreme Court's religion jurisprudence helps explain why judicial tests may sometimes rationalise religion instead of protecting lived conscience (Sen, 2010). Mahmood's work is used more cautiously, to show how minority claims are often shaped by the categories through which the State agrees to recognise them (Mahmood, 2016). Sezgin and Künkler's comparison of judicialisation in India and bureaucratisation in Indonesia supports the institutional part of the analysis, because public order is not only announced by courts. It is also produced by police stations, ministries, local offices, school authorities, and identity documents (Sezgin & Künkler, 2014).

The article is selective. It does not cover all doctrinal strands of religious freedom. It concentrates on those areas where public order and minority vulnerability are most visible. These include religious offence, conversion, conscience, religious dress, worship permits,

blasphemy, indigenous belief recognition, and regional religious criminal law. The aim is to produce a legally disciplined framework rather than a catalogue of controversies.

Public order as constitutional language

Public order is a legitimate constitutional value. It allows the State to prevent violence, coercion, intimidation, and serious disruption of social life. In religious freedom cases, public order may be necessary where religious mobilisation threatens the safety of others, where coercive conversion practices are alleged, where processions or counter-mobilisations may cause violence, or where public expression is deliberately used to incite hostility. A constitution that protects liberty must also protect the conditions in which liberty can be exercised.

The elasticity of public order creates the difficulty. It can move from actual disorder to anticipated discomfort. It may begin as a power to prevent violence and become a device for avoiding controversy. In minority cases, this risk is acute. If the State restricts a minority practice because the majority may react, public order becomes a reward for threatened disorder. The State then shifts the constitutional burden from the potential aggressor to the rights-holder. That is the central danger in both India and Indonesia. A disciplined public order inquiry should ask whether there is a legal basis for restriction, whether the aim is legitimate, whether credible evidence shows actual risk, whether the measure is necessary, whether a less restrictive alternative exists, whether the burden falls disproportionately on a vulnerable group, and whether the State first attempted to protect the rights-holder from hostile reaction. These questions are familiar in rights analysis, but they are often underused in religion cases where courts and administrators invoke order, harmony, or sensitivity in broad terms.

Public order must also be distinguished from majoritarian offence. A religious majority may sincerely experience discomfort, disagreement, or offence when confronted with minority belief or practice. Constitutional law cannot treat every offence as disorder. Offence becomes legally relevant only when it is linked to a constitutionally recognised harm such as incitement, violence, coercion, or deliberate malicious attack of the kind the law may regulate. If hurt sentiment alone becomes a public order ground, minority freedom survives only at the pleasure of dominant sensibilities.

This point is especially important in postcolonial societies where religious identity is tied to political belonging. In such contexts, the majority religion may be coded as culture, civilisation, or national sentiment. Minority practices, by contrast, may be read as separatist, foreign, provocative, or excessively visible. The same rule may then operate differently across communities. A public order framework that ignores this asymmetry will appear neutral while reproducing hierarchy.

The legal-theoretical problem is that public order often appears as a language of State necessity, but it may conceal the politics of recognition. A practice becomes dangerous because the State sees it through a particular social lens. Religious dress, proselytisation, dissent, heterodox worship, and minority congregations may be formally described as order problems, even when the actual risk comes from hostility directed at the claimant. This is why vulnerability must enter the doctrine. Without it, public order becomes a clean legal phrase for an unequal social settlement.

There is also an institutional dimension to this problem. Public order is rarely produced by courts alone. It is usually first shaped by police assessment, district administration, school rules, local permits, preventive orders, and prosecutorial choices. By the time a dispute reaches a constitutional court, the minority claimant may already have lost access to education, worship, public space, or social security. Judicial review must therefore avoid treating public order as a ready-made administrative fact. The court must ask how the claimed disorder was produced, whose conduct was treated as dangerous, and whether the public authority acted against the source of intimidation or only against the visible minority practice. A further danger lies in anticipatory reasoning. State authorities often say that they are acting before violence occurs. Preventive action is not illegitimate in itself. A State need not wait for bloodshed before intervening. Yet prevention becomes suspect when it is directed at the peaceful claimant rather than the threatened violence. In such cases, the State does not prevent disorder. It manages disorder by asking the vulnerable person to withdraw. A constitutional doctrine of public order must therefore separate prevention from capitulation.

Indonesia uses the language of harmony more explicitly. Harmony sounds softer than public order, but it can operate in similar ways. Where harmony means coexistence, mutual restraint, and prevention of violence, it is constitutionally valuable. Where it means that minorities must reduce their presence to avoid upsetting dominant groups, it becomes a technique of control. The legal question is therefore not whether harmony is good. The question is who must sacrifice for it.

Public order and harmony need not be rejected. They must be constitutionalised. They must be tied to evidence, necessity, proportionality, and equal citizenship. They must protect vulnerable minorities from disorder rather than treat minority presence as the disorder itself.

India, Article 25 and the burden of public order

Indian constitutional law recognises religious freedom but places it within a structured set of limitations. Article 25 protects freedom of conscience and the right freely to profess, practise, and propagate religion. The right is subject to public order, morality, health, and other provisions of Part III. Article 25 also permits the State to regulate secular activities associated with religious practice and to enact laws for social welfare and reform. Article 26 protects denominational autonomy in matters of religion, again subject to public order, morality, and health.

This framework is not separationist. It recognises religion and allows regulation. The Indian State may intervene in religious institutions, reform exclusionary practices, regulate secular aspects of religious activity, and protect vulnerable persons within communities. Yet the same framework can burden minorities when public order, reform, or neutrality is applied without attention to power. Minority vulnerability often arises not from explicit denial of religious freedom, but from formally neutral doctrines enforced in unequal social conditions. *Bijoe Emmanuel v. State of Kerala* remains one of the strongest Indian decisions protecting conscience against compulsory conformity. Jehovah's Witness students stood respectfully during the national anthem but did not sing it because of their religious belief. The Supreme Court protected them. The case is important because the Court did not treat religious conscience as disorder merely because it departed from public ritual. It distinguished respectful dissent from disrespect. This is a valuable model for minority-sensitive adjudication because it refuses to convert national sentiment into compelled religious or ideological conformity.

The logic of Bijoe Emmanuel has not always guided later disputes. Religious dress controversies indicate how public order, discipline, and institutional uniformity may burden minorities. In Resham v. State of Karnataka, the Karnataka High Court upheld the restriction on hijab in State pre-university colleges and applied the essential religious practices test. In *Aishat Shifa v. State of Karnataka*, the Supreme Court delivered a split verdict. The disagreement revealed a deeper constitutional question. Should courts ask whether the hijab is essential to Islam, or should they ask whether a sincere religious practice can be reasonably accommodated without causing genuine institutional harm. For minority girls, the practical question is not only doctrinal. It is whether education becomes conditional upon reducing religious visibility.

Sen's account of Indian religious freedom jurisprudence is relevant here because it shows how the Supreme Court has often transformed religious freedom disputes into inquiries about the rational, essential, or reformable core of religion (Sen, 2010). That move may sometimes allow the Court to separate protected faith from secular administration. It also risks ignoring the immediate burden on the claimant. In a hijab dispute, for example, the constitutional injury may lie less in the court's final theological conclusion and more in the exclusion of a student from education. A vulnerability-sensitive approach would therefore begin with burden and accommodation before moving to theological essentiality.

A further difficulty arises from the doctrine of essential religious practices. Although the doctrine is not formally a public order test, it often decides whether a claimant receives constitutional protection before the State's justification is closely examined. Sen's critique is relevant because a court that treats religion through essentiality may bypass the more immediate constitutional question of burden (Sen, 2010). In minority cases, this is especially troubling. A practice may not be judicially essential to the religion, yet it may still be deeply connected to identity, conscience, dignity, or access to public institutions. Once the Court stops at non-essentiality, the State avoids the harder burden of showing necessity and proportionality.

Public order also appears in religious offence law. 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 Court accepted that such legislation could fall within public order. The concern is understandable in a society marked by religious tensions. Yet the provision illustrates the danger of treating religious sentiment as an order problem. If prosecutions or threats of prosecution are used to silence unpopular views, critics, rationalists, artists, or minorities, then public order protects the offended rather than the vulnerable.

The same concern applies to public processions, symbolic expression, and local policing, although these disputes are not always litigated as leading constitutional cases. Administrative restrictions may be framed as even-handed management of routes, timing, sound, or crowd control. They may also reflect unequal assumptions about whose public religion is ordinary and whose public religion is provocative. A minority-sensitive approach would not deny the State's power to regulate time, place, and manner. It would insist that such regulation be applied with reasons, equal treatment, and protection against hostile reaction. Conversion law raises a related concern. In Rev. *Stainislaus v. State of Madhya Pradesh*, the Supreme Court upheld laws regulating conversion by force, fraud, or inducement, and held that the right to propagate does not include a fundamental right to convert another person. Preventing coercive conversion is a legitimate State aim. Yet

contemporary anti-conversion regulation becomes troubling when voluntary religious change, inter-faith marriage, minority missionary activity, or private conscience are viewed through suspicion. The constitutional line between preventing coercion and policing religious mobility must be drawn with care.

The public order rationale in conversion disputes is especially sensitive because conversion changes community boundaries. In a majoritarian environment, minority growth may be imagined as a demographic or cultural threat. A law that formally regulates force or fraud may be applied in ways that burden minority communities or inter-faith couples. Public order then becomes a means of preserving inherited religious location. Constitutional scrutiny should therefore require evidence of coercion, not mere anxiety about religious change. Bhatia's work helps refine this point. He argues that religious freedom cannot be understood only as a contest between the State and the community, because individuals within and across communities may be excluded from basic civil goods (Bhatia, 2016). Applied to public order, this means that the court must ask whose freedom is being protected and whose civil standing is being reduced. A convert, a woman in an inter-faith relationship, a student wearing religious dress, or a dissenter from community orthodoxy may all be vulnerable in different ways. Public order doctrine becomes constitutionally inadequate if it treats these persons as sources of disorder rather than as rights-holders.

Secularism as a basic structure offers a broader restraint. In *S. R. Bommai v. Union of India*, the Supreme Court held that secularism is part of the basic structure of the Constitution. The State cannot identify itself with one religion. Yet basic structure secularism does not answer every public order problem. A State may formally proclaim secularism while tolerating the transformation of majority sentiment into administrative action. The test of secularism is therefore not only formal neutrality. It is whether the State protects minorities when their practices become unpopular. Gender justice cases add complexity. In Indian Young Lawyers Association v. State of Kerala, the Supreme Court considered the exclusion of women of menstruating age from Sabarimala. The majority relied on equality, dignity, and constitutional morality, while the dissent warned against judicial intrusion into faith. This is not a simple minority vulnerability case, but it shows that religious freedom cannot be treated only as community autonomy. Women within communities may be vulnerable to religious authority. Public order and religious freedom must therefore be read with equality.

Personal law controversies also expose layered vulnerability. Mohd. *Ahmed Khan v. Shah Bano Begum* and *Shayara Bano v. Union of India* show that religious community autonomy may become a site of gendered injury. The State may need to intervene to protect dignity and equality. At the same time, selective intervention into minority personal law may be politically framed as majoritarian correction. A court must therefore articulate its reasons in constitutional language that protects women without demonising the minority community.

Caste after conversion illustrates another form of minority vulnerability. The Constitution (Scheduled Castes) Order, 1950, as amended, confines Scheduled Caste recognition to Hindus, Sikhs, and Buddhists. In Soosai v. Union of India, the Supreme Court declined to extend Scheduled Caste status to a Christian convert on the evidentiary record before it. The issue persists because caste-origin stigma may continue after conversion. Here the vulnerability arises from the intersection of caste, religion, and recognition. A Dalit Christian or Dalit Muslim may face caste-based exclusion but may not receive the legal recognition attached to Scheduled Caste status. Religious freedom is affected because conversion may carry the loss of remedial protection. The Indian pattern is therefore ambivalent. Article 25

protects conscience and religious exercise, but public order, morality, health, reform, institutional discipline, and religious offence can narrow protection. The constitutional task is not to remove these limitations. It is to discipline them. Courts and administrators must ask whether public order is being used to prevent actual harm or to make minority life less visible.

Indonesia, Pancasila, and managed harmony

Indonesia's constitutional structure begins with a different vocabulary. Pancasila affirms belief in the One and Only God. Article 29 states that the State is based upon belief in the One and Only God and guarantees freedom of worship according to religion or belief. Article 28E protects freedom of religion and belief, while Article 28J permits limitations by law for reasons including morality, religious values, security, and public order in a democratic society. Religious freedom is therefore recognised, but within a theistic and harmony-oriented constitutional order.

The Indonesian model is neither strict secularism nor formal theocracy. *Pancasila* helped prevent the establishment of a formal Islamic State, but it also places religion at the centre of public identity. Butt and Lindsey (2012) show that Indonesian constitutionalism is shaped by Pancasila, rights, democracy, and State authority in continuing tension. Menchik (2014) describes the broader political culture as godly nationalism, where citizenship is expected to be religious even if the State does not formally establish Islam. Decision No. 140/PUU-VII/2009 on the blasphemy law is the central Indonesian decision for understanding public order and minority vulnerability. The petitioners challenged Presidential Decree No. 1/PNPS/1965 on the Prevention of the Misuse and/or Defamation of Religion, later given statutory status by Law No. 5 of 1969. The Constitutional Court upheld the law. Crouch (2012) argues that the Court treated religion as a public good requiring State protection. The decision placed strong weight on Pancasila, Article 29, public order, and religious harmony.

The problem is not that the State sought to prevent violence or inter-religious hostility. The problem is that blasphemy law can protect recognised orthodoxy against heterodox belief. If the State must determine misuse or deviation, it must also decide who speaks for a religion and which interpretations become legally suspect. This produces special vulnerability for Ahmadiyah, Shia, indigenous belief communities, and other groups that may be treated as deviant rather than merely different.

Human Rights Watch (HRW) documented serious abuses against religious minorities in Indonesia, including attacks and discrimination affecting Ahmadiyah, Shia, Christian, and other communities (Human Rights Watch, 2013). The report also shows how houses of worship have been closed, construction halted, and minorities pressured in the name of order or harmony. Such evidence matters because it shows that public order is not an abstract doctrine. It operates through police choices, local government action, community pressure, and administrative discretion. The 2006 Joint Regulation of the Minister of Religious Affairs and the Minister of Home Affairs on houses of worship illustrates this regulatory ecology. It requires local support and recommendations before a house of worship can be established. The formal aim is to maintain harmony. Yet the requirement may allow local majorities to block minority worship. A minority congregation may have religious freedom in constitutional language, but lack practical access to worship if local approvals are withheld or intimidation is tolerated. Harmony then becomes a procedural burden placed on the minority.

Crouch's study of conflict and courts in West Java is useful because it shows that religious freedom disputes often travel through ordinary administrative and local legal channels before they become constitutional questions (Crouch, 2014). A permit refusal, a police decision, or local pressure against a congregation can determine the reality of worship more directly than constitutional text. Feener's account of modern Indonesian Islamic legal thought also shows that Islamic law in Indonesia has developed through State institutions, reformist debates, legal education, and bureaucratic structures rather than outside them (Feener, 2007). The Indonesian public order problem must therefore be understood institutionally. It is produced by courts, ministries, local officials, religious bodies, and community pressure acting together. This institutional ecology explains why vulnerability can persist even where constitutional rights exist. A minority may win recognition in principle but remain blocked by local procedures. A community may be formally protected from violence, yet police may treat its worship as a source of conflict. Religious values may be presented as a general constitutional limitation, while the concrete burden falls on heterodox or smaller groups. In this setting, public order is not a single doctrine. It is a chain of decisions that begins before the courtroom and often continues after judgment.

Decision No. 97/PUU-XIV/2016 shows another side of Indonesian constitutionalism. The Constitutional Court held that adherents of indigenous beliefs, known as penghayat kepercayaan, could be recognised in population administration. The decision corrected a form of administrative exclusion. It recognised that identity documents affect marriage, education, employment, public services, and civic standing. The case is significant because it shows that Pancasila can be read inclusively.

Yet the decision did not remove all vulnerability. It did not abolish religious classification. It did not create full constitutional comfort for non-belief. It allowed indigenous belief adherents to become legible to the State, but within a system that still expects citizens to be located within religion or belief. Mahmood's work is relevant here because minority subjects often have to translate themselves into the categories through which the State can recognise them (Mahmood, 2016). Non-believers remain vulnerable because the constitutional and administrative order is built around theistic recognition. The State may not always punish non-belief directly, but civic legibility remains difficult where public identity is expected to be religious.

Aceh marks a sharper form of public order and morality regulation. Law No. 11 of 2006 concerning the Governing of Aceh gives the province a special legal position. Qanun Aceh No. 6 of 2014 on Jinayat Law incorporates Islamic criminal norms into regional law and provides punishments including caning. Fuad, Darma, and Muhibbuthabry (2022) note that Qanun Jinayat has been criticised as unconstitutional, discriminatory, and difficult to reconcile with national law. The material review challenge before the Supreme Court was registered as Decision No. 60 P/HUM/2015 and was declared inadmissible as premature. Aceh raises questions beyond ordinary recognition of religious identity. It shows how religious morality can become coercive public law. Where criminal law is grounded in regional religious norms, minority vulnerability may arise for women, sexual minorities, non-conforming Muslims, non-Muslims, and persons whose conduct is treated as moral disorder. Regional autonomy has constitutional value, but it cannot be allowed to erase national rights. Butt's analysis of regional legal disorder is relevant because decentralisation may allow local legal regimes to proliferate in ways that strain national constitutional coherence (Butt, 2010).

Indonesia, therefore, shows how religious freedom may be protected and narrowed through the same vocabulary. Pancasila may prevent formal theocracy and support plural belonging. Harmony may reduce conflict. Public order may prevent violence. Yet the same concepts may also make legal protection conditional on conformity, recognition, and local acceptance. Minority vulnerability appears when the State treats heterodoxy as disorder and administrative recognition as the gateway to citizenship.

Minority vulnerability as a constitutional problem

Minority vulnerability is not only a sociological fact. It is a constitutional problem. A minority may be vulnerable because it lacks numbers, because its practices are visible, because it is historically stigmatised, because its beliefs are treated as deviant, or because the State classifies it in a way that limits access to rights. Vulnerability may also exist within religious communities, where women, converts, dissenters, Dalits, indigenous believers, or non-believers face internal or external pressure.

The term vulnerability should be used carefully. It does not mean weakness as an identity. It refers to a legal and social condition in which a person or group carries a higher risk of rights loss because institutions respond to them through suspicion, delay, over-policing, or non-recognition. A vulnerability analysis therefore does not replace doctrine. It deepens it. It asks whether a formally valid limitation has unequal consequences, whether the State has treated hostility by others as a reason to restrict the claimant, and whether the claimant is being asked to disappear in order to preserve peace.

In India, minority vulnerability appears in several patterns. First, religious minorities may be subject to public order restrictions when their practices become politically contested. Hijab restrictions, conversion regulation, and religious procession disputes all show how minority practices can be framed as threats to discipline or order. Secondly, Muslims and Christians may experience conversion law as a legal regime that places their missionary or marital relationships under suspicion. Thirdly, rationalists, artists, writers, and dissenters may be vulnerable to religious offence complaints. Fourthly, Dalit Christians and Dalit Muslims face a distinct form of vulnerability where caste stigma and religious classification intersect.

This does not mean that every minority claim must succeed. It means that the State must justify restrictions with evidence and must avoid making the majority reaction the measure of minority freedom. The question is not only whether the law applies equally on paper. It is whether the law burdens an already vulnerable group in practice. A dress code, conversion law, or offence provision may appear formally neutral, but its social effect may be unequal. In Indonesia, minority vulnerability often begins with recognition. Ahmadiyah and Shia communities may be treated as deviant from recognised Islam. Christians may face difficulty in establishing houses of worship in local majoritarian contexts. Indigenous belief adherents historically faced administrative invisibility. Non-believers remain difficult to place within a theistic constitutional order. In each case, the problem is not merely private prejudice. It is the interaction between social hostility and legal classification.

The public order problem is also distinct in the two countries. In India, public order often appears through police power, criminal law, conversion regulation, religious offence, and institutional discipline. In Indonesia, it often appears through harmony, religious values, recognition, administrative permits, and blasphemy law. The vocabulary changes, but the risk is similar. The State may avoid conflict by restricting the vulnerable rather than restraining those who threaten them.

Minority vulnerability also requires attention to intersectionality. A Muslim girl excluded from school because of religious dress is affected not only as a Muslim, but also as a woman and a student. A Dalit Christian denied Scheduled Caste recognition is affected by caste history, religious conversion, and remedial policy. An Ahmadiyah follower in Indonesia may be affected by minority status, doctrinal suspicion, and local violence. A non-believer may face both legal invisibility and social hostility. Constitutional analysis that treats these questions as isolated religious claims misses the layered nature of harm.

A minority-sensitive public order doctrine should therefore begin from the position of the rights-holder. It should ask whether the State has protected the claimant from private coercion. It should require specific evidence of risk. It should distinguish public order from discomfort, offence, and theological disagreement. It should ask whether less restrictive accommodation is possible. Above all, it should refuse to reward threatened violence.

COMPARATIVE ANALYSIS

India and Indonesia reveal two different routes through which public order affects religious freedom. India uses the constitutional language of secularism, conscience, public order, social reform, and equality. Indonesia uses Pancasila, religious values, harmony, recognition, and public order. India's risks lie in majoritarian recoding, religious offence law, anti-conversion suspicion, school discipline, and selective enforcement. Indonesia's risks lie in recognitional hierarchy, blasphemy regulation, worship-permit control, pressure on heterodox groups, and regional religious criminalisation.

The first comparative point concerns the burden of peace. In both systems, minorities may be asked to carry the burden of maintaining order. In India, a minority practice may be restricted because it is said to disturb discipline or provoke tension. In Indonesia, a minority worship space may be blocked because local approval is absent or harmony is said to be at risk. In both settings, the State may present its action as neutral order management. Yet the practical effect may be to reward intolerance. The second point concerns legal visibility. India does not generally require citizens to belong to an officially recognised religion for ordinary civic identity. Yet legal categories such as personal law, minority status, Scheduled Caste recognition, and religious endowment regulation still classify religion. Indonesia's system is more directly administrative. Religion or belief appears in identity administration, and recognised categories affect access to ordinary civic life. Decision No. 97/PUU-XIV/2016 expanded recognition, but did not fully detach citizenship from religious legibility.

The third point concerns religious offence and blasphemy. India's Section 295A and Indonesia's blasphemy law both reflect concerns about inter-religious peace. Both may also silence dissent, heterodoxy, and criticism. The question is whether the law targets deliberate incitement and malicious attack, or whether it protects dominant religious feeling from challenge. A democratic public order cannot require all citizens to avoid causing religious discomfort.

The fourth point concerns conversion and religious change. India directly regulates conversion through State laws, with Rev. Stainislaus providing a constitutional foundation for prohibiting force, fraud, and inducement. Indonesia does not organise the same doctrinal debate around propagation, but religious identity is administratively and socially significant. In both systems, religious change can be viewed as destabilising. A constitution committed to conscience must protect voluntary change, including conversion, reconversion, and exit.

The fifth point concerns courts. Courts may protect minorities, as in Bijoe Emmanuel and Decision No. 97/PUU-XIV/2016. Courts may also uphold regulatory regimes that narrow minority freedom, as in Ramji Lal Modi, Rev. Stainislaus, and Decision No. 140/PUU-VII/2009. The issue is not whether courts are good or bad institutions. It is whether they apply public order with discipline and whether they recognise the difference between actual disorder and dominant discomfort. A comparative framework must therefore be modest. India should not simply import Indonesian harmony, and Indonesia should not import India's essential religious practices doctrine. Both systems need a more disciplined public order review. The common requirement is evidence, proportionality, protection of the vulnerable, and refusal to let hostile audiences define the scope of freedom.

Towards a minority-sensitive public order test

A minority-sensitive public order test should not be framed as a mechanical checklist. It is better understood as a discipline of justification. When the State limits religious freedom, it must explain why the restriction is lawful, why the harm is real, why the particular claimant must bear the burden, and why less restrictive protection would not suffice. This changes the posture of adjudication. The court does not begin with anxiety about disorder. It begins with the claimant's freedom and then asks whether the State has discharged the burden of justification.

The first requirement is legality. A restriction on religious freedom should rest on clear law, not informal pressure, vague executive instructions, or local compromise that has no constitutional basis. Public order is too serious a ground to be invoked casually. Once legality is established, the State must identify the specific harm it seeks to prevent. General references to sensitivity, hurt sentiment, discipline, harmony, or anticipated tension should not be enough. The harm must be described in terms capable of legal evaluation.

Evidence is the next safeguard. Courts and administrators should insist on credible material showing an actual risk to public order. The risk may be preventive, but it cannot be imaginary. Where the risk arises from threatened violence by opponents of the claimant, the State must explain why it cannot restrain the opponents instead. This question is central to minority protection. Public order cannot become a constitutional reward for the most easily offended or the most willing to mobilise.

Necessity and proportionality should follow. A restriction is necessary only when protective measures, reasonable accommodation, targeted policing, dialogue, or narrower regulation cannot address the risk. In a school, accommodation may preserve discipline without excluding a student. In a worship dispute, police protection or reform of permit procedures may protect both peace and worship. In a conversion dispute, investigation of coercion may be justified, but suspicion of voluntary religious change is not enough. Proportionality requires the State to show that the burden on freedom is not excessive in relation to the harm prevented. The test must also examine the discriminatory effect. A rule may be neutral in wording but unequal in social meaning. If the majority practices remain invisible as culture, while minority practices are marked as religious disturbance, neutrality becomes formal. Courts should therefore ask whether the claimant belongs to a group already exposed to social hostility, whether the restriction entrenches that hostility, and whether the State has treated the claimant as a rights-holder rather than as a source of trouble.

Finally, remedies must be practical. A declaration of religious freedom is inadequate if the claimant still cannot attend school, secure protection, build a place of worship, register a

marriage, obtain documents, or live without intimidation. Public order adjudication should end not only with a legal conclusion, but with a remedy that lowers vulnerability. This is where constitutional law becomes real for minorities. It moves from paper protection to conditions of equal citizenship.

The proposed test should also change the way courts write judgments. A court should avoid language that treats the minority claimant as a problem to be managed. It should identify the constitutional subject with care, describe the actual burden, and then assess the State's justification. A judgment that begins with order may easily end with suppression. A judgment that begins with freedom and then examines order with discipline is more likely to preserve equal citizenship.

Remedial design also needs a temporal dimension. Delay can defeat religious freedom as effectively as prohibition. A student kept out of class for one academic year, a congregation denied worship space for several festivals, or a convert kept under continuing police suspicion may formally retain rights while practically losing them. Courts should therefore consider interim protection, time-bound administrative reconsideration, and accountability for officials who allow private intimidation to determine public outcomes. In minority cases, the injury often lies not only in the final restriction but also in the period during which the person is made to wait, negotiate, or retreat. A minority-sensitive doctrine must therefore treat delay, uncertainty, and administrative silence as possible burdens on freedom.

This is particularly important for communities that win a formal legal point but lose the conditions needed to enjoy it. A worship permit granted after years of hostility, a school accommodation ordered after examination cycles have passed, or identity recognition issued after civic exclusion has already occurred may come too late to repair the harm. Courts should therefore treat time as part of the remedy. Interim orders, monitoring directions, and clear administrative deadlines may be necessary where public order has been used to postpone minority freedom rather than protect it.

The remedy should also address institutional failure. Where a school excludes a student, the court should consider whether accommodation is administratively possible. Where a congregation is denied a permit, the remedy should not stop at acknowledging difficulty. It should require the administration to process the claim fairly and to protect the congregation from intimidation. Where a prosecution for religious offence is used to silence criticism or dissent, courts should insist on strict statutory thresholds. Minority-sensitive public order is therefore not only a test of restriction. It is a test of State responsibility. This approach would not disable the State. It would still allow action against forced conversion, incitement, violence, fraud, coercion, and genuine threats to peace. Its purpose is more modest and more demanding. It requires the State to justify why freedom must yield, and it refuses to allow public order to become a shortcut for avoiding difficult protection of unpopular minorities.

CONCLUSION

Religious freedom in India and Indonesia cannot be understood without public order. These are plural societies where religion is socially embedded, politically mobilised, and legally recognised. The State must prevent violence, coercion, and genuine disorder. Yet public order becomes constitutionally dangerous when it is used to manage the visibility of minorities rather than protect them. The central problem is not the existence of limitations. It is the unequal allocation of their burden.

India shows how a secular Constitution may still allow public order, religious offence, conversion regulation, institutional discipline, and reform to narrow minority freedom. Indonesia shows how Pancasila, harmony, religious values, recognition, and public order may both protect pluralism and discipline heterodoxy. Neither system can be reduced to a simple label. India is not merely secular in practice. Indonesia is not simply religious in the theocratic sense. Both are postcolonial constitutional orders trying to govern religion in conditions of diversity, anxiety, and political contestation. The article has argued that minority vulnerability must become central to religious freedom analysis. A court or administrator should not ask only whether the State has invoked public order. It should ask whether the restriction is supported by evidence, whether it is necessary, whether it is proportionate, whether it burdens a vulnerable group, and whether the State has first attempted to protect the rights-holder from hostile reaction. The difference between protecting order and rewarding intolerance lies in that discipline.

A democratic public order must be brave enough to protect unpopular freedom. It must not make minorities responsible for preventing majority anger. It must not treat religious difference as disorder, conversion as threat, heterodoxy as deviance, dress as indiscipline, or worship as provocation. Religious freedom has meaning only if it protects conscience and practice when they are socially inconvenient. This standard is not hostile to religious communities. It protects them by making State action more accountable. It also protects internal minorities by refusing to treat community authority as the final word where civil exclusion or coercion is present. In that sense, a minority-sensitive public order doctrine is not a concession to any one group. It is a discipline for constitutional democracy itself, especially where fear, offence, and local pressure are likely to distort ordinary rights reasoning. The future of religious freedom in India and Indonesia will depend on whether courts, legislatures, and administrators can hold this balance. Public order is necessary, but it must be constitutional public order. It must protect peace without silencing the vulnerable. It must restrain violence without rewarding intimidation. It must allow religious communities to live with dignity while ensuring that no community, majority or minority, captures the law. The final measure is equal citizenship. A person should not have to become less visible, less faithful, less dissenting, or less honest about belief to remain safe under the Constitution.

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