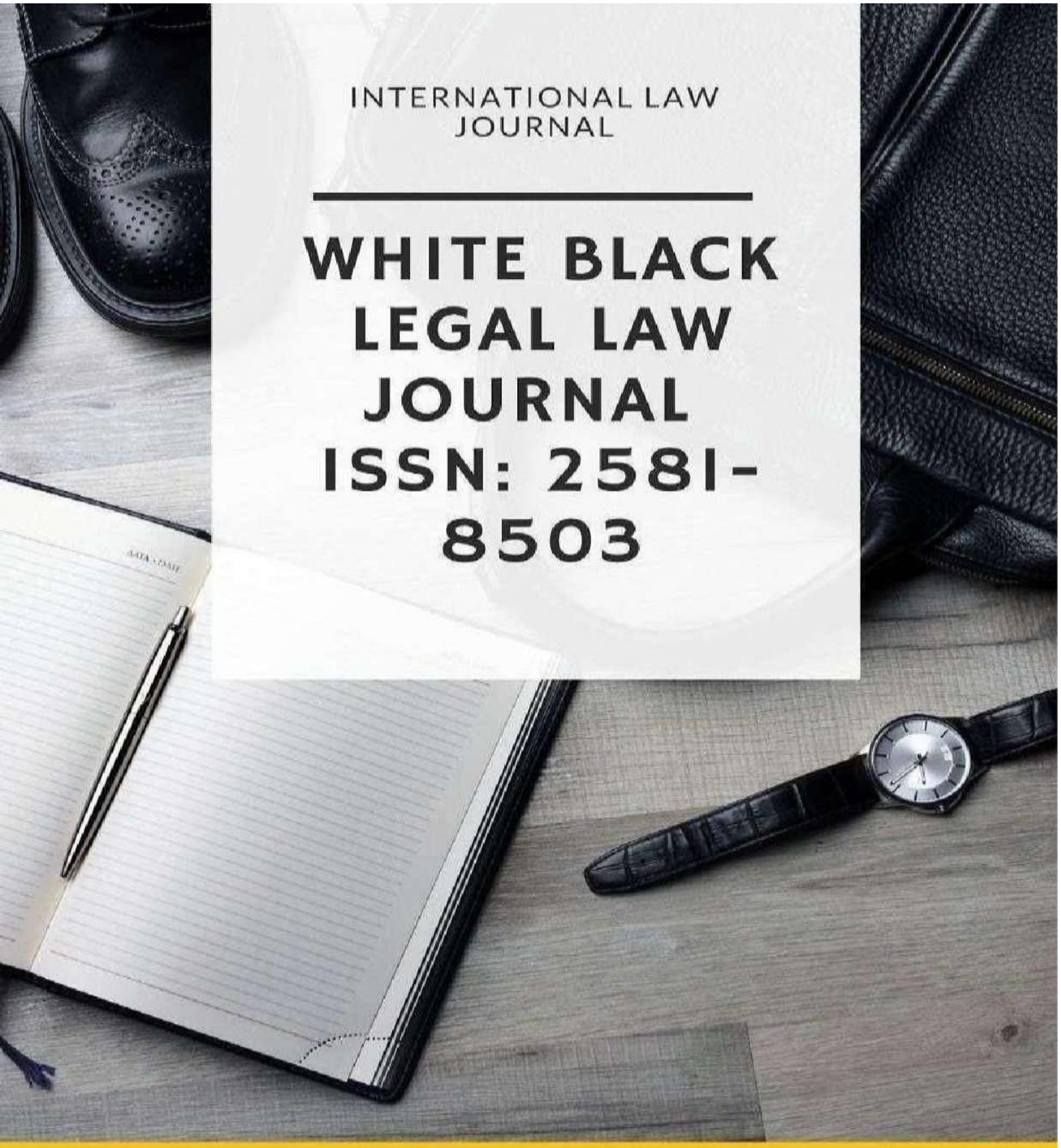

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DISCRIMINATION ON RELIGIOUS FREEDOMS OF HINDUS: A CRITICAL ANALYSIS OF STRUCTURAL AND JUDICIAL INEQUALITIES UNDER INDIAN CONSTITUTIONAL LAW

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ABSTRACT

Religious freedom constitutes one of the most sacrosanct guarantees under modern constitutional democracies, serving as a bulwark against majoritarian tyranny as well as state-sponsored theological preference. The Constitution of India proclaims secularism as a foundational value and guarantees equal religious liberty to all persons under Articles 14, 15, 25–28, and 29–30. However, the operationalization of these guarantees within India's legal and judicial framework reveals a deeply asymmetrical application of religious freedom, particularly vis-à-vis the Hindu community. This paper undertakes a critical examination of the constitutional, statutory, and judicial architecture governing religious freedoms in India, arguing that Hindu religious practices, institutions, and traditions are subjected to disproportionate state control, selective reform, and judicial skepticism when compared to minority religious groups.

By tracing the evolution of religious regulation from the colonial period to contemporary constitutional jurisprudence, the paper interrogates the compatibility of state control over Hindu religious institutions, the Essential Religious Practices doctrine, and minority-specific protections with the principles of equality, neutrality, and substantive religious freedom. The study further situates these issues within broader theoretical debates on secularism, constitutional morality, and judicial role in religious adjudication, laying the groundwork for examining landmark judgments and future constitutional trajectories.

Through an analysis of constituent assembly debates, personal law regimes, temple administration statutes, and landmark Supreme Court judgments, this study interrogates whether India's secularism has transformed from principled neutrality into a doctrine of

selective intervention. Employing doctrinal research methodology, this paper critiques the judiciary's evolving interpretation of "essential religious practices," the state's expansive regulatory control over Hindu religious institutions, and the legislative insulation enjoyed by minority religious laws. The paper further situates these developments within a comparative constitutional framework and evaluates their implications for equality jurisprudence, constitutional morality, and the future of Indian secularism. Ultimately, the paper argues that unless recalibrated, India's current model risks institutionalizing discrimination under the guise of reform, thereby eroding the constitutional promise of equal religious freedom.

I. INTRODUCTION

A. Religious Freedom and the Constitutional Promise of Equality

Religious freedom occupies a central position in constitutional democracies, operating simultaneously as an individual liberty and a collective cultural right. In India, this freedom is articulated through a constellation of constitutional provisions that purport to guarantee both freedom of conscience and the right freely to profess, practice, and propagate religion. Article 25 of the Constitution explicitly affirms this liberty, subject only to public order, morality, and health[1]. Complementing this guarantee are Articles 26, 27, and 28, which collectively protect religious denominations, prohibit compulsory religious taxation, and ensure freedom from religious instruction in state-funded institutions[2].

At the heart of these guarantees lies Article 14, which mandates equality before the law and equal protection of the laws. Read conjointly with Articles 15 and 16, the Constitution establishes a normative framework that rejects discrimination on religious grounds and aspires toward substantive equality[3]. Secularism, later affirmed as a basic feature of the Constitution, was envisioned not as hostility toward religion, but as principled state neutrality across faiths[4]. Yet, constitutional text alone does not determine constitutional reality. The lived experience of religious freedom in India has been shaped less by textual guarantees and more by legislative interventions, administrative control, and judicial interpretation. It is within this operational sphere that deep asymmetries emerge.

[1] INDIA CONST. art. 25.
[2] INDIA CONST. arts. 26–28.
[3] INDIA CONST. arts. 14–16.
[4] *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

B. The Crisis of Indian Secularism

The concept of "Secularism" in India has never mirrored the Western Westphalian model, which mandates a strict "Wall of Separation" between Church and State. Instead, the Indian Constituent Assembly debated and ultimately adopted a model often described as *Sarva Dharma Sambhava* (equal respect for all religions). However, the operationalization of this concept over seven decades has led to a peculiar legal ecosystem where the State acts as a "Reformist Interventionist" for the majority religion (Hinduism) but a "Passive Protector" for minority religions (Islam, Christianity, etc.)[5]. This approach of 'wall of separation', often described as one of "principled distance," was designed to accommodate India's vast religious diversity while preventing religious practices from undermining constitutional values[6].

The critique presented here is not political but strictly constitutional. It argues that the "intelligible differentia" required under Article 14 (Right to Equality) to classify "Hindu institutions" as a separate class requiring state management is legally absent. The result is a legal regime where a Church or Mosque is private property managed by the community, while a Hindu Temple is effectively public property managed by the State bureaucracy. This raises a question whether this disparity violates the "Basic Structure" of the Constitution.[7]

This dichotomy raises a grave constitutional question: Does the State's power to regulate "secular activities" associated with religion (under Article 25(2)(a)) justify the complete nationalization of Hindu temple management?

Religious freedom occupies a uniquely complex position within the Indian constitutional framework. Unlike strict separationist models of secularism, Indian secularism adopts a pluralistic approach that permits state engagement with religion to ensure social reform, equality, and public order.[8]

This intervention-oriented model represents a significant departure from classical secularism rooted in the Westphalian tradition, which emphasizes institutional separation, state neutrality, and non-entanglement with religious doctrine.[9] The increasing willingness of Indian courts and legislatures to regulate, reform, and even administer religious institutions—particularly those of the Hindu majority—signals a negative shift from neutrality toward selective involvement.[10]

[5] Id.
[6] Ronojoy Sen, Articles of Faith: Religion, Secularism, and the Indian Supreme Court, 36 OXFORD J. LEGAL STUD. 18 (2016).
[7] Kesavananda Bharati v. State of Kerala, (1973) 4 S.C.C. 225.
[8] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford U. Press 1966).
[9] Mark Hill QC, *Religion and Law in the United Kingdom* 3–7 (Kluwer Law Int'l 2011).
[10] Gautam Bhatia, State Control of Temples and the Constitution, *The Hindu* (July 15, 2019).

This approach dilutes the core secular promise embedded in the Preamble of the Constitution, which envisages the State as equidistant from all religions rather than actively engaged in restructuring them.[11]

By moving away from non-interference and toward doctrinal and administrative control, Indian secularism risks transforming from a constitutional guarantee of religious liberty into a mechanism of discretionary governance, undermining the foundational secular ethos the Constitution claims to uphold.[12]

However, the practical operation of this model has generated persistent controversies. While the Constitution guarantees equality before law and prohibits discrimination on the ground of religion,[13] The legal treatment of religious communities has been far from uniform. Hindu religious institutions—particularly temples—remain subject to pervasive state regulation, financial control, and administrative oversight, whereas institutions of religious minorities often enjoy greater autonomy.[14]

This divergence raises a fundamental constitutional question: whether differential regulation, even when justified in reformist or secular terms, amounts to legal discrimination when it disproportionately burdens one religious community.

The issue is not merely political or sociological; it is deeply juridical. Judicial doctrines, statutory frameworks, and executive practices together shape the lived experience of religious freedom. When courts determine what constitutes an "essential" religious practice, when legislatures regulate temple administration but not churches or mosques to a comparable extent, and when constitutional protections are asymmetrically distributed, the neutrality of the legal order itself comes under scrutiny.[15]

C. Religious Freedom and the Constitutional Promise of Equality

Indian secularism has historically evolved within a minority-protective paradigm, rooted in the trauma of Partition and the fear of majoritarian domination. Consequently, constitutional and statutory frameworks have been crafted with a pronounced emphasis on safeguarding minority identities, institutions, and practices[16] Articles 29 and 30, which grant cultural and educational rights to minorities, exemplify this protective approach and have received expansive judicial

[11] S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1, 234–36.
[12] Arun K. Thiruvengadam, Constitutional Courts and Religion, 9 *Indian J. Const. L.* 1, 28–31 (2015).
[13] **INDIA CONST.** arts. 14, 15.
[14] Gautam Bhatia, State Control of Temples and the Constitution, **THE HINDU** (July 15, 2019).
[15] Faizan Mustafa, Freedom of Religion in India, 5 **NUJS L. REV.** 101 (2012).
[16] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 54–57 (Oxford U. Press 1966).

interpretation over decades[17].

However, this minority-centric orientation has produced an unintended corollary: the treatment of the Hindu majority as a subject of reform rather than protection. Hindu religious institutions have been placed under extensive state control through temple administration laws, endowment statutes, and government-appointed boards, a phenomenon largely absent in the regulation of minority religious institutions[18]. While minority personal laws continue to enjoy legislative insulation, Hindu personal laws have been codified, amended, and judicially scrutinized in the name of social reform[19].

This differential treatment raises a fundamental constitutional question: can a secular state justify unequal regulation of religions based solely on demographic majority?

D. Problem Statement

Despite the Constitution's avowed commitment to equality and religious neutrality, Hindu religious freedoms in India are subject to:

1. **Disproportionate state control over places of worship and religious institutions**
2. **Selective judicial application of the "essential religious practices" doctrine**
3. **Unequal legislative reform of personal laws**
4. **Unequal access to minority-style constitutional protections**

These patterns collectively suggest the existence of structural discrimination against Hindu religious freedoms under Indian law, operating not overtly but through institutional design and judicial reasoning.

E. Research Questions

This paper seeks to address the following core questions:

1. Whether the Indian constitutional framework, as interpreted and applied, discriminates against Hindu religious freedoms.
2. Whether state control over Hindu religious institutions violates Articles 14, 25, and 26.
3. Whether the judiciary's interpretation of secularism and essential religious practices reflects ideological inconsistency.
4. Whether minority-specific protections undermine the principle of equal religious liberty.

[17] *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 S.C.C. 481.
[18] R. Venkata Rao, State Control of Hindu Temples: A Constitutional Critique, 45 J. Indian L. Inst. 321 (2003).
[19] Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 112–130 (Oxford U. Press 2003).

5. Whether India's model of secularism requires doctrinal recalibration to ensure genuine neutrality.

II. HISTORICAL EVOLUTION OF RELIGIOUS FREEDOM AND STATE CONTROL IN INDIA

A. Pre-Colonial India: Pluralism Without Centralized Control

Prior to colonial intervention, religious life in the Indian subcontinent was characterized by decentralization, pluralism, and community-based governance. Hindu religious institutions—temples, mutts, akharas, and mathas—were not organs of the state but autonomous entities sustained through endowments, royal patronage, and community participation[20]. Kings were regarded as *dharmic protectors* rather than regulators of religious doctrine. While rulers extended patronage across faiths, they rarely interfered in ritualistic or theological matters, reflecting a civilizational ethos of religious coexistence rather than homogenization[21].

Crucially, Hindu temples functioned as socio-religious institutions, performing roles beyond worship—education, charity, dispute resolution, and cultural preservation. Governance of these institutions rested with religious functionaries or hereditary trustees, and disputes were adjudicated according to customary law rather than sovereign command[22]. Hindu temples functioned largely as autonomous institutions governed by local communities, hereditary trustees, or royal endowments.[23] This historical reality contradicts the modern assumption that state intervention in Hindu religious institutions is a traditional or necessary feature of Indian governance.

Colonial administration marked a decisive shift. Citing mismanagement, the British introduced regulatory frameworks such as the Madras Religious Endowments Act, 1927, institutionalizing state supervision over Hindu temples.[24] Comparable intervention was not imposed upon Christian or Islamic institutions, which were treated as private or denominational bodies.[25]

B. Colonial Disruption and the Genesis of State Control

The British colonial administration marked a decisive rupture in India's religious governance.

[20] Radhakumud Mookerji, *Ancient Indian Education: Brahmanical and Buddhist* 87–92 (Motilal Banarsidass 1951).
[21] Bimal N. Patel et al., *Indian Legal System* 213–215 (Oxford U. Press 2014).
[22] Marc Galanter, Hinduism, Secularism, and the Indian Judiciary, 21 **Phil. E. & W.** 467, 471–73 (1971).
[23] H.M. Seervai, *Constitutional Law of India* (4th ed. 2013).
[24] Madras Religious Endowments Act, 1927.
[25] Galanter, supra note.

Driven by administrative convenience and fiscal interests, the colonial state gradually assumed supervisory control over Hindu religious endowments, often under the guise of preventing mismanagement. The Bengal Regulation XIX of 1810 and subsequent enactments empowered colonial courts to oversee temple administration, transforming religious institutions into legally cognizable property-holding entities subject to bureaucratic control[26].

Ironically, while the colonial state progressively disengaged from direct management of Christian and Muslim religious affairs—especially after the backlash of the 1857 Revolt—it retained and expanded its regulatory grip over Hindu temples and endowments[27]. This selective intervention was justified on the premise that Hindu institutions were "public" in nature, a classification not uniformly applied to minority religious establishments.

The colonial judiciary further entrenched this asymmetry through early formulations of what would later evolve into the "essential religious practices" doctrine. Courts began distinguishing between religious essentials and secular accretions, arrogating to themselves the authority to determine theological legitimacy—an exercise alien to both Hindu tradition and classical liberal constitutionalism[28].

C. Constituent Assembly Debates: Intent Versus Outcome

The Constituent Assembly Debates reveal a conscious effort to balance religious freedom with social reform. Framers such as Dr. B.R. Ambedkar advocated for state intervention in religious practices that contravened constitutional morality, particularly in relation to caste discrimination and social exclusion[29]. Article 25(2)(b), which permits state-led social welfare and reform, was thus incorporated as an enabling provision rather than a carte blanche for religious regulation.

However, several members cautioned against excessive state interference in religious autonomy. K.M. Munshi emphasized that secularism must imply equal distance from all religions, not selective reform of one[30]. Despite these warnings, the final constitutional text left critical terms—such as "public order," "morality," and "health"—open-ended, thereby granting the judiciary wide interpretive latitude.

Notably, the Assembly never envisioned permanent state control over Hindu religious institutions. Temporary intervention to eradicate social evils was contemplated; perpetual

[26] Bengal Regulation XIX of 1810.
[27] Elizabeth Kolsky, *Colonial Justice in British India* 156–60 (Cambridge U. Press 2010).
[28] Durgah Committee, Ajmer v. Syed Hussain Ali, A.I.R. 1961 S.C. 1402.
[29] **VII Constituent Assembly Debates** 781–84 (Dec. 2, 1948).
[30] **VII Constituent Assembly Debates** 830 (Dec. 6, 1948).

bureaucratic management was not. The subsequent statutory regime governing Hindu temples thus represents not the fulfillment but the distortion of constituent intent[31].

D. Post-Constitutional Developments: Codification and Control

Following independence, the Indian state embarked upon an ambitious project of legal reform, with Hindu law as its primary target. The Hindu Code Bills—culminating in the Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; and Hindu Adoptions and Maintenance Act, 1956—profoundly transformed Hindu personal law[32]. While these reforms advanced gender justice and individual rights, they also subjected Hindu religious norms to unprecedented legislative overhaul.

In contrast, Muslim, Christian, and Parsi personal laws were largely left untouched, insulated by political considerations and judicial deference. This asymmetry entrenched a structural imbalance: Hindu religious practices became sites of reform, while minority religious practices became zones of protection[33].

Parallelly, state governments enacted Hindu Religious and Charitable Endowments (HRCE) Acts, placing temples under direct governmental supervision. These statutes authorized state-appointed commissioners, executive officers, and boards to control temple finances, administration, and even ritual practices[34]. Such pervasive control finds no equivalent in the regulation of mosques or churches, raising serious concerns under Articles 14 and 26 of the Constitution.

E. Secularism Reimagined: From Neutrality to Selective Intervention

Indian secularism, as judicially articulated, diverges sharply from its classical liberal counterparts. Rather than strict separation, it endorses principled intervention—yet this principle has been unevenly applied. The Supreme Court's affirmation of secularism as a basic feature in *S.R. Bommai v. Union of India* emphasized equal respect for all religions[35]. However, subsequent jurisprudence reveals a pattern of heightened scrutiny toward Hindu practices, juxtaposed with judicial restraint in matters involving minority faiths.

This selective secularism undermines the constitutional promise of equality. By normalizing extensive state control over Hindu religious institutions while exempting others, the legal

[31] H.M. Seervai, *Constitutional Law of India* vol. I, 556–60 (4th ed. Universal Law Pub 2015).
[32] Werner Menski, *Hindu Law: Beyond Tradition and Modernity* 145–170 (Oxford U. Press 2003).
[33] Tahir Mahmood, Personal Laws in Crisis, 33 **J. Indian L. Inst.** 1, 8–10 (1991).
[34] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959.
[35] *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

system perpetuates a hierarchy of religious freedoms incompatible with Article 14's guarantee of equal protection[36].

Post-independence India inherited and expanded these mechanisms. State governments enacted Hindu Religious and Charitable Endowments (HRCE) laws vesting permanent control over temple administration in statutory boards.[37] While reformist objectives such as temple entry were constitutionally justified, the continuation of permanent state control represented a profound shift from autonomy to supervision.

III. CONSTITUTIONAL ARCHITECTURE AND EQUALITY JURISPRUDENCE

A. Article 14: Equality Before Law and the Problem of Differential Religious Treatment

Article 14 of the Constitution enshrines the foundational principle of equality before the law and equal protection of the laws. Indian equality jurisprudence has evolved from a formalistic notion of classification toward a doctrine of substantive equality, emphasizing non-arbitrariness and reasoned state action[38]. The Supreme Court has consistently held that Article 14 strikes at arbitrariness in state action and ensures fairness as an intrinsic constitutional value[39].

However, when examined through the prism of religious freedom, the application of Article 14 reveals deep inconsistencies. Hindu religious institutions are routinely subjected to comprehensive state regulation—financial audits, administrative appointments, and governmental takeover—while analogous minority religious institutions remain largely autonomous. This differential treatment is rarely justified through intelligible differentia or rational nexus, thereby failing the classical test of reasonable classification[40].

The constitutional infirmity lies not merely in disparate outcomes but in the presumption underlying state action: that Hindu institutions are public, reformable, and administratively governable, while minority institutions are private, sacrosanct, and beyond reform. Such presumptions are constitutionally suspect, as demographic majority cannot constitute a valid ground for unequal treatment[41].

[36] Gautam Bhatia, State Intervention and Religious Freedom, 6 **NUJS L. Rev.** 153, 165–68 (2013).
[37] State Hindu Religious & Charitable Endowments Acts.
[38] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3.
[39] *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.
[40] M.P. Jain, *Indian Constitutional Law* 1032–35 (8th ed. LexisNexis 2018).
[41] Sudhir Krishnaswamy, Democracy and Constitutional Morality, 6 **NUJS L. Rev.** 1, 14–16 (2013).

B. Articles 25 and 26: Scope, Limitations, and Judicial Expansion of State Power

Article 25 guarantees to all persons the freedom of conscience and the right freely to profess, practice, and propagate religion, subject only to public order, morality, and health. Article 26 further grants religious denominations the right to manage their own affairs in matters of religion, establish institutions, and administer property in accordance with law.

Judicial interpretation, however, has progressively diluted these guarantees through expansive readings of permissible state intervention. The Supreme Court has repeatedly held that the right to manage religious affairs is subject to regulation of secular activities associated with religion[42]. While doctrinally sound in principle, this distinction has been applied disproportionately in cases involving Hindu practices.

The judiciary has often conflated "regulation" with "control," permitting the state to assume near-total authority over Hindu religious institutions. In contrast, courts have exhibited restraint when adjudicating disputes involving minority religious administration, frequently invoking autonomy and protection from state interference[43]. This asymmetrical application undermines the universality of Articles 25 and 26.

C. The Essential Religious Practices Doctrine: Judicial Theology and Its Discontents

One of the most controversial instruments enabling judicial intervention in religious affairs is the "essential religious practices" doctrine. First articulated in *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, the doctrine empowers courts to determine which practices are essential to a religion and therefore constitutionally protected[44].

While ostensibly neutral, the doctrine has been applied with particular severity toward Hindu practices. Courts have routinely subjected Hindu rituals, customs, and traditions to theological scrutiny, often relying on selective scriptural interpretation or reformist logic. This approach effectively positions the judiciary as an arbiter of religious orthodoxy—a role incompatible with constitutional secularism[45].

Scholars have criticized the doctrine for lacking methodological consistency and for privileging judicial perceptions over lived religious experience[46]. The absence of a comparable level of

[42] *Ratilal Panachand Gandhi v. State of Bombay*, A.I.R. 1954 S.C. 388.
[43] Faizan Mustafa, Freedom of Religion and Judicial Review, 4 **Indian J. Const. L.** 45, 60–63 (2010).
[44] *Comm'r, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, A.I.R. 1954 S.C. 282.
[45] B.K. Mathew, Judicial Review of Religious Practices, 39 **J. Indian L. Inst.** 197, 210–14 (1997).
[46] Marc Galanter, Secularism, East and West, 12 **Comp. Stud. Soc'y & Hist.** 133, 145–47 (1970).

scrutiny in minority religious cases reinforces the perception of doctrinal bias, raising serious concerns under Articles 14 and 25.

D. Articles 29 and 30: Minority Protection and the Unequal Constitutional Safeguards

Articles 29 and 30 provide minorities with the right to conserve their culture and establish and administer educational institutions of their choice. Judicial interpretation has accorded these provisions expansive protection, insulating minority institutions from regulatory interference and policy mandates applicable to non-minority institutions[47].

While minority protection is constitutionally justified, its absolutist interpretation has produced structural inequality. Hindu institutions, lacking equivalent group-based safeguards, remain vulnerable to state intervention even in matters central to religious identity. The Constitution does not explicitly deny such protections to the majority; rather, judicial interpretation has confined them to minorities alone[48].

This asymmetry raises a fundamental constitutional dilemma: whether equality jurisprudence permits the permanent exclusion of the majority from protections available to minorities. If secularism mandates neutrality, then protection cannot translate into perpetual privilege[49].

E. Article 39A and Access to Justice: A Neglected Dimension

Article 39A mandates the state to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Although primarily associated with legal aid, Article 39A embodies a broader egalitarian ethos, reinforcing the Constitution's commitment to fairness and non-discrimination.

In the context of religious freedom, the persistent regulatory burden on Hindu institutions—often accompanied by financial expropriation—undermines their capacity to seek effective legal redress. State-controlled temples frequently lack autonomy to challenge governmental decisions, creating a paradox where the state acts as both regulator and litigant[50].

This structural disadvantage further entrenches inequality, rendering constitutional remedies illusory rather than real.

[47] *St. Stephen's Coll. v. Univ. of Delhi*, (1992) 1 S.C.C. 558.
[48] H.M. Seervai, *Constitutional Law of India* vol. II, 1801–05 (4th ed. Universal Law Pub 2015).
[49] Abhinav Chandrachud, Minority Rights and the Constitution, 8 **Nat'l L. Sch. India Rev.** 89, 102–05 (1996).
[50] Arvind P. Datar, Temple Administration and Fundamental Rights, 55 **SCC J.** 1, 9–12 (2014).

F. Structural Contradictions and Constitutional Tension

When Articles 14, 25–26, and 29–30 are read holistically, a constitutional tension becomes apparent. The Constitution envisions equal religious liberty, yet its judicial and legislative interpretation has resulted in unequal religious governance. The selective deployment of reformist logic against Hindu practices, combined with minority insulation, fractures the constitutional promise of neutrality.

Such outcomes cannot be reconciled with the doctrine of basic structure, which mandates equality and secularism as inviolable constitutional values[51]. Unless doctrinal recalibration occurs, the constitutional architecture risks legitimizing discrimination through interpretation rather than text.

IV. STATUTORY FRAMEWORK AND LEGISLATIVE DISCRIMINATION

A. Codification of Hindu Personal Law: Reform or Selective Intervention

The post-constitutional codification of Hindu personal law marks one of the most significant legislative interventions into religious practice in independent India. Through the enactment of the Hindu Marriage Act, 1955; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; and the Hindu Adoptions and Maintenance Act, 1956, Parliament undertook a comprehensive restructuring of Hindu familial and religious norms[52].

While these enactments are often justified as instruments of social reform, their constitutional implications merit closer scrutiny. No comparable codification or restructuring was imposed upon Muslim, Christian, or Parsi personal laws. Muslim Personal Law (Shariat) Application Act, 1937 remains largely intact, and judicial interventions into minority personal laws have historically been cautious and incremental[53].

The constitutional concern arises not from reform per se, but from **selective reform**. If social reform is a legitimate state objective under Article 25(2)(b), its application must be religion-neutral. The exclusive targeting of Hindu law for legislative overhaul suggests a presumption that Hindu religious practices are inherently reformable, while minority practices are culturally inviolable—a presumption incompatible with Articles 14 and 15[54].

[51] *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225.
[52] Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Hindu Minority and Guardianship Act, 1956; Hindu Adoptions and Maintenance Act, 1956.
[53] Muslim Personal Law (Shariat) Application Act, 1937.
[54] B. Sivaramayya, Reform of Hindu Law and Constitutional Equality, 27 **J. Indian L. Inst.** 1, 12–15 (1985).

B. Hindu Religious and Charitable Endowments Acts: Institutionalized State Control

Perhaps the most glaring manifestation of legislative discrimination lies in the regime governing Hindu temples and religious endowments. State-level Hindu Religious and Charitable Endowments (HRCE) Acts—such as those enacted in Tamil Nadu, Andhra Pradesh, Karnataka, and Kerala—authorize extensive governmental control over Hindu places of worship[55].

These statutes empower state authorities to:

- appoint executive officers to manage temples,
- audit and appropriate temple finances,
- dissolve hereditary trusteeships, and
- regulate ritualistic and administrative functions.

Such control often extends beyond secular administration into matters intimately connected with religious autonomy. Courts have upheld these statutes by characterizing temple management as a "secular activity," thereby placing it outside the core of Article 26 protections[56]. However, this reasoning fails to account for the integral relationship between ritual, finance, and administration in Hindu religious practice.

Notably, no parallel statutory framework exists for the direct state management of mosques, churches, or gurdwaras. Waqf Boards, for instance, though statutory bodies, are community-controlled and not government-administered in the same intrusive manner as HRCE authorities[57]. This disparity cannot be reconciled with constitutional equality.

The structural similarity of these control mechanisms across major States is illustrated in Appendix A.[58]

C. The Waqf Act, 1995: Autonomy Without Accountability

The Waqf Act, 1995 provides a striking counterpoint to HRCE legislation. Under the Act, Waqf properties are deemed inalienable and immune from adverse possession, and Waqf Boards enjoy extensive autonomy in administration[59]. Judicial interference is limited, and the Act

[55] Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959; Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987.
[56] *Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P.*, (1997) 4 S.C.C. 606.
[57] Faizan Mustafa, The Waqf Act and Constitutional Equality, 10 **Indian J. Const. L.** 211, 223–25 (2016).
[58] *See Appendix A (providing a comparative overview of statutory powers exercised by State authorities under major Hindu Religious and Charitable Endowments enactments across selected States, including appointment, audit, and financial administration mechanisms).*
[59] Waqf Act, 1995.

confers near-conclusive authority upon Waqf Tribunals.

While protection of minority religious endowments is constitutionally permissible, the **degree** of protection afforded under the Waqf Act far exceeds that granted to Hindu institutions. Temples routinely lose land to state acquisition, encroachment, or mismanagement by government-appointed officials, with limited avenues for redress[60].

The asymmetry is not merely functional but ideological: Hindu institutions are treated as public resources, while minority institutions are treated as private religious property. This legislative double standard undermines the secular premise of equal respect for all religions.

For contrast, the statutory governance framework applicable to waqf properties is summarized in Appendix B.[61]

D. The Places of Worship (Special Provisions) Act, 1991: Freezing Historical Injustice

The Places of Worship Act, 1991 prohibits the conversion of the religious character of any place of worship as it existed on 15 August 1947, with the sole exception of the Ram Janmabhoomi dispute[62]. While ostensibly enacted to preserve communal harmony, the Act has disproportionately impacted Hindu claims seeking restitution of historically desecrated temples.

By statutorily freezing historical wrongs, the Act forecloses judicial inquiry into documented instances of temple destruction and conversion during medieval invasions. Minority religious sites, often beneficiaries of such historical processes, retain legal protection without scrutiny, while Hindu grievances are rendered non-justiciable[63].

From a constitutional perspective, the Act raises serious concerns under Articles 14 and 25 by selectively extinguishing Hindu religious claims while preserving the status quo for others. The legislation prioritizes political expediency over substantive justice, thereby constitutionalizing inequality under the guise of secularism.

E. Financial Expropriation and Diversion of Temple Resources

Another dimension of legislative discrimination lies in the diversion of temple revenues for ostensibly secular purposes. Under various HRCE regimes, surplus temple funds are routinely

[60] Arvind P. Datar, Religious Endowments and Equality, 60 **SCC J.** 45, 52–55 (2018).
[61] See Appendix B (providing an illustrative overview of statutory governance, appointment, audit, property protection, and adjudicatory mechanisms under the Waqf Act, 1995).
[62] Places of Worship (Special Provisions) Act, 1991.
[63] R. Venkata Rao, Historical Justice and the Places of Worship Act, 48 **J. Indian L. Inst.** 401, 415–18 (2006).

redirected toward state welfare schemes, infrastructure projects, and even non-Hindu causes[64]. Such diversion would be constitutionally impermissible if applied to minority religious institutions. Mosques and churches retain exclusive control over their donations and properties, reinforcing a perception of unequal fiscal autonomy. The selective appropriation of Hindu religious wealth transforms temples into quasi-state entities, eroding their religious character and autonomy[65].

F. Legislative Silence on Majority Rights

Despite extensive minority-specific protections, the Constitution and statutory law remain conspicuously silent on collective rights of the Hindu majority. This silence is not mandated by constitutional text but is a product of interpretive and legislative choices. Equality jurisprudence does not prohibit majority protection; it prohibits majority domination. The conflation of these distinct concepts has resulted in the systematic denial of group-based protections to Hindus[66].

G. Statutory Discrimination as Structural Inequality and Necessity, Reform, and the Limits of Differential Governance

The statutory landscape reveals a coherent pattern: **Hindu religion is regulated, reformed, administered, and financed by the state**, while minority religions are protected, insulated, and autonomous. This pattern cannot be justified through isolated legislative objectives. It reflects a structural bias embedded within India's legal framework, operating beneath the rhetoric of secularism.

A recurring justification advanced in defense of Hindu Religious and Charitable Endowments (HRCE) legislation is that heightened state control is necessitated by historical caste exclusion, endemic mismanagement of temple property, and the need for financial transparency. These claims merit direct engagement, not dismissal, because they represent the strongest policy-based arguments sustaining the existing regime. However, when tested against constitutional standards of equality, proportionality, and temporal limitation, these necessity claims fail to justify the permanence and exclusivity of state control over Hindu religious institutions alone. The argument from historical caste discrimination draws normative force from Article

[64] S. Gurumurthy, Temple Wealth and State Control, *The Hindu* (Jan. 12, 2019).
[65] Subramanian Swamy, Temple Autonomy and Constitutional Rights, 5 **Nat'l Law Sch. India Rev.** 77, 90–94 (1993).
[66] H.M. Seervai, *Constitutional Law of India* vol. III, 3101–06 (4th ed. Universal Law Pub 2015).

25(2)(b), which permits state intervention for social welfare and reform. Constituent Assembly Debates confirm that this clause was designed to enable the removal of specific social disabilities, most notably untouchability and exclusion from public religious spaces, not to authorize indefinite bureaucratic management of religious institutions as a class. Dr. B.R. Ambedkar repeatedly emphasized that reform was an enabling power, not a license for wholesale displacement of religious autonomy.[67] Scholarly accounts similarly note that the framers envisaged targeted and time-bound intervention, rather than structural nationalization of religious governance.[68] Once temple entry and related reforms were constitutionally secured and judicially enforced, the continued invocation of caste reform as a justification for permanent state control loses its factual and constitutional basis.

The second necessity claim relates to alleged mismanagement and corruption in temple administration. Preventing misappropriation of religious endowments is a legitimate state interest, but constitutional law requires that such interest be pursued through the least restrictive means. Indian equality jurisprudence is clear that administrative convenience or historical malpractice cannot justify a blanket presumption against an entire class of institutions.[69] Comparable risks of mismanagement exist in minority religious and educational institutions, yet the state response there has been regulation through neutral audit, disclosure, and accountability mechanisms, not direct takeover.[70] The decision to treat Hindu temples as uniquely incapable of self-governance reflects an evidentiary assumption rather than a reasoned classification, and therefore fails the intelligible differentia test under Article 14.

The financial transparency argument similarly collapses on closer scrutiny. Transparency obligations are religion-neutral regulatory tools and can be imposed uniformly without displacing institutional autonomy. The present HRCE framework goes well beyond transparency by vesting appointment powers, budgetary discretion, and surplus appropriation in the state. Courts have repeatedly held that regulation must not extinguish the core of the right guaranteed under Article 26.[71] When transparency becomes a rationale for financial expropriation and diversion of temple funds to general state purposes, the justification shifts from oversight to redistribution, a move that lacks constitutional sanction. Scholars have pointed out that no principled theory of secularism permits the state to treat the wealth of one

[67] VII Constituent Assembly Debates 781–84 (Dec. 2, 1948).
[68] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 54–57 (Oxford U. Press 1966).
[69] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3.
[70] Abhinav Chandrachud, Minority Rights and the Constitution, 8 Nat'l L. Sch. India Rev. 89, 102–05 (1996).
[71] *Ratilal Panachand Gandhi v. State of Bombay*, A.I.R. 1954 S.C. 388.

religion as a public fiscal resource while shielding others from comparable claims.[72]

Most significantly, even if these necessity claims were valid at inception, constitutional classification cannot be frozen in time. Equality doctrine requires periodic reassessment of whether the underlying conditions that justified differential treatment continue to exist.[73] Protective or reformative discrimination that becomes permanent, detached from contemporary necessity, transforms from a remedial measure into structural inequality. The continued operation of HRCE laws decades after the eradication of the primary social evils they were meant to address indicates doctrinal inertia rather than constitutional justification.

Accordingly, the constitutional defect does not lie in the acknowledgment of reform, accountability, or transparency as legitimate state objectives. It lies in the refusal to subject those objectives to uniform standards of justification across religions and to temporal limits consistent with Articles 14, 25, and 26. A secular and egalitarian constitutional order cannot sustain necessity arguments that operate only in one direction, against one religious community, and without sunset, review, or exit mechanisms. This failure of proportionality and reassessment reinforces, rather than weakens, the claim that the existing framework represents structural discrimination rather than context-sensitive regulation.

Illustrative empirical instances of statutory appropriation, community-centric autonomy, and judicially directed restoration of religious administration are set out in Annexure C.[74]

V. JUDICIAL ADJUDICATION AND LANDMARK JUDGMENTS: A CRITICAL RE-EXAMINATION

A. Shirur Mutt and the Birth of Judicial Theology

The judgment in *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt* is widely regarded as the cornerstone of Indian religious freedom jurisprudence[75]. The Court affirmed that matters of religion are protected under Articles 25 and 26 and that the state may regulate only secular activities associated with religion. However, the judgment simultaneously introduced the "essential religious practices" test, empowering courts to determine which practices are constitutionally protected.

While Shirur Mutt is often cited as a libertarian judgment, its long-term consequences have

[72] H.M. Seervai, *Constitutional Law of India* vol. III, 3101–06 (4th ed. Universal Law Publ'g 2015).
[73] *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.
[74] See Annexure C, paras. C.1–C.3 (documenting selected statutory and judicial instances relating to financial control of temples, governance of waqf properties, and restoration of religious administration).
[75] *Comm'r, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, A.I.R. 1954 S.C. 282.

been paradoxical. By vesting courts with authority to adjudicate religious essentials, the judgment laid the groundwork for judicial overreach into theology—particularly Hindu theology, which lacks centralized doctrine or ecclesiastical hierarchy[76].

The application of this doctrine has disproportionately affected Hindu practices, enabling courts to invalidate rituals, customs, and institutional arrangements on reformist or rationalist grounds, while refraining from comparable scrutiny in minority religious contexts. The doctrinal flaw lies not in the protection of religious freedom but in the judiciary's assumption of theological competence.

B. S.R. Bommai: Secularism Declared, Neutrality Abandoned

In *S.R. Bommai v. Union of India,* the Supreme Court elevated secularism to the status of a basic feature of the Constitution[77]. The Court conceptualized secularism as equal respect for all religions and a commitment to religious neutrality by the state.

However, subsequent jurisprudence reveals a divergence between Bommai's normative articulation and judicial practice. While Bommai emphasized non-identification of the state with any religion, later judgments have tolerated, and even endorsed, extensive state management of Hindu religious institutions. This selective application raises a critical question: can a state that controls temples, appropriates temple wealth, and regulates Hindu rituals credibly claim religious neutrality?

Bommai thus stands as a declaratory milestone whose transformative promise remains unrealized in practice.

C. Ismail Faruqui: Property, Faith, and Selective Historical Amnesia

The decision in *Ismail Faruqui v. Union of India* represents one of the most controversial interventions by the Supreme Court into Hindu religious sentiment[78]. The Court held that a mosque is not an essential part of Islamic practice and that namaz can be offered anywhere, thereby legitimizing state acquisition of the disputed land at Ayodhya.

Paradoxically, while the judgment minimized Islamic religious claims in abstract terms, it simultaneously foreclosed Hindu restitution claims in general by endorsing the Places of Worship Act, 1991. The Court's reasoning reflected an uneasy compromise: theological reductionism paired with political expediency.

[76] Marc Galanter, Hinduism and the Indian Judiciary, 21 **Phil. E. & W.** 467, 480–83 (1971).
[77] *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.
[78] *Ismail Faruqui v. Union of India*, (1994) 6 S.C.C. 360.

The deeper constitutional concern lies in the Court's willingness to adjudicate historical religious claims selectively, recognizing Hindu grievances only within narrowly circumscribed political boundaries. This selective historicism undermines the judiciary's role as a neutral arbiter of constitutional rights.

D. T.M.A. Pai Foundation: Minority Rights Without Equal Baselines

In *T.M.A. Pai Foundation v. State of Karnataka*, the Supreme Court expansively interpreted Articles 29 and 30, affirming the near-absolute autonomy of minority educational institutions[79]. The judgment emphasized protection from state interference as essential to preserving minority identity. While doctrinally sound within its own frame, the judgment failed to address the corollary question of equality: why are comparable protections unavailable to majority religious institutions? The Constitution does not mandate that autonomy be a minority monopoly. By refusing to interrogate this asymmetry, the Court entrenched a regime of unequal institutional liberty. Pai thus exemplifies a jurisprudence of insulation rather than equality.

E. Shayara Bano: Reform Selectively Applied

The judgment in *Shayara Bano v. Union of India* invalidated the practice of instant triple talaq as unconstitutional[80]. While hailed as a progressive victory for gender justice, the decision is notable for its exceptionalism. The Court intervened decisively into Muslim personal law only after sustained political consensus and legislative support.

In contrast, Hindu personal law reform has historically been imposed without similar hesitation. The differential tempo and intensity of reform reinforce the perception that Hindu law is perpetually reformable, while minority law is conditionally reformable.

From an equality standpoint, Shayara Bano underscores inconsistency rather than transformation.

F. Sabarimala: Essential Practice or Judicial Morality?

The decision in *Indian Young Lawyers Association v. State of Kerala* (Sabarimala) marks the zenith of judicial intervention into Hindu religious practice[81]. The majority held that the exclusion of women of menstruating age violated Articles 14, 15, and 25, rejecting the temple's claim to denominational autonomy.

[79] *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 S.C.C. 481.
[80] *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1.
[81] *Indian Young Lawyers Ass'n v. State of Kerala*, (2019) 11 S.C.C. 1.

The judgment exemplifies the judiciary's willingness to subordinate religious autonomy to judicially constructed notions of morality and equality—exclusively in Hindu contexts. The Court assumed authority to redefine religious identity, ritual practice, and denominational status, departing sharply from its deferential stance in minority religious cases.

Subsequent review proceedings and internal judicial disagreement expose the fragility of the judgment's doctrinal foundations.

G. Pattern Recognition: Doctrinal Drift and Ideological Selectivity

When examined collectively, these judgments reveal a consistent pattern:

1. Hindu practices are subjected to intensive judicial scrutiny.
2. Minority practices receive deferential treatment.
3. Reform is imposed asymmetrically.
4. Secularism operates as intervention, not neutrality.

This pattern is not accidental; it reflects an ideological drift within Indian constitutional adjudication that equates majority identity with diminished constitutional protection.

VI. COMPARATIVE CONSTITUTIONAL PERSPECTIVE, PRESENT IMPLICATIONS, AND FUTURE TRAJECTORY

A. Comparative Constitutional Models of Religious Freedom

A comparative constitutional analysis reveals that India's model of secularism is an anomaly rather than a norm. While constitutional democracies adopt varying approaches to religion-state relations, a common thread persists: **institutional neutrality and equality of treatment across faiths**.

1. United States: Non-Establishment and Free Exercise

The United States Constitution, through the First Amendment, embodies a dual commitment to non-establishment and free exercise of religion. The U.S. Supreme Court has consistently resisted governmental control over religious institutions, even when those institutions are socially influential or financially significant[82]. Crucially, the demographic majority plays no role in determining the scope of religious autonomy.

Unlike India, the American judiciary does not adjudicate theological authenticity. Courts refrain from determining what constitutes an "essential" religious practice,

[82] *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947).

recognizing such inquiries as constitutionally impermissible entanglement[83]. This restraint preserves religious pluralism without privileging or penalizing any faith.

2. ***United Kingdom: Established Church Without Administrative Control***

Despite having an established church, the United Kingdom maintains minimal state interference in religious administration. The Church of England enjoys autonomy over doctrine, worship, and internal governance. Minority religions operate under the same legal framework, subject only to neutral regulatory laws of general application[84].

The British model demonstrates that even symbolic establishment does not necessitate intrusive state control—undermining the justification for India's pervasive regulation of Hindu institutions.

3. ***France: Laïcité and Uniform Application***

France's doctrine of *laïcité* mandates strict separation of religion and state. While religion is confined to the private sphere, the law applies uniformly across religious communities. The French state does not selectively reform or administer the institutions of a particular faith based on majority status[85].

India's selective secularism—interventionist toward Hinduism and deferential toward minorities—finds no parallel in major constitutional systems.

B. Present-Day Implications of Asymmetrical Secularism

1. ***Erosion of Equality Jurisprudence***

The unequal application of religious freedom norms corrodes the integrity of Article 14 jurisprudence. When similar religious activities are treated differently based solely on religious identity, equality before the law becomes contingent rather than absolute[86].

This erosion is not merely doctrinal but perceptual. Public confidence in constitutional neutrality diminishes when legal outcomes consistently burden one religious group.

2. ***Politicization of Religious Reform***

Selective reform incentivizes political mobilization along religious lines. Minority protections become electoral shields, while majority grievances remain

[83] *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012).
[84] Mark Hill QC, *Religion and Law in the United Kingdom* 44–49 (Kluwer Law Int'l 2011).
[85] John R. Bowen, *Why the French Don't Like Headscarves* 67–72 (Princeton Univ. Press 2007).
[86] Gautam Bhatia, *The Transformative Constitution* 211–214 (HarperCollins 2019).

institutionally unaddressed. This dynamic transforms secularism from a constitutional principle into a political instrument[87].

3. ***Judicial Credibility and Institutional Legitimacy***

When courts engage in theological adjudication, they risk undermining their own legitimacy. Judicial morality, untethered from constitutional text, invites accusations of ideological bias and erodes the authority of precedent[88].

C. The Uniform Civil Code Debate Revisited

Article 44 of the Constitution directs the state to endeavor toward a Uniform Civil Code (UCC). Historically framed as a means of national integration, the UCC debate has acquired renewed constitutional significance in light of asymmetrical personal law reform.

A genuinely uniform civil code—applied equally across religions—would address structural inequality by eliminating religion-specific legal privileges and burdens[89]. However, selective or partial implementation risks deepening, rather than resolving, constitutional imbalance.

D. Toward Constitutional Recalibration: Reformative Proposals

The concerns traditionally invoked to justify differential regulation of Hindu religious institutions—social reform, prevention of mismanagement, and protection of public interest—are neither illusory nor constitutionally irrelevant. The Supreme Court has repeatedly affirmed that the Constitution permits regulatory engagement with religion where necessary to advance public order, morality, health, and social welfare.[90] The constitutional difficulty arises not from the existence of regulatory power, but from its **asymmetrical deployment, indefinite duration, and attenuated connection to present necessity**.

The following reformative proposals are therefore advanced not as a repudiation of existing jurisprudence, but as a principled recalibration consistent with the Court's own equality, proportionality, and basic structure doctrines.

1. ***Doctrinal Reorientation from Religious Determination to Rights Review***

The Essential Religious Practices doctrine, as articulated in *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*,[91]

[87] Pratap Bhanu Mehta, Secularism and Its Discontents, 37 **Seminar** 12, 15–17 (2010).
[88] Arun K. Thiruvengadam, Constitutional Courts and Religion, 9 **Indian J. Const. L.** 1, 28–31 (2015).
[89] Law Comm'n of India, Consultation Paper on Reform of Family Law 7–12 (2018).
[90] *Ratilal Panachand Gandhi v. State of Bombay*, A.I.R. 1954 S.C. 388.
[91] *Comm'r, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*, A.I.R. 1954 S.C. 282.

served an important historical function by shielding core religious matters from state intrusion. However, subsequent application has required courts to undertake theological determinations for which judicial processes are institutionally unsuited. Recent Supreme Court jurisprudence reflects an emerging awareness of this limitation. In *Indian Young Lawyers Association (Sabarimala Review)*,[3] multiple opinions expressed caution against courts assuming the role of religious arbiters. A calibrated doctrinal shift that confines judicial review to examining **the legality, necessity, and proportionality of state action**, rather than the theological essentiality of practices, would preserve religious autonomy while maintaining constitutional oversight. Such an approach aligns with the Court's broader movement toward proportionality analysis in rights adjudication.[92]

2. ***Adoption of Religion-Neutral Regulatory Standards***

The Court has consistently held that Article 14 forbids arbitrariness and mandates reasoned classification.[93] If financial transparency, prevention of mismanagement, and protection of devotees constitute legitimate state interests, those interests can be secured through **neutral regulatory mechanisms** applicable across religious institutions.

The experience of minority educational institutions demonstrates that autonomy and accountability are not mutually exclusive.[94] Extending comparable regulatory baselines—such as audit requirements and disclosure norms—without displacing institutional governance would satisfy public interest concerns while avoiding religion-specific presumptions. Such neutrality reinforces, rather than dilutes, the secular character of the State.

3. ***Legislative Reassessment of HRCE Regimes on Continuing Necessity***

The Supreme Court has recognized that classifications valid at one point in time may become constitutionally infirm if their underlying rationale no longer subsists.[95] HRCE statutes were upheld historically on the premise of correcting specific social evils and administrative failures. Where those objectives have been achieved, or where less intrusive mechanisms are available, **continued permanent state control requires fresh justification**.

[92] *Modern Dental College & Research Centre v. State of M.P.*, (2016) 7 S.C.C. 353.
[93] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3.
[94] *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 S.C.C. 481.
[95] *State of W.B. v. Anwar Ali Sarkar*, A.I.R. 1952 S.C. 75.

A structured legislative review assessing present-day necessity would comport with Article 14's evolving equality jurisprudence and with the Court's insistence that restrictions on fundamental rights remain proportionate and contextually justified.[96] This does not mandate abrupt withdrawal of oversight, but encourages a transition toward autonomous governance subject to neutral supervision.

4. ***Equality-Consistent Interpretation of Articles 29 and 30***

Minority protections under Articles 29 and 30 are a cornerstone of India's constitutional pluralism. The Court has rightly emphasized that these provisions operate as shields against discrimination.[97] At the same time, equality jurisprudence cautions against transforming protective provisions into permanent exemptions from regulatory scrutiny.

An equality-oriented interpretation does not diminish minority rights. It clarifies that **autonomy and accountability must coexist across religious communities**, calibrated to objective regulatory needs rather than religious identity. Such an approach harmonizes Articles 14, 25, and 29–30, rather than placing them in latent conflict.

5. ***Reaffirmation of Secularism as Principled Institutional Neutrality***

In *S.R. Bommai v. Union of India*, the Court described secularism as equal respect for all religions.[98] That principle is best preserved when the State maintains institutional neutrality, intervening only where constitutionally compelled and withdrawing once the necessity abates.

Reform, regulation, and minority protection remain legitimate constitutional tools. Their legitimacy, however, depends on **uniform standards of justification, temporal limitation, and proportionality**. A recalibrated approach rooted in neutrality strengthens public confidence in constitutional adjudication and ensures that secularism operates as an equality-enhancing principle rather than an identity-contingent one.

E. Probable Future Trajectory of Indian Secularism

India stands at a constitutional crossroads where the future direction of secularism will determine the credibility of equality jurisprudence and the legitimacy of judicial review in

[96] *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248.
[97] *St. Stephen's Coll. v. Univ. of Delhi*, (1992) 1 S.C.C. 558.
[98] *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1.

religious matters. Continued adherence to an **asymmetrical application of secular governance norms** risks entrenching religious inequality by normalizing differential state control over religious institutions through precedent rather than principle. Such an approach strains Articles 14 and 25–26 and sits uneasily with secularism as a basic feature, which requires neutrality and equal standards of justification rather than identity-based governance.[99] Scholarly commentary has consistently warned that secularism loses constitutional coherence when the State assumes a continuing reformist role toward one religion while exercising restraint toward others.[100]

A recalibrated approach, anchored in equality, neutrality, and institutional restraint, offers a principled path forward. This requires a shift away from judicial theology and toward review of state action on proportionality, necessity, and religion-neutral criteria. The framers' understanding of secularism emphasized non-identification and equal distance, not differential supervision.[101] Contemporary constitutional scholarship similarly cautions that selective engagement corrodes both equality and institutional legitimacy.[102]

This analysis does not proceed from a majoritarian or communitarian standpoint, nor does it contest the constitutional legitimacy of minority protections as such. It advances an equality-based institutional critique focused on the durability of differential religious governance under Articles 14 and 25 and the basic structure doctrine, independent of the identity of the affected religious group.[103] Comparative constitutional experience supports this position. Courts in Canada and South Africa, while committed to substantive equality, have emphasized institutional restraint and religion-neutral standards when adjudicating state interaction with religious bodies, cautioning against differential governance grounded in religious identity rather than demonstrable necessity.[104]

Recent judicial developments suggest an emerging awareness of these tensions. Fragmentation in major judgments, review proceedings, and sustained academic criticism of expansive doctrines indicate discomfort with intensive judicial intervention in religious affairs. Whether this awareness matures into doctrinal correction depends on institutional resolve and fidelity to

[99] *S.R. Bommai v. Union of India*, (1994) 3 S.C.C. 1, 234–36.
[100] H.M. Seervai, *Constitutional Law of India* vol. III, 3101–06 (4th ed. Universal Law Pub 2015); Marc Galanter, Hinduism, Secularism, and the Indian Judiciary, 21 *Phil. E. & W.* 467, 480–83 (1971).
[101] Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 54–57 (Oxford Univ. Press 1966).
[102] Gautam Bhatia, *The Transformative Constitution* 211–14 (HarperCollins 2019).
[103] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3; H.M. Seervai, *Constitutional Law of India* vol. III, 3101–06 (4th ed. Universal Law Pub 2015).
[104] *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 (Can.); *Minister of Home Affairs v. Fourie*, 2006 (1) S.A. 524 (CC) (S. Afr.); Ran Hirschl, *Comparative Matters: The Renaissance of Comparative Constitutional Law* 98–102 (Oxford Univ. Press 2014).

constitutional limits. Absent recalibration, secularism risks hardening into a framework where inequality is reproduced through interpretation, undermining the promise of equal religious freedom.

VII. CONCLUSION

This paper directly contests the claim that the existing legal framework reflects only *context-sensitive regulation* rather than discrimination. While the Constitution permits regulation of religion-associated secular activities, regulation has, in the Hindu context, crossed the constitutional boundary into permanent control. Temporary oversight to correct mismanagement has evolved into an entrenched administrative regime in which Hindu temples are governed, staffed, audited, and financially appropriated by the State for decades without sunset clauses or exit mechanisms. Context-sensitive regulation, by definition, must be limited, proportionate, and reversible. The present framework fails all three tests.

The argument that Hindu institutions are regulated because of their public character, not religious identity, is also constitutionally unsustainable. Public character alone cannot justify exclusive state takeover. Many minority religious institutions such as large mosques, churches, waqf properties, and minority educational institutions serve public functions, receive public donations, and affect large populations. Yet, they are not subjected to comparable state management or financial appropriation. If *publicness* were the true basis of regulation, the regulatory framework would be religion-neutral. The selective designation of Hindu temples as "public" while treating minority institutions as "private" reveals a presumptive classification based on religion, not function. Article 14 does not permit such presumptions to substitute for intelligible differentia.

The claim that minority protections exist due to historical necessity and not favoritism is constitutionally valid only up to a point. Protective discrimination is justified to remedy vulnerability, not to create permanent asymmetry. The Constitution does not freeze history into eternity. Seventy-five years after independence, minority protections under Articles 29 and 30 have evolved from shields against discrimination into structural insulation from regulatory scrutiny, while the majority religion remains subject to continuous reform, supervision, and judicial skepticism. Constitutional equality demands periodic reassessment of classifications. Historical vulnerability cannot justify perpetual privilege, especially when it results in the

systematic denial of autonomy to another religious group.

The assertion that judicial intervention is guided by constitutional morality rather than theological control is perhaps the most contested—and the most problematic. Constitutional morality is meant to restrain state power, not expand judicial authority into doctrinal adjudication. When courts decide what constitutes an "essential" religious practice, assess scriptural legitimacy, or override denominational authority based on judicial interpretation of morality, they inevitably enter the realm of theology. This intrusion is especially pronounced in Hinduism, a non-centralized and pluralistic faith, where judicial determinations effectively reshape religious identity itself. The selective intensity with which this doctrine is applied is largely against Hindu practices, and undermines the claim of neutrality and raises serious concerns under Articles 14 and 25. Moreover, constitutional morality cannot operate selectively. If practices across religions potentially conflict with equality or dignity, they must be examined using uniform standards of scrutiny. The consistent judicial restraint shown in minority religious matters, contrasted with aggressive intervention in Hindu contexts, suggests not neutrality but ideological asymmetry. Courts cannot simultaneously claim restraint and assert reformist authority without collapsing the constitutional balance between religious freedom and state power.

Taken together, these counter-positions fail not because regulation, protection, or reform are unconstitutional per se, but because their application has become structurally one-sided. The constitutional infirmity lies in cumulative impact. When one religion alone is subjected to state control, legislative overhaul, financial diversion, and doctrinal adjudication, while others are protected from similar intervention, the result is not secularism but selective secularism.

The Constitution does not envision a secular state that reforms one religion, manages its institutions, controls its wealth, and interrogates its practices, while acting as a passive guardian for others. Secularism, as a basic feature, requires equal distance, not unequal engagement. Equality under Article 14 requires not identical outcomes, but equal standards of justification. Those standards are absent in the present framework.

Therefore, the conclusion of this paper is not a rejection of reform, regulation, or minority protection. It is a rejection of permanent asymmetry justified by temporary reasons. Unless Indian constitutional law recalibrates its approach by limiting state control to genuine necessity,

applying judicial scrutiny uniformly, and restoring institutional autonomy, the promise of religious freedom will remain unevenly realized. A Constitution committed to equality cannot sustain a system where neutrality is proclaimed in theory but denied in practice.

Appendix A

Comparative Overview of State Hindu Religious and Charitable Endowments Statutes

Illustrative comparison of statutory powers exercised by State authorities under selected Hindu Religious and Charitable Endowments enactments

State	Principal Statute	Appointment & Administrative Powers	Audit & Financial Control	Powers Relating to Utilization of Funds
Tamil Nadu	Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959	Commissioner and senior officials appointed by the State; Executive Officers may be appointed for individual temples; hereditary trustees subject to suspension or removal	Mandatory audit of temple accounts under HRCE authorities; budgets and expenditures subject to statutory oversight	Surplus temple funds may be pooled and utilized in accordance with statutory directions and schemes approved by the State
Andhra Pradesh	Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987	Commissioner, Deputy Commissioners, and Executive Officers appointed by the State; extensive supervisory control over notified institutions	State-controlled audit and financial supervision; power to frame administrative and financial schemes	Statutory authority to allocate temple funds for common religious or charitable purposes as prescribed
Karnataka	Karnataka Hindu Religious Institutions and Charitable Endowments Act, 1997	Commissioner appointed by the State; temple administration committees subject to governmental supervision	State-supervised audit mechanisms; approval required for certain categories of expenditure	Common Pool Fund constituted from specified temple income and administered through statutory mechanisms

Kerala	Travancore–Cochin Hindu Religious Institutions Act, 1950; Malabar Devaswom Board Acts	Devaswom Boards exercise administrative control; Board composition and functioning governed by statute with State involvement	Audits conducted through statutory boards subject to state-directed procedures	Temple revenues administered by Devaswom Boards; individual temple autonomy subject to statutory controls

Notes

1. The table is illustrative and confined to major statutory features relevant to governance, financial supervision, and administrative control.
2. It does not assess the constitutional validity of any provision and is intended solely to present a comparative structural overview.
3. Statutory references are to the principal enactments as amended from time to time.

Appendix B

Statutory Overview of Waqf Boards and Governance Framework

Illustrative overview of statutory powers and governance structures under the Waqf Act, 1995

Aspect	Statutory Position under the Waqf Act, 1995
Constitution of Waqf Boards	State Waqf Boards constituted under statute; members primarily drawn from the Muslim community as prescribed by law
Administrative Control	Waqf Boards exercise direct control over waqf properties and institutions; management authority vested in the Board rather than the State executive
Appointment Powers	Mutawallis (managers) appointed or recognized under the Act; State does not appoint executive officers to manage individual waqf institutions in routine administration
Audit & Financial Supervision	Statutory audits conducted under procedures prescribed by the Act; financial oversight exercised through Board mechanisms rather than direct State treasury control
Protection of Property	Waqf properties declared inalienable; protected against adverse possession and unauthorized transfer

Adjudicatory Mechanism	Exclusive jurisdiction of Waqf Tribunals over disputes relating to waqf property and administration; limited scope for ordinary civil court intervention
Utilization of Funds	Waqf income to be utilized for purposes consistent with the waqf deed and religious or charitable objectives recognized under the Act

Notes

1. This table is descriptive and confined to principal statutory features governing waqf administration and oversight.
2. It does not evaluate constitutional validity or comparative merit.
3. References are to the Waqf Act, 1995 as amended from time to time.

Appendix C

Illustrative Empirical Instances of Differential Religious Governance

C.1. State Appropriation and Diversion of Temple Funds under HRCE Regimes

1. It is a matter of record that under several State Hindu Religious and Charitable Endowments enactments, surplus temple funds are statutorily liable to be pooled and utilized for purposes determined by the competent authority. For instance, under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, surplus funds from individual temples may be transferred to a common pool and applied in accordance with schemes framed or approved by HRCE authorities. The Supreme Court has taken cognizance of such statutory arrangements while upholding regulatory oversight, while also cautioning that diversion of temple funds must remain connected to religious or charitable purposes and not amount to secular expropriation.[1] The continued operation of pooled-fund mechanisms across decades illustrates that financial control under HRCE laws extends beyond audit and transparency into substantive appropriation of temple resources by the State apparatus.[105]

C.2. Community-Centric Autonomy and Property Protection under the Waqf Act, 1995

2. In contrast, waqf properties governed by the Waqf Act, 1995 are statutorily insulated from adverse possession and unauthorized alienation. The Act declares waqf property

[105] *Sri Adi Visheshwara of Kashi Vishwanath Temple v. State of U.P.*, (1997) 4 S.C.C. 606; Tamil Nadu Hindu Religious and Charitable Endowments Act, No. 22 of 1959.

inalienable and vests administration in Waqf Boards composed predominantly of members of the concerned religious community. In *Board of Wakf, West Bengal v. Anis Fatma Begum*, the Supreme Court affirmed the special statutory protection accorded to waqf property and emphasized the exclusive jurisdiction of Waqf Tribunals in adjudicating disputes relating to waqf administration.[2] This framework reflects a model of autonomy combined with internal accountability, where the State's role is supervisory rather than managerial, and where property protection operates through religion-specific statutory safeguards rather than executive control.[106]

C.3. Judicially Mandated Restoration of Temple Administration to Religious Functionaries

3. The Supreme Court has, in specific instances, directed the withdrawal of State management over Hindu religious institutions once the conditions justifying intervention were found to have ceased. In *A.A. Gopalakrishnan v. Cochin Devaswom Board*, while addressing mismanagement and alienation of temple properties, the Court underscored that State or Board control is not an end in itself and emphasized the duty to protect temple autonomy and restore proper administration consistent with religious purpose.[3] This decision illustrates that even within existing jurisprudence, State control is constitutionally understood as corrective and conditional, not permanent. Such cases demonstrate that restoration of autonomy is judicially conceivable, but remains episodic rather than systemic under prevailing statutory frameworks.[107]

[106] *Bd. of Wakf, W. Bengal v. Anis Fatma Begum*, (2010) 14 S.C.C. 588; Waqf Act, No. 43 of 1995.
[107] *A.A. Gopalakrishnan v. Cochin Devaswom Bd.*, (2007) 7 S.C.C. 482.