

***Law Audience Journal, Volume 3 & Issue 3, 21st January 2022,
e-ISSN: 2581-6705, Indexed Journal, Published at
<https://www.lawaudience.com/volume-3-issue-3/>, Pages: 139 to 168,***

***Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnl.u.ac.in, anjalisah2512004@gmail.com.***



Cite this article as:

MS. JASS KAUR BINDRA & MS. ANJALI SAH, “*Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic*”, Vol.3 & Issue 3, Law Audience Journal (e-ISSN: 2581-6705), Pages 139 to 168 (21st January 2022), available at <https://www.lawaudience.com/scrutinizing-the-right-to-freedom-of-religion-during-the-covid-19-pandemic>.

***Law Audience Journal, Volume 3 & Issue 3, 21st January 2022,
e-ISSN: 2581-6705, Indexed Journal, Published at
<https://www.lawaudience.com/volume-3-issue-3/>, Pages: 139 to 168,***

***Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.***

Publisher Details Are Available At:

<https://www.lawaudience.com/publisher-details/>

Editorial Board Members Details Are Available At:

<https://www.lawaudience.com/editorial-board-members/>

| Copyright © 2022 By Law Audience Journal |

(E-ISSN: 2581-6705)

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Law Audience Journal), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

For permission requests, write to the publisher, subject of the email must be “Permission Required” at the email addresses given below.

Email: lawjournal@lawaudience.com, info@lawaudience.com,

Phone: +91-8351033361,

Website: www.lawaudience.com.

Facebook: www.facebook.com/lawaudience

Instagram: www.instagram.com/lawaudienceofficial

Contact Timings: 5:00 PM to 9:00 PM.

***Law Audience Journal, Volume 3 & Issue 3, 21st January 2022,
e-ISSN: 2581-6705, Indexed Journal, Published at
<https://www.lawaudience.com/volume-3-issue-3/>, Pages: 139 to 168,***

***Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.***

DISCLAIMER:

*Law Audience Journal (e-ISSN: 2581-6705) and Its Editorial Board Members do not guarantee that the material published in it is 100 percent reliable. You can rely upon it at your own risk. But, however, the Journal and Its Editorial Board Members have taken the proper steps to provide the readers with relevant material. Proper footnotes & references have been given to avoid any copyright or plagiarism issue. Articles published in **Volume 3 & Issue 3** are the original work of the authors.*

*Views or Opinions or Suggestions (**if any**), expressed or published in the Journal are the personal point of views of the Author(s) or Contributor(s) and the Journal & Its Editorial Board Members are not liable for the same.*

While every effort has been made to avoid any mistake or omission, this publication is published online on the condition and understanding that the publisher shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work.

All disputes subject to the exclusive jurisdiction of Courts, Tribunals and Forums at Himachal Pradesh only.

***Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnl.u.ac.in, anjalisah2512004@gmail.com.***

ABSTRACT:

“This research paper extensively studies the violation of the right to freedom of religion amid an ongoing pandemic through detailed examples of India as well as countries abroad. The authors have strived to describe the consequences, impact, causes, effects, and resulting nature of events behind imposing preventative curbs on religious practices and the widespread unrest arising out of it. The international community witnessed vast differences in how religious restrictions were treated throughout the world, with some countries using it as a pathway for discrimination against minority groups.

The paper reiterates the extent of the right to freedom of religion and right to life, the main point of contention in deciding the magnitude of curbs, and also provides a detailed analysis of which of the two can be subject to exceptions. The authors trace the nature of preventive guidelines issued in India on religious freedom and analyze the rationale and changing stances of the Judiciary in adjudicating upon such matters. It raises questions of utmost urgency like to what extent religious freedom can be constrained and which shall prevail in a war between public health and religious autonomy. The answers to all such questions have been framed through the assertion of examples and justification of narratives. Lastly, the paper suggests forging trust-building exercises between the heads of government and religious bodies to fairly justify the intended motive behind religious curbs”.

Keywords: Covid-19, lockdown, freedom of religion, right to life, minorities, safety, constitution, India, International Organizations.

I. INTRODUCTION:

“Of all the religions in the world, perhaps the religion of liberty is the only faith capable of purity.” ~ Tiffany Madison

Religious liberty and freedom are of paramount importance to humanity. Mankind will be able to access religious freedom to the fullest when it is not pushed on them rather, they pick it on

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnl.u.ac.in, anjalisah2512004@gmail.com.

their own without any arbitrary restrictions. So, our civilization will be able to bang religious liberty to the core when no capricious, erratic, and oppressive restraint lies on their religious liberty, but the unanticipated pandemic in the name of Coronavirus ambushed the entire humanity. Mankind all across the world have been affected by the worldwide Coronavirus epidemic. Since its discovery in December 2019, the virus has infected millions of individuals all around the world. Article 25-28¹ will continue to battle challenges to religious freedom across the world during the epidemic. Because of government overreach during the epidemic, religious freedom was violated, making it critical to encourage the government and other actors to protect human rights, especially the right to freedom of religion, alongside efforts to battle the pandemic. The government's measures against Coronavirus have raised serious concerns about the legality of limits on fundamental rights like liberty of religion or belief in practically all contemporary democracies. We investigate some of those challenges with stress on freedom of conscience, based on the experiences of several western countries. In the contemporary welfare state, the government's principal purpose is to protect and promote individual rights while also promoting social welfare.

The real problem arises when one privilege is cancelled to protect another. The government implemented a statewide lockdown to curb the spread of the COVID-19 epidemic in India. *During the COVID-19 outbreak, the topic of reopening religious facilities as part of the unlocking program sparked a debate over the right to health vs religious liberty.* It also examines government-religious collaboration in the battle against the epidemic, as well as religious groups' responses to anti-COVID-19 regulations, which has lately included some lawsuits alleging unfair treatment of religion in contrast to other activities or organizations. Greater communication and reciprocal engagement between governments and religious groups (and civil society in general) are essential in such crises, as is a careful review of restrictions put on the practice of religion from a fairness and equality stance. The continuing coronavirus epidemic has had an impact on religious freedom throughout the world, and this research paper

¹ INDIA CONST. art. 25-28.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

will address the following questions: To what degree does law enable governments to place limits on religious freedom? Is it possible for public health to trump religious liberty? What influence has the government's and society's reactions to the epidemic had on religious practices? How has the introduction of Covid Norms affected the right to religious freedom? What inconsistencies may be found in the Supreme Court and High Courts of India's *ratio decidendi*? What was the tug of war between the right to religious freedom and its infringement during Covid-19? Finally, what solutions can be looked into to ensure the religious liberty of our civilization? All these issues will be dealt with meticulously and assiduously throughout this research paper, beginning with the impacts of a pandemic on religious freedom.

II. IMPACT OF THE PANDEMIC ON RELIGIOUS FREEDOM:

The onset of the pandemic resulted in a multifaceted disruption of lives across the world in all improbable fields, religion being one of them. The wide-scale halt in the daily drudge was reluctantly tolerated by the masses however ²when it came to religion and matters associated with divine faith, the situation got a tad bit sophisticated as it seems to have always happened with issues as sensitive as this. Governments all over the world pressed for a wider and stricter shut down of social and public services to secure and safeguard community health. The effects of these viable and arguably justified restrictions were incidentally visible in communities and countries as they strived toward achieving a healthy balance between religious freedom and religious prohibition. Because of the controversial element attached to secularist faith, the implementation of the restrictive orders was not easy nor was it unopposed, and never could be seamless in a religiously fragmented country like India. The executive and legions of bureaucracy marched ahead advocating for greater restrictions on mass gatherings and halting of public processions, celebrations, events that attracted crowds in significant numbers, and religious occurrences that could likely plunge the infection rates to a dangerous level. Western countries were quick to activate measures and reconditioned alternative ways for continuing religious discourses. With the beginning of the pandemic in 2020, the churches closed in-

² CATHERIN COOKSON, ENCYCLOPEDIA OF RELIGIOUS FREEDOM 489-500 (Berkshire 1st ed. 2003).

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnl.u.ac.in, anjalisah2512004@gmail.com.

person masses and public gatherings of devotees. The church associations managed to instill faith through regulating digital congregations and prayers services however the response greatly varied amongst the population. ³A large chunk of the *Christian community including the Hispanic Catholics (70%) and Black Protestants (84%)* considered public health of great prominence while the White Evangelicals and Catholics, prioritized the economy. Though the responses differed demographically for our western counterparts, a stark opposition to religious curbs was not seen partially due to the prevalence of liberal ethics and partially due to educated and informed masses.

However, a grievous condition arose when countries with particularly vibrant notions of atheism and much less democratic fervor started using the pandemic as an excuse to take away religious rights. This is another reason why experts believe that curbs on religious freedom need to be heavily scrutinized to ensure that it does not become a mechanized tool for the government to intervene in people’s right to personal practices. In countries like China and Russia, the limiting measures could very well be seen as a cut short path for agonizing religious liberty. Thus, worldwide a legal battle took shape as the unsettling restrictions worsened with a worsening pandemic.

Persons of legal acumen argued upon the infringed rights of the populace and universally it was seen as a conflict between the right to freedom of religion and the right to health. A proportionate counter-balance between the two is hard to strike and even harder to maintain, given the contrasting and diversified nature of communities. In an Indian context, ⁴Articles 25 and 26, grant citizens the right to freely practice, propagate and profess their religion and the freedom to manage religious affairs, however subject to public order, health and morality. The Supreme Court, through its various interpretations such as in the case of ⁵*Commissioner of*

³ Carol Kuruvilla, *Study: White Evangelicals Aren't as Worried About COVID-19 As Other Faith Groups*, HUFFPOST (June27,2020, 12:46 pm), https://www.huffpost.com/entry/white-evangelicals-coronavirus-less-worried_n_5ef375b0c5b601e5995762f.

⁴ INDIA CONST. art 25 & 26.

⁵ (2004) 12 S.C.C. 770 (India).

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnlul.ac.in, anjalisah2512004@gmail.com.

Police & others vs. Acharya Jagadishwarananda Avadhuta & another, has expanded the term religion to include matters of religious belief, doctrine, and principles and has also perceived it to be an integral part of individual liberty, thus making it a part of Article 21. The court favors freedom of religious conscience as a way of assuring a dignified life to the citizenry. The right to life and a healthy and safe environment is another right enshrined in the fundamentals of the Constitution and is seen as the most basic, humane, transcendental, and protected right granted to people irrespective of citizenship. The right to life and liberty guaranteed in Article 21 has been expounded by the Supreme Court to include the paramount importance of protecting and maintaining public health. It is reposed as the sole responsibility of the governments and leaders of the state to preserve the right to life of its citizens as a provision that cannot be overridden by any other facet. The WHO Constitution also mandates its member states to establish the best health care for their population and grant legal recognition to safeguard public health.

The contention between the two constitutionally guaranteed and universally acclaimed rights came to be grossly visible with expertise being divided into two halves. The Supreme Court of India ended up taking drastically divergent stances with the ongoing fluctuations of the pandemic trying to accommodate the interests of various groups. Petitions, cases, and court records flung across the country, filed by those demanding a limited but accessible return to places of worship and those who condoned the supremacy of safety and favored restrictions. The premise of the entire situation saw the legal machinery juggling to maintain the sanctity of the two provisions all the while trying to uphold its dignity as the supreme body of justice. State governments and High Courts too inter-sectioned into a conflict with the apex court with their provisions, relaxations and sometimes severely constricting measures.

Enumerating Consequences of Covid-19 Regulations on Religious Autonomy;

- Infringement of the right to freely practice, profess and propagate one’s religion.
- Curbing of mass religious events, gatherings, and processions.
- Scattered opposition against the alleged violation of the fundamental right to freedom of religion.

***Title: "Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic", Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnlul.ac.in, anjalisah2512004@gmail.com.***

- Multiple proceedings, cases, and legal deliberation over maintaining the sanctity of the Constitution and endeavors to safeguard public health.
- Flailing public faith in the government and other functional bodies of the nation. The apparent threat of communal tension.
- Long-term impact over mental serenity and contention of deprivation of the right to life

III. ANALYZING THE BASIC UNDERSTANDING OF FREEDOM OF RELIGION AND COVID-19:

The years 2020-2021 have been awful, with flagrant violations of the right to freedom of religion, as well as restrictions and curtailments of numerous religious rights. While universal commitment to maintaining human rights norms has been eroding for some years, the COVID-19 epidemic has hastened the deterioration of our society's democratic fabric, which is ultimately what protects the freedom to practice, profess, and propagate one's faith. *The epidemic has thrown our lives into disarray in the same manner that 9/11 and the financial crisis of 2008 did, if not more so.* It has also given many governments an excellent pretext to exploit anxieties and crackdown on dissent, restrict people's rights, and adopt emergency legislation that has the potential to have long-term implications beyond the current health crisis. The phrase "secular" refers to being "neutral" to religion or without a religious foundation. A secular person is one whose moral ideals are not based on any religion. *Secularism is defined as the separation of religion from the political, economic, social, and cultural components of life, and the treatment of religion as a completely personal affair.* Secularism approaches developing information and admiration for specific religions. The government under the leadership of Indira Gandhi brought forward and enumerated Secularism as a part of the Constitution of India in the preamble by the *Forty Second Amendment Act*⁶.

Catalogue of Profuse Laws and Legislation Dealing with Right to Freedom of Religion:

⁶ The Constitution (*Forty-Second Amendment*) Act, 1976, Acts of Parliament, 1976 (India).

***Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.***

1. ***1st Constitutional Amendment Act of USA:*** *Everybody in the U. S. has the freedom to exercise his or her religion, or no religion at all, according to the First Amendment of the United States Constitution. The First Amendment's Establishment Clause prevents the government from sponsoring or promoting religion in any form.*
2. ***Article 9 of Human’s Right Act:*** *“Freedom of thought, conscience, and religion- Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.”*
3. ***Article 18 of UDHR:*** *“Freedom of religion or belief is guaranteed by article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights and the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.”*
4. ***Article 25-28 of the Constitution of India:***
 - *Article 25: Freedom of conscience and free profession, practice, and propagation of religion.*
 - *Article 26: Freedom to manage religious affairs.*
 - *Article 27: Freedom as to payment of taxes for promotion of any particular religion. Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions.”*

Ratio Decidendi Interpreting the Meaning Of Article 25-28⁷

1. ***Hasan Ali vs. Mansoor Ali***⁸- *“The Bombay High Court held that Articles 25 and Article 26” now no longer best prevents doctrines or ideals of faith however additionally the acts executed in pursuance of faith. It accordingly ensures ceremonies, modes of worship, rituals, observances, and so on which might be a quintessential part of faith.*

⁷ INDIA CONST. art. 25-28.

⁸ Hasanali vs Mansoorali, (1948) 50 BOMLR 389 (India).

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlul.ac.in, anjalisah2512004@gmail.com.

2. **Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt**⁹-The Supreme Court ruled that there may be no question that faith reveals its foundation within the gadget of doctrines appeared with the aid of using folks who profess that faith, however, it'll now no longer be accurate to mention faith is not anything however a doctrine or perception.
3. **SP Mittal vs. Union of India**¹⁰- “The courtroom docket held that Religion no longer is theistic. It isn't simply an opinion; doctrine or perception however has an outward expression within the act as well.”
4. **A.S. Narayan vs. State of Andhra Pradesh**: In this case, Justice Hansaria found that “our charter makers had used the word “faith” in those articles (Articles 25 and 26) within the feel conveyed with the aid of using the word ‘dharma’.”
5. **Bijoe Emmanuel vs. the State of Kerala**¹¹- “The Supreme Court held that the motion of the headmistress of expelling the kids from faculty for now no longer making a song the countrywide anthem became violative in their freedom of faith. The essential rights assured beneath Article 19(1)(a) and Article 25(1) have been infringed.”
6. **M Siddiq vs. Mahant Suresh Das**- Supreme Court held that the state has the sovereign power to acquire the property. The state has also the power to acquire places of worship such as mosques, churches, temples, etc. and the acquisition of a place of worship per se is not violative of Art 25 and 26.

IV. CLAMPDOWN OF INTERNATIONAL RIGHT TO FREEDOM OF RELIGION:

The ongoing pandemic has shown the world various ways of implementing deterrent policies and that too, universally. Countries across the globe struggled to institute and articulate changes to caution immunization to their masses. The effects, as we have already seen, were more

⁹ Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, A.I.R 1954 S.C 282.

¹⁰ SP Mittal v. Union of India, A.I.R 1983 S.C (1)729.

¹¹ Bijoe Emmanuel v. State of Kerala, A.I.R 1987 S.C.R (3)518

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

sensitized when associated with religion, as compared to health, economics, politics, trade, ideological arrangements, or scientific research. The international community was not untouched by the aftermath of violative restrictions on religious rights, especially if we consider the differentiated and often inhumane approach certain nation-states have in dealing with issues of religion. ***The world witnessed massive crackdowns on public religious practices including-***

- The ¹²Jewish synagogues being shut down for the first time in Belgium since the second world war
- The marginalized ¹³Baha’i community of Iran facing vulnerable threats of oppression.
- The Christian communities shifted to a digital observance of their faith, the change welcome to some was not equally acceptable to all.

Article 18 of the International Covenant to Civil and Political Rights (ICCPR) And Turbulence Caused by Pandemic:

The mandates to the international right to freedom of religion, or more precisely, freedom of religion or belief (FORB), and its limitations are mentioned in ¹⁴Article 18 of the International Covenant to Civil and Political Rights (ICCPR). The article guarantees freedom to religious conscience and the right to practice and manifest religious practices either in private or public setup. *These rights are limited only by the scope of due process of law, public health, morality, law, and order.* Though the article was endeavored to be implemented in spirit and sense, its application has been under legal scrutiny and it has been observed that it can be applied in its limiting demeanor keeping in mind ‘public health’ and ‘freedom of others’, the two essential notions of proportionality. The WHO issued specific measures to be followed while observing religious manifestations keeping in mind the high rate of spread of infections and fatality. It

¹² Kemal Rjiken, *Antwerpse Joden nemen maatregelen om corona en ‘leven de Belgische regels na*, JONET.NL (June 17, 2020, 1:32 PM),

<https://jonet.nl/antwerpse-joden-nemen-maatregelen-om-corona-en-leven-de-regels-na/>.

¹³ Micheal Lipin, *Baha’i Leader: Iran Keeping Up to 100 Baha’is in Prison Under Virus Threat*, VOA NEWS (Apr. 14, 2020, 1:18 AM)

https://www.voanews.com/a/middle-east_voa-news-iran_bahai-leader-iran-keeping-100-bahais-prisons-under-virus-threat/6187494.html

¹⁴ INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS art. 18.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlul.ac.in, anjalisah2512004@gmail.com.

issued recommendations to faith-based organizations to alter their religious events to a virtual mode as suited and pressed for the precautionary means to be followed with diligence.

¹⁵The WHO pushed for aided physical restrictions on mass gatherings, events that exclusively necessitate human contact like touching, kissing, sharing the same vessels in Christian ceremonies or the use of holy water and Eucharist, washing of feet, eating, cooking, or sharing edibles that could have been the cause of skyrocketing mortality rates. These preventive guidelines were thus held to be legally justified on the *exception of ‘public health’ mentioned in article 18 of ICCPR* or else could have been subject to *direct limitation under Article 18(3)*.

However, the concerning factor comes in when these guidelines fall prey to being used as a perfunctory mechanism of suppression and prejudice. Social distancing has existed for centuries as a way of controlling and separating human civilization and often it had a hidden element of socioeconomic, political, racial, religious, caste, or minority-based discrimination.

¹⁶The United Kingdom once used the term ‘social distance’ to refer to the lower classes while the United States used the same for racially vulnerable groups. The entire concept of social restrictions has been greatly misused and distrusted in the past and similar consternation is being noticed in the modern era. Countries have reportedly dodged the WHO pandemic regulatory guidelines in the light of not declaring it as a public health emergency at all, and the ones who did, have been gravely haphazard in their discharge of duty.

- States with primarily stringent religious laws like ¹⁷*Russia, Kazakhstan, and Uzbekistan* used the inherent intervention in religious affairs as an illegitimate way to raid people of non-registered beliefs and faiths.

¹⁵ WHO team, *Practical considerations and recommendations for religious leaders and faith-based communities in the context of COVID-19*, WHO (Apr. 7, 2020).
<https://www.who.int/publications/i/item/practical-considerations-and-recommendations-for-religious-leaders-and-faith-based-communities-in-the-context-of-covid-19>.

¹⁶ Lily Scherlis, *Distantiated Communities*, CABINET (Apr. 30, 2020)
https://www.cabinetmagazine.org/kiosk/scherlis_lily_30_april_2020.php.

¹⁷ Organization for security and cooperation in Europe, *OSCE Human Dimension Commitments and State Responses to the COVID- 19 pandemic*, (July 17, 2020) <https://www.osce.org/odihr/human-rights-states-of-emergency-covid19>.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

- ¹⁸In a similar event in *North Africa and the Middle East*, the prohibition on mass gatherings was maliciously utilized to silence popular public protest and resulted in gross violation of fundamental rights of the citizens.

These unfortunate events occurring around the globe is the reason why strict vigilance of such restrictive policies is being demanded along with a rational proportionality analysis of the limitation to freedom of religion or belief. It has also to be kept in mind that the international relaxation given to heads of governments to apply controlling measures and exercise authoritative powers, does not lead to arbitrary and inconsistent use of administrative force in the name of religious violations, as was seen in India as well the UK. ***Both the UK and India saw police officials using physical force in the moments of utmost unnecessary*** to prevent a seemingly irrelevant breach of rules. These instances of unaccountable and desultory use of executive power were also witnessed in ¹⁹France, Belgium, and Portugal.

An almost palpable consequence of the negligent implementation of regulatory provisions is the violation of rights and mistreatment of minority religious and ethnic groups which occurred on a large scale in the fight against the coronavirus. The International Forum for justice had urged the leaders of states to be vigilant in their application of restrictions and to stay true to their commitment of *‘leaving no one behind.’* That is to say that the rules of prohibition or any exercise of administrative authority should be made with the view of public concern and not for facilitating ulterior motives.

- Despite that, ²⁰Iran reported the government releasing 85,000 prisoners to avoid overcrowding of cells although falsely detaining prisoners of the Sufi minority in packed wards.

¹⁸ Michelle Colazzo & Alexandra Tyan, *Emergency Powers, COVID-19 and the New Challenge for Human Rights*, IAI (June 27, 2020) <https://www.osce.org/odihr/human-rights-states-of-emergency-covid19>.

¹⁹ OSCE, States’ obligation in a time of emergency, OSCE ODIHR BLOG, (Sep. 3, 2020) <https://www.osce.org/odihr/elections/462723>.

²⁰ Gayle Manchin, *COVID-19 symposium: Don’t let religious freedom be a casualty of coronavirus*, OPINIOJURIS, (Apr. 6, 2020) <https://opiniojuris.org/2020/04/06/covid-19-symposium-dont-let-religious-freedom-become-a-casualty-of-coronavirus/>.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

- In South Korea another incident of religious discrimination was seen when members of a small sect were scapegoated when one member of the community tested positive.

Thus, there is always a threat of preventive and precautionary guidelines being molded into totalitarian abuses and inflicted on the communities of fragmented organizations. The application of such regulatory guidelines, therefore, requires a functionality balance and intricate realization of the government’s responsibility.

The consequential intercontinental thwack of religious restrictions:

- Gross violation of human rights and incessant restriction of fundamental provisions.
- Illicit raids and attacks on faith-based groups.
- Treacherous use of public gathering bans to silence dissent and freedom of speech.
- Careless and delinquent handling of minority communities.
- Infliction of conflict between religious and non-religious groups pressing for minimizing restrictions and heightening security, respectively.

V. TO WHAT DEGREE MAY PUBLIC PARTICIPATION IN RELIGIOUS RITUALS/FESTIVALS BE CURTAILED?

In a heterogeneous and multicultural society like India, community participation is a crucial strategy for maintaining peaceful coexistence. It is made up of the active participation of various members of a community in mutually beneficial relationships. Public religious observances and cultural festivals are one approach to get people involved in the community. As proven by numerous occurrences, they may be used to promote societal cohesion, peace, and harmony. Cultural festivals encourage community participation along cultural and ethnoreligious lines, reducing segregation by encouraging prolonged interaction in advance of the event and fostering ties and communication across groups. For public involvement to have a larger beneficial influence and reach, it must be "scaled up" by incorporating a larger community. However, when the Coronavirus pandemic multiplied and expanded to millions of people, it became a bottleneck for community interactions, religious festivals, rituals, and gatherings. The right to freely profess, practice, and promote religion is guaranteed to all people

Title: "Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic", Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnl.u.ac.in, anjalisah2512004@gmail.com.

by Article 25 of the Constitution. Article 26 gives all religious denominations the freedom to govern their own business in religious issues, among other things. These rights may be practiced in one's own private space or with the involvement of the public, as long as they do not jeopardize public order, morality, or health.

Amid a pandemic presenting significant health issues, to what degree may public participation in religious rituals/festivals be curtailed? The wording was changed from "partially" to "totally."

- All public venues, including houses of worship, were locked down when the first lockdown was declared in March 2020.
- In June, the restrictions were partly lifted, although most houses of worship remained closed to the public.
- Initially, the Supreme Court seemed to favor the (gradual) opening of houses of public worship, while deferring to the executive's judgment on the issues.
- However, after the devastation caused by COVID-19's second wave, and with rumors of a third wave on the way, courts have taken a cautious approach.

The Lord Jagannath Rath Yatra, Puri Orissa:

- **The Rath Yatra During 2020** - On June 18, 2020, the Supreme Court, while hearing a plea to postpone the Rath Yatra planned for Puri ordered that no Rath Yatra (Or any secular or religious events connected with it) be conducted anywhere in Odisha in the year 2020.
 - The Court did so while mentioning that **Article 25 is subject to health** and that the Rath Yatra is expected to attract between 10 and 12 lakh people.
 - As a result, it would be prudent to put it on hold "in the interests of public health and safety of devotees."
 - Four days later, after numerous petitions for intervention and modification of the judgment were submitted, the Court allowed the Rath Yatra to take place, subject to certain restrictions such as social distance and so on.

The Court observed that the State of Odisha submitted an affidavit saying that the Rath Yatra may be held "*in a restricted manner without public attendance*" as suggested by the Chairman

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

of the Puri Jagannath Temple Administration. As a result, the Court reasoned, *“If no public attendance can be guaranteed, we see no reason why the Rath Yatra cannot be safely performed along its customary path from temple to temple.”*

- **The Rath Yatra During 2021-** Due to the Covid-19 outbreak, the nine-day Rath Yatra event in Odisha's Puri was barren of pilgrims for the second year in a row. Only priests and officials who had been properly vaccinated and tested negative for Covid-19 were permitted to participate in the yatra. The temple priests, who are used to seeing lakhs of people throughout the yatra, appeared to be less excited this year. According to the priests *“Lord Jagannath is unable to see his worshippers when he walks out on his chariot. Every year, people go from all over the world to participate in the Rath Yatra, but this hasn't happened in the previous two years”*. During the chariot parade in Puri, the government has outlawed the presence of people on the Grand Road in front of the 12th-century shrine. Only those who are Covid-19 negative or who have received both doses of the vaccination have been allowed to pull the chariots. On both sides of the main route, security officers have been stationed on the rooftops of various structures to guarantee that people do not assemble in huge numbers to watch the event from residential residences, hotels, lodges, and guest houses.

The Amarnath Yatra & Entry in Baidyanath Jyotirlinga Temple and Baba Basukinath Temple- Following that, in July, the Court refused to limit general public, devotees, and pilgrims' entry to the annual Amarnath Yatra for 2020, stating that the choice should be left to the local administration's competence.

Supreme Court Challenged the Order of High Court:

- In the same month, the Supreme Court heard a Special Leave Petition challenging a Jharkhand High Court decision prohibiting the general public from entering the Baidyanath Jyotirlinga Temple in Deoghar and Baba Basukinath Temple during the months of Shravan and Bhado.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

- The High Court ordered ‘online darshan,’ while enabling the Temple trust to conduct worship without public involvement.
- The Supreme Court, in part amending the High Court's orders, said *that a "complete ban on public darshan is prima facie unjustified,"* and that it should have been allowed to the State government's discretion to allow *"limited entrance of general public"* while preserving social distance.

The Court then went on to ask the State government to look into the idea of controlled public darshan, not just for temples but also for other holy sites like churches and mosques (as was done in the case of another Jyotirlinga in Ujjain), noting, *“The state cannot dodge its duty to maintain social distance standards, especially as more of these locations open up across the world.”*

VI. CHANGE IN DECISIONS OF HIGH COURTS WITH UPCOMING OF THE 2nd WAVE:

India as a nation, let its guard down earlier than it was supposed to in February 2021 as the cases dropped to a hopeful low. Major religious celebrations, events, gatherings, rallies bustled in the streets with hundreds and thousands of mask-less beings thwarting around. The celebrations turned out to be premature indeed with cases soaring to a dangerous a ²¹lakh per day count in April 2021, announcing the advent of a ferocious second wave. The expert opinion, after strict international warnings, was to cease all kinds of public gatherings and worship to assure a safe and unharmed population, and the Judiciary, which had also loosened up in due course of time, pulled a tight lease. It offered absolutely no recourse or relaxation, neither the Supreme nor the High Courts, to the various pleas made by the executive or administrative officials. *The judicial bodies drastically altered their stand after the onus of promoting public safety fell onto them and the public itself*, a great proportion of which was severely at risk. The Courts came up with various judgments that hastened the restrictive curbs

²¹ Krishna N. Das & Sachin Ravikumar, *Rallies, religious gatherings aggravate India's worst COVID-19 surge*, REUTERS, (Apr, 8, 2021, 2:20 PM) <https://www.reuters.com/article/us-health-coronavirus-india-surge-idUSKBN2BV129>.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnlul.ac.in, anjalisah2512004@gmail.com.

on religious freedom in India but at the same time, brought down the number of casualties that otherwise could not have been prevented.

The Supreme Court earlier appeared to be in favor of partial restriction in granting public access to religious rituals or ceremonies probably as an inherent attempt at refuting allegations communal in nature. The apex court had *granted permission to conduct the culturally significant Rath Yatra of Jagannath Puri in 2020* amidst the surging pandemic noting that if the procession and rituals were performed with no public attendance there could not be any harm in allowing its commencement. The Supreme Court again made modifications in the *Jharkhand High Court’s decision to ban complete participation of the public in temple worship at Baba Baidyanath Jyotirlinga Temple*, calling it prima facie unreasonable. The Court favorably inclined toward the fundamental right to freedom of religion and shielded the same in every reasonable way it could. In certain places, the court also left it to the competency of the executive and local bodies to conduct and manage the assembly of such events without raging fatalities, like the Amarnath Yatra.

Although, as the pandemic shadowed our lives like a hanging sword of death, the Supreme Court and the High courts across India grew vigorously protective of the right to life and public health citing the conduct of any mass religious manifestation subject to community health. The Judiciary refused to allow any leeway to the pressure groups or religious groupings for convening any such ritualistic affair, this time not even deferring to the executive for an assurance of competency.

1. ***Restraints On Nizamuddin Markaz Mosque During the Second Wave-*** The Delhi Waqf Board approached the Delhi High Court to allow a limited number of devotees to enter the mosque during Ramzan. The mosque had been kept under strict monitoring after the Tablighi Jamaat congregation resulted in an FIR being filed on the property.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

²²The Delhi Court allowed a limited entry of 50 people to offer prayers under strict adherence to SOPs and noted that no such exception had been made for other places of religious worship or congregations.

2. ***Banned Entry to The Meenakshi Sundareswarar Temple***- The Madras High Court amidst the worsening second wave *imposed a complete ban on public gathering in the Meenakshi Sundareswarar Temple on the occasion of the Chithirai festival*, refuting the demand for even limited access to devotees.²³ The temple allowed a digital broadcast of the ceremony similar to what the Jharkhand High Court had ordered in concern to the Baidyanath Jyotirlinga temple. However, this time the Supreme Court chose not to intervene in the total prohibition of public access signifying a dramatic shift in its stance.
3. ***Curbs On Kumbh Mela and The Char Dham Yatra***- The Uttarakhand High Court took note of the grievous situation that arose in the state of Uttarakhand primarily after the great Kumbh Mela was held amid an ongoing pandemic. The Court remarked, “²⁴*there is a clear correlation between the holding of Kumbh Mela in April 2021 and the consequent deaths which occurred in Uttarakhand in May 2021.*” The High Court lamented the poor decision of holding the Kumbh gathering with devotee numbers ranging to lakhs that ultimately and untimely resulted in soaring deaths. The Court did not encourage any such mass gatherings to be permitted when the situation was more critical than ever and attached supreme importance to human life. The High Court assumed a similar standing in the matter of conducting the Char Dham Yatra and redirected the state of Uttarakhand to review its decision of allowing a public

²² Mohammad Ibrar, *At first 50 enter Nizamuddin Markaz to offer prayers, management wants restrictions lifted*, TIMES OF INDIA, (Mar.29, 2021, 12:04PM) <https://timesofindia.indiatimes.com/city/delhi/as-first-50-enter-nizamuddin-markaz-to-offer-prayers-management-wants-restrictions-lifted/articleshow/81739928.cms>.

²³ Staff Reporter, *Chithirai festival to be held inside Meenakshi Temple without public transportation*, THE HINDU, (Apr. 13, 2021, 22:41) <https://www.thehindu.com/news/cities/Madurai/chithirai-festival-to-be-held-inside-meenakshi-temple-without-public-participation/article34313460.ece>.

²⁴ Aditi Dani, *Courts on COVID-19, health and religious freedom*, BAR AND BENCH, (Aug 8, 2021, 10:36 AM) <https://www.barandbench.com/columns/courts-on-covid-19-health-and-religious-freedom>.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlul.ac.in, anjalisah2512004@gmail.com.

participatory gathering again after the recent Kumbh Mela catastrophe. The Court later *allowed a restricted commencement of the Yatra but remained severely critical of the government’s encouragement and mishandling of public congregations.*

The second wave of the pandemic saw a much harsher view of the judicial respondents in tackling the pandemic, dismissing PILs, and granting no remedy to advocates of mass celebration. Several such cases were noticed scattered across communities and demography.

- ²⁵The *Karnataka High Court* took unobserved notice of the *Chief minister’s son entering the Mysore temple and performing pooja* in July of 2021, marking the event as a violation of government guidelines. The Court said public guidelines were meant to be scrupulously followed by all with no exceptions whatsoever.
- The Supreme Court dismissed a petition negating the decision of the *State of Maharashtra* to allow 10 palkis to perform the wari to Pandharpur.
- ²⁶The Supreme Court’s Suo moto cognizance of the Uttar Pradesh government’s decision to conduct the *Kanwar Yatra* and further cancellation of it.
- ²⁷The *Gujarat High Court* dismissed a plea for granting permission to the members of the *Parsi community to conduct last rites* for the dead according to their traditional custom Dokhmenashini, believing that peculiar guidelines for handling of dead bodies had been issued in the country, given the extraordinary circumstances and must be complied with, without giving trajectory to individual faith.

Each of these judgments confided in it a clear stance of the Supreme and High Court and their determination to not put public health at risk after having witnessed the devastating after-effects

²⁵ Rintu Mariam Biju, *there can’t be one rule for political leaders and another for citizens: Karnataka HCon temple visit of Yediyurappa’s son amid COVID-19*, BAR AND BENCH, (Jun. 10, 2021 4:45 pm) <https://www.barandbench.com/news/litigation/karnataka-high-court-questions-state-by-vijayendra-temple-visit-covid-19-yeddiurappa>.

²⁶ Debayan Roy, *Kanwar Yatra canceled in Uttar Pradesh after Supreme Court suo motu intervention*, BAR AND BENCH (July 17, 2021, 10:35 PM) <https://www.barandbench.com/news/litigation/uttar-pradesh-cancels-kanwar-yatra-after-supreme-court-suo-motu-intervention>.

²⁷ Shagan Suryam, *right to religion subject to public order, morality and health: Gujarat High Court*, BAR AND BENCH, (Jul 25, 2021, 9:24 AM), <https://www.barandbench.com/news/litigation/disposal-covid-19-bodies-parsee-last-rites-gujarat-high-court>.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

of public relaxation. The right to freedom of religion was declared to be right subservient to the right to life and protection was held to be of unequivocal paramountcy. The Court had duly and justly shifted the view of its restrictive lens to maintain order and control, and above all, the life of the citizenry. However, these provisions of unmitigated restriction and its contradiction with the freedom to religion did not go unnoticed or undebated.

VII. SUPREME COURT DENIED THE PERMISSION GRANTED BY HIGH COURT FOR RATH YATRA:

The *Supreme Court* denied petitions to conduct Rath Yatras at other temples in Odisha on the same scale as Puri on July 6, 2021. The *Supreme Court* rejected a plea contesting Maharashtra's decision to allow just 10 palkis to conduct the war to Pandharpur on July 19.

Restraints On Bakri-Eid During 2nd Wave:

On July 20, the **Bombay High Court** rejected two petitions asking the Municipal Corporation to raise the limit on the number of buffaloes killed on Bakri-Eid (from 300 to 700 per day). To make the room available at the Deonar Abattoir for the sacrifice, noting, “*We need to remind everyone that COVID is not yet history and that when public health is at risk and the government is working hard to keep every person alive, religious concerns must yield to broader public interests.*”

Restraints On Kanwar Yatra, Due to Danger Of 3rd Wave:

After the state of Uttarakhand banned the Kanwar Yatra, which was set to begin on July 25, the Supreme Court took *Suo Motu* notice of the state of Uttar Pradesh's decision to allow it. Given the impending danger of a third wave, the Supreme Court ordered the state of Uttar Pradesh to rethink its judgment on July 16, stating clearly, “*The citizens of India's health and right to "life" are of vital importance. All other feelings, religious or otherwise, are subordinate to this most basic fundamental right.*”

Bakri-Eid and Decision of The State of Kerala:

The State announced its intention to postpone the Yatra on July 19. The Supreme Court chastised the state of Kerala the following day for allowing businesses to operate three days

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlul.ac.in, anjalisah2512004@gmail.com.

before Bakri-Eid. The state of Kerala has submitted an affidavit saying that the decision was made in response to agitation by merchants' groups and opposing political parties, among other things. The Supreme Court bemoaned the fact that regions with the greatest infection rates were given a full day of leisure. *“Giving in to pressure groups so that India's citizens are exposed to a national epidemic reveals a sad state of affairs.”*²⁸

VIII. TUG OF WAR BETWEEN RIGHT TO FREEDOM OF RELIGION AND ITS VIOLATION DURING COVID-19:

The past two years were caught in havoc due to spiraling waves of the viral pandemic that caught the world unprepared and unbacked. However, the damage that occurred was more than just of physical health and safety, a massive part of judicious well-being was sacrificed as well to keep the country running on its toes. The entire world saw a stifling conflict between the right to freedom of religion, its violations, and its severe inconsistency with the right to life.

Extent of Right to Freedom of Religion- Human rights advocates, legal experts, and social scientists had their opinions to pitch in when it came to unearthing the true nature and intent behind restrictions, and argumentative opinions from both sides carried the interest of greater good for the public. The Right to freedom of religion is a fundamental right in Article 25 sanctified by the Constitution with an equal amount of grandiose attached to it.

However, it's subject to public health, law and order, and morality, as mentioned earlier. It also comes into the picture while interpreting the right to life in Article 21, which provides for liberty to be bestowed upon each citizen in terms of practicing, following, and believing their preferred notions, including religious aspects. Thus, the *right to freedom of religion rests not only in Articles 25-28 but also in Article 21 as well the Preamble*, in its true essence. The

²⁸ Frances Z. Brown, Saskia Brechenmacher & Thomas Carothers, *how will the Coronavirus Reshape democracy and Governance Globally?* CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, (Apr. 6, 2020) <https://carnegieendowment.org/2020/04/06/how-will-coronavirus-reshape-democracy-and-governance-globally-pub-81470>.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnl.u.ac.in, anjalisah2512004@gmail.com.

Judiciary has also expounded the meaning of religion to include both theistic and atheistic approaches, including matters of personal belief and doctrine in the latter part.

- The Court has also *intended to separate ‘matters of religion’ from matters of secular interest*²⁹ by maintaining a restrictive distance from religious affairs. The Indian legal sphere has always been inclined toward being at arm’s length from personal religious practices and stepping in at times when the threshold for public tolerance is crossed and others’ rights are violated.
- Another point of conflict is *ascertaining the importance, practicality, and intent behind religious ceremonies*, which are often included under matters of religion however the state subjects them to judicial review whenever required³⁰.

Expanding The Rights of Life and Public Health- Right to life is the most resplendent and ethereal right guaranteed to the whole of humanity as is upheld by international organizations when remarking on human life. The Indian Constitution too administers protection and liberty of life to everyone irrespective of their citizenship. Right to life has been fostered as the universal right of existence and its paramountcy cannot be subjected to any other provision, however stringent or particular. It is mentioned as the highest right assured to and expected to be followed by all nation-states mentioned in ³¹*Article 3 of the Universal Declaration of Human Rights*.

Speaking of public health, it is also enumerated in many volumes and pages of the Indian Constitution, specifically in *Entry 6 of List II, state list in schedule VII*³². The Supreme Court has time and again reiterated the primacy of the right to life, two of those precedents being the case listed below.

²⁹Swati Singh, *Right to Health V. Freedom of Religion- An Analysis Of Opening Of Religious Institutions In Present*, IRALS, (Nov 22, 2020) <https://www.iralr.in/post/right-to-health-v-freedom-of-religion-an-analysis-of-opening-of-religious-institutions-in-present>.

³⁰ Constitutional Assembly Vol,7p.781.

³¹ Universal Declaration of Human Rights, 1948; Article 3, G.A. Res. 217A (III), U.N. Doc. A/8 10, at 71 (1948).

³² Constitution of India, 1950, Entry 6, List II-State List, 7th Schedule.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

- ***Parmanand Katara vs. Union of India***³³, which concluded that preservation of human life is of immeasurable value and once life is lost the status quo ante cannot be restored since resurrection is beyond the capacity of man.
- In the case of ***Maneka Gandhi vs. Union of India***,³⁴ the Supreme Court established that the right to life had to be examined on a greater horizon with its broadening and expansion to include more vital aspects of human life.

Thus, the right to life has its pre-positioned station as the supreme right and the right from which all other rights are derived. The right to health has impliedly been considered a part of the right to life as the apex court has held in the past that life entrenches more than just mere human existence. It includes the right to live with dignity in a healthy and clean environment.

³⁵*The concept of health has expressly been stated to be more than just the absence of sickness and health is, thus, deemed to be an overall state of being fit, physically and mentally. This aggravated field of Article 21 insinuates a legal obligation on the state to protect the citizens’ health and well-being as part of their indomitable claim to the right to life.*

Freedom Of Religion and Right to Life: Which One to Be Less Absolute and More Compromised?

The Indian legal directory requires the state to follow a ‘principled distance’ from all religion-related matters in the name of granting a restriction-free environment to the practitioners of those affairs. However, as we have seen, the state does not shy away from setting foot in a cramped situation that necessitates outer adjudication. The intervention or non-intervention of the state depends upon the loss-harm analysis of which approach would stabilize law, order, and public morality the best. The Courts have also strived to take a clear view of events and rituals that are an essential and integral part of a religion rather than just a common act of

³³Parmanand Katara v. Union of India AIR 1989 SC 2039.

³⁴ Maneka Gandhi v. Union of India, AIR 1978 S.C. 597.

³⁵ C.E.S.C Ltd. v. Subash Chandra Bose, AIR 1992 S.C 573.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnl.u.ac.in, anjalisah2512004@gmail.com.

secular nature, to make sure that every little aspect of religion is not exaggerated to the extent of causing a communal disorder.

1. The Supreme Court in the case of ³⁶the ***Durga Committee, Ajmer v. Syed Hussain Ali***, observed that the *act of slaughtering a cow on the occasion of Bakr-id was not a practice integral or religiously mandated in Islam* and a Muslim need not slaughters a cow to practice his religious beliefs. *Thus, banning it resulted in no religious violation of Article 25.* The practice was not meant to be essential according to the religion itself. This shows that the judiciary is not just solemnly ready to, but even willing to make compromises on religion if the prevailing circumstances pose threats to the greater good.
2. In a similar case of religious compromise, ³⁷***Church of God v. KKR Majestic Welfare Colony Associations & Ors***, the Court held that *religious prayers were not to be held in a way that interfered with the general public’s life* to carry on their discourses peacefully. A similar guiding principle was employed to discard the use of amplifiers and speakers for *azaan* since the court believed that though the practice itself was mandatory in the religion, the use of speakers and microphone was not.

The court further clarified that any religious practice, even if religiously integral, would be put to a halt if the life of the general population was put to the immediate threat, danger, or any larger fathomable inconvenience. These instances lead us to believe that the higher functioning machinery of the country views freedom of religion as an indeterminate, indefinite and inconclusive provision that can be mended, molded, and demolished as per the needs of the hour.

Also, if we again consider the shifting stand of the Supreme and High Courts in dealing with religious restrictions during the pandemic, it’s again clear that the Courts moved from being partially restrictive to totally restrictive when it fell upon them to secure and safeguard public

³⁶ Durga Committee, Ajmer v. Sayyed Hassan Ali, A.I.R 1961 S.C 1402.

³⁷ Church of God v. KKR Majestic Welfare Colony Association, (2000) 7 S.C.C 282.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnl.u.ac.in, anjalisah2512004@gmail.com.

health. The Judiciary has acknowledged the paramountcy of the right to life and the indisputable fact that all other rights are submissive to it or derived out of it.

- In another peculiar event back *in 2018, the court had* ³⁸*banned the use of hazardous fireworks in the Delhi/ NCR region* entailing that the practice, though a part of a religious event, cannot be left uncompromised if it intervened and hampered public well-being of the residents of the said region.

Therefore, any kind of religious occurrence that poses public fatality can be and will be subjected to partial or total prohibition as public interest and protecting rights of the public at large would prevail over religious freedom. The emerging pandemic makes it an even justified excuse to impose total bans and disallowance of mass gatherings to the degree that the legal boundaries may see fit.

The concern over the pandemic allows extensive space for the judiciary to impose overreaching restrictions since it's a globally acclaimed catastrophe. However, the real question remains as to how far the Judiciary will step to limit religious autonomy citing reasons of public interest. And previously cited examples prove that it has proactively been engaged in ensuring active settlement wherever necessary.

IX. CURBS ON RELIGIOUS FREEDOM AT THE INTERCONTINENTAL STAGE:

The pandemic has taken all the Continents under its clutches spreading the deadly virus, smacking the health of millions of individuals belonging to different nation-states. Despite recent improvements in global health, individuals throughout the globe continue to confront complex, interwoven dangers to their health and well-being rooted in social, economic, political, and environmental factors. The pandemic has also exposed major flaws in country health-information systems. While high-resource settings have experienced issues such as

³⁸ Arjun Gopal v. Union of India, (2019) 13 S.C.C. 523.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

capacity constraints and fragmentation, weaker health systems risk compromising decades of hard-won health and development benefits.

Hence, because of these extravagant dangerous curbs have been placed on the Freedom and Liberty of Individuals to profess, propagate and practice³⁹ their religion during challenging times. Different nation-states have imposed different restraints on the enjoyment of the Right to freedom of religion. Some of the examples are-

- The First Liberty Institute, a judicial organization located in the USA, has offered instructions for religious organizations on how to stop working during the COVID-19 epidemic.
- Over 100,000 confirmed cases of coronavirus (COVID-19) have been recorded in California, with over 4,000 fatalities. The state has ordered that nonessential shopping and religious activities be halted for more than two months to preserve public health. The head of California issued an order restricting gathering to either 100 people or 25% of capacity.
- The Pentecostal Church filed a lawsuit to overturn the restrictions, claiming that its services typically draw 200 to 300 people.

Equivalent or more stringent regulations apply to comparable gatherings of people such as presentations, music events, movie screenings, sports games, and stage shows, where large crowds congregate nearby for extended periods. *To protect public health, the Supreme Court of the United States upheld, “The state's right to limit congregations and secular activities. According to the ruling, Although California's rules restrict houses of worship, they appear to comply with the First Amendment's Free Exercise Clause”⁴⁰.* In reaction to Church Baptist being cited for hosting parking lot prayer meetings, the US Department of Justice argued that the state may not place societal limitations on religious behavior that do not apply to equivalent nonreligious activities. Congregants remained in their automobiles while listening to the church

³⁹ Javier Martínez-Torrón, *COVID-19 and Religious Freedom: Some Comparative Perspectives*, MDPI (Re: May 3 2021) <https://www.mdpi.com/2075-471X/10/2/39/html>.

⁴⁰ Id.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlul.ac.in, anjalisah2512004@gmail.com.

sermon on car radios. The congregants in the church were each fined \$700. In any state or local state's reaction to COVID-19, the Justice Department stressed religious liberty and sided with the church.

The Chinese administration, which maintains a policy of official atheism, took advantage of the *COVID-19 outbreak to continue its anti-religious operations, razing Xiang Baishu Church and plucking a Catholic symbol* from a church spire in Guiyang County. Officials in Shandong have issued instructions prohibiting internet preaching, which is a critical means for churches to reach out to their congregations in the face of harassment and the proliferation of the virus.

X. TRUST BUILDING EXERCISE: GOVERNMENT **COLLABORATING WITH FAITH LEADERS:**

The pandemic, as we have seen in great detail, resulted in the mass curbing of rights worldwide. Various countries across the globe responded either diligently or sluggishly, as per their convenience, to the call of gearing up for stronger medical facilitation. However, one centripetal factor all countries had to align at, was placing temporary restrictions on human rights. Violation of rights came almost inevitably with the ceasing of movement, travel restrictions, and the right to assemble.⁴¹ The suppression of these rights was bound to overshadow other subsequent rights, the right to freedom of religion being one of them. The utter state of panic allowed several constraints to be imposed on religious gatherings and observance of public ceremonies; however, there were also reported events of states using repressive reprimands to stifle, discriminate and harass the minority communities. In such a situation, when dangers on health and public well-being prevail, and the only institution which is reposed with the duty to protect its people i.e The government is looked at with fear and suppression, it would automatically give rise to grim skepticism. Such an atmosphere of fear

⁴¹ Gunnar Ekeløve-Slydal & Liv H. Kvanvig, *Lockdowns vs. religious freedom: COVID-19 is a trust-building exercise*, OpenGlobalRights (July 8, 2020).

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

and confusion would be an additional misgiving to handle and make a proper response to the pandemic even more hindered.

Individual, as well as mass incidents of denial and opposition to religious restraints, were detected that made the hostile attitude of staunch faith-holders, who paid no heed to what the government figures had to say, quite clear.

1. *A young man in Nigeria refused to accept the prohibition of offering prayers in a Mosque⁴²* and argued that God protected him from the virus and the Government had no place to tell him what to do.
2. *In Argentina, an Evangelical church reopened itself as a bar when the government did not plan an even reopening of religious places⁴³.*
3. In another such turn of events, *pastors in some parts of the US continued to organize religious ceremonials*, assuming their status as that of essential services.

That is why an alternative was suggested to expedite cooperation and ties of a partnership between government authorities and leaders of religious faith and beliefs and other religion-based organizations. It's impossible to tether such a connection and harmonical construction if the two institutions continue pressing for full autonomy and disregard compromises. The pandemic has caused every surviving human to relinquish a part of their rights or sustain some damage. Nobody has been excluded from the harm suffered thus no one should be excused. The religious leadership, as well as the administrative leaders, need to understand each other's side and act accordingly.

It is a proven fact that communities around the world have deep-rooted faith in their religious customs and consequently the leaders and people associated with them. Religious and faith

⁴² Gunnar Ekeløve-Slydal & Liv H. Kvanvig, *Lockdowns vs. religious freedom: COVID-19 is a trust-building exercise*, OpenGlobalRights (July 8, 2020). <https://www.openglobalrights.org/lockdowns-vs-religious-freedom-covid-19-is-a-trust-building-exercise>

⁴³ C. P. Scott, *Argentina pastor turns the church into a bar in protest at uneven coronavirus restrictions*, THE GUARDIAN, June 13, 2020, 02.23 BST.

⁴⁴ Id.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

leaders influence society in a dynamic manner and whimper change that probably cannot be exerted through force or verbose rules.

1. ***In Norway, a study report showed religious figures and government authorities joining hands together working a charm in curbing the spread of infections.***⁴⁵The Mosques acted quickly as a guide for transmitting health awareness and reaching nooks and crannies of the population that the government could not. The Churches, too, applied a disciplined approach to government guidelines and shifted online.
2. The WHO released a set of guidelines to be complied with by faith-based communities and authoritarian figures in such communities to protect their interests. The international policy framers assented that these ***vulnerable communities who often felt isolated and unprotected at the hands of unreliable and alienated regimes had a better rationale for accepting health advice if it came from their religious leaders.*** Besides, most of these communities are engaged in the direct provision of health and civil services and could be used as added infrastructure.
3. During the most recent Ebola outbreak in the DRC, ***4670 faith leaders were vaccinated in public*** to wash away the fear and suspicion against vaccination which in turn resulted in an uptake of inoculation drive. This proves that religious practitioners' support of modern health measures can better communicate mundane but necessary measures to the public.
4. ***WHO***⁴⁷ ***guidelines on regulations during Ramadan had the recommendation of using alcohol-based hand sanitizers*** before and after prayers to ensure hygiene. However, due to the strict prohibition on alcohol in Islam, it had the potential of turning into an allegation on the healthy body. In such a circumstance, the ***WHO could turn to***

⁴⁵ Id.

⁴⁶ Bernard Balibuno, Emanuel Mbuna Badjonga and Howard Mollett, *Lessons not learnt? Faith leaders and faith-based organizations in the DRC Ebola response*, HUMANITARIAN PRACTICE NETWORK (Sept. 2019) <https://odihpn.org/magazine/lessons-not-learnt-faith-leaders-and-faith-based-organisations-in-the-drc-ebola-response/>.

⁴⁷ Ramadan, *Safe Ramadan practices in the context of the COVID-19*, WHO, (Sept. 15, 2020)

<https://apps.who.int/iris/bitstream/handle/10665/331767/WHO-2019-nCoV-Ramadan-2020.1-eng.pdf>.

Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)), Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.

religious leaders who had endorsed alcohol-based sanitizers depending on the principle that Islam permitted things that were restrictive in case of dire necessity.

Therefore, various mechanisms and collaborative tactics have been prescribed to encourage better promotional growth of healthy ties between government and religious faiths for further democratic management of rights.

- Involving and integrating religious communities into decision-making and measuring implantation processes at all levels of coping mechanisms.
- Rely on religious leaders and scholars to disseminate scripture-based ideals and contextualize public health curbs in terms of religious beliefs.
- Discard false and untrue theories of religious conspiracy and separate essential religious practices from non-essential ones.
- Support and encourage popular religious guides to come up with alternative practices to mass celebrations including virtual dimensions.

XI. CONCLUSION:

Amid a continuing pandemic, it might be inferred that the right to freedom of religion has been violated in India and other nations throughout the world. Religious limitations have been viewed differently across the world, with some nations utilizing them as a vehicle for discrimination against minority groups, according to the international community. No one may engage in any activity that is averse to state policy or promotes discontent or intolerance among the Indian people under the name of religion.

Religious practices, rituals, observances, ceremonies, worship methods and styles, and so on are all significant and fundamental components of religion, but they should not cause trouble to others, particularly during a pandemic. The research paper reaffirmed the scope of the right to religious freedom and the right to life, which are the primary points of debate in determining the scale of temporary restrictions and a comprehensive examination of which provisions could

***Title: “Scrutinizing The Right to Freedom of Religion During the Covid-19 Pandemic”, Authored By: Ms. Jass Kaur Bindra (B.A.LL.B (Hons)),
Co-Authored By: Ms. Anjali Sah (B.A.LL.B (Hons)), Hidayatullah National
Law University, Raipur,
Email Ids: jass.2020@hnlu.ac.in, anjalisah2512004@gmail.com.***

or could not be susceptible to exceptions. The paper has examined the nature of India's preventative rules on religious freedom, as well as the rationale for changing views of the judiciary in such cases. It poses urgent considerations such as to what extent religious freedom may be curtailed and which side will win in the battle between public health and religious liberty. Keeping the concept of Religious Freedom and COVID-19 Norms it is well stated that *“We have to pray with our eyes on God, and this prayer must not cost the life of another⁴⁸”* - Oswald Chambers.

It is suggested that religious leaders perform religious rituals in an online format without risking people's lives or health during COVID-19 by using organizational websites, newsletters, emails, radio, or other broadcast media. Moreover, the nation-states must ensure that correct information is communicated with communities and that deception is countered and addressed. As a result, to overcome the crisis, religiously inclusive and varied choices for building a bearable strategy are required.

As a result, the greatest method to safeguard the health and religious freedom is to increase cooperation and partnerships between government officials and religious faith and belief leaders, as well as other religion-based organizations. Every surviving person has had to give up some of their rights or suffer some injury as a result of the epidemic. Nobody is exempt from the consequences of their actions; thus no one should be excused. Both religious and administrative officials must comprehend one other's perspectives and proceed appropriately.

⁴⁸ HEINER BIELEFELDT, NAZILA GHANEA & MICHAEL WIENER, FREEDOM OF RELIGION OR BELIEF AN INTERNATIONAL LAW COMMENTARY 103-08 (2016).