

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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ISSN

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# **THE PROTECTION OF MINORITY RIGHTS UNDER THE INDIAN CONSTITUTION: AN OVERVIEW OF EVOLVING JURISPRUDENCE**

AUTHORED BY - HIMANSHU VARSHNEY<sup>1</sup> & SHOURYA JOSHI<sup>2</sup>

## **LIST OF ABBREVIATIONS**

<b>Abbreviation</b>	<b>Full Form</b>
ACHR	American Convention on Human Rights
AIR	All India Reporter
Art./Arts.	Article/Articles
CA	Constituent Assembly
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Criminal Tribunal for the Former Yugoslavia
IPC	Indian Penal Code
NGO	Non-Governmental Organization
SC	Supreme Court
UDHR	Universal Declaration of Human Rights
UN	United Nations
UK	United Kingdom
US	United States
USSR	Union of Soviet Socialist Republics

<sup>1</sup> Assistant Professor, Amity Law School, Noida, Amity University Uttar Pradesh.

<sup>2</sup> 5<sup>th</sup> Year Student, BBA LL.B. (H), Amity Law School, Noida, Amity University Uttar Pradesh.

## LIST OF CASES

1. Arrowsmith v. United Kingdom, (1978) 3 EHRR 218
2. Begum v. Denbigh High School, [2006] UKHL 15
3. Durgah Committee, Ajmer v. Syed Hussain Ali, AIR 1961 SC 1402
4. Eweida v. British Airways, [2013] ECHR 37
5. Glavno Myuftiistvo v. Bulgaria, App no. 35623/04 (ECtHR, 15 October 2009)
6. Indian Young Lawyers Association v. State of Kerala (Sabarimala case), (2018) 10 SCC 1
7. Independent Thought v. Union of India, (2017) 10 SCC 800
8. Ismail Faruqui v. Union of India, (1994) 6 SCC 360
9. Kokkinakis v. Greece, (1993) 17 EHRR 397
10. Mohd. Hanif Quareshi v. State of Bihar, AIR 1958 SC 731
11. Narasu Appa Mali v. State of Bombay, AIR 1952 Bom 84
12. Paquete Habana, The, 175 U.S. 677 (1900)
13. Prosecutor v. Dusko Tadić, IT-94-1 (ICTY)
14. Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388
15. S.R. Bommai v. Union of India, (1994) 3 SCC 1
16. Shayara Bano v. Union of India, (2017) 9 SCC 1
17. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt v. The Commissioner, Hindu Religious Endowments, Madras, AIR 1954 SC 282
18. State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84
19. Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan, AIR 1963 SC 1638
20. Trump v. Hawaii, 138 S. Ct. 2392 (2018)

## ABSTRACT

This paper examines the larger framework for the protection of minority rights within the constitutional framework, with an emphasis on the right to religious freedom as guaranteed by Articles 25 to 28 of the Indian Constitution. It critically examines the judiciary's efforts to achieve a precarious equilibrium between conflicting fundamental rights like gender justice and equality and the freedom to freely profess, practice, and spread religion. *Shayara Bano v. Union of India*, *Indian Young Lawyers Association v. State of Kerala (Sabarimala)*, and *The Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt* are just a few of the significant cases examined in this paper to illustrate the contradictions in judicial interpretations of what constitutes "essential religious practices," highlighting the inherent difficulties in balancing religious autonomy with constitutional morality.

Additionally, it uses comparative analysis from countries such as the US, UK, Australia, Belgium, and Sri Lanka to evaluate how other democracies manage comparable tensions between religious freedom and secular governance. The need for a consistent, rights-based approach to religious freedom—one that recognizes pluralism while protecting constitutional morality and the dignity of all citizens, especially women and minorities is highlighted by this research's engagement with both national and international legal norms.

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## CHAPTER I

# LEGAL AND CONSTITUTIONAL FRAMEWORK FOR PROTECTING MINORITY RIGHTS

### 1.1 Introduction

The defense of minority rights, especially religious freedoms, has been an essential feature of legal systems aiming for justice, equality, and pluralism in the development of contemporary constitutional democracies. India faces the difficult task of striking a balance between individual liberties and the shared objectives of social change, public order, and national unity as a secular state with significant religious and cultural diversity.

The Indian model of secularism is distinct: it does not advocate a strict separation between religion and state, as seen in Western democracies. Instead, it embodies a model of principled distance, allowing state intervention in religious matters when necessary to uphold egalitarian values and human dignity. This nuanced relationship between religion and state often places the judiciary at the center of defining what constitutes 'religion' and determining the limits of state interference.

This dissertation explores the evolving jurisprudence around minority rights and religious freedoms under the Indian Constitution, with a particular focus on how the judiciary has interpreted these provisions in landmark cases. It also examines tensions between religious freedom and other constitutional values such as equality, especially in the context of gender justice. In doing so, it situates Indian developments within broader international and comparative perspectives, drawing insights from other jurisdictions and global human rights instruments. The objective is to critically analyze whether India's constitutional framework and judicial approach adequately safeguard minority rights while ensuring that religion does not undermine the constitutional promise of a just, equal, and inclusive society.

### 1.2 The Need and Basis of Religion

The Indian state's commitment to religious neutrality is based on the concept of secularism, which was previously discussed. It is necessary to have a good understanding of both concepts in order to comprehend how this principle interacts with religion. Religion still plays a significant part in the lives of Indian citizens and communities, notwithstanding secularism's call for a moral separation between the State and religion.

Part III of the Indian Constitution, notably Articles 25 to 28, provides freedom of religion. India's secular framework guarantees that the State does not support or meddle with religion unless it is required for the general good, but it also does not advocate for the elimination of religion from public life.

Subject to public order, morality, health, and other fundamental rights, Article 25(1) ensures that "all persons are equally entitled to freedom of conscience and the right freely to profess, practice, and propagate religion."<sup>3</sup> Additionally, Article 25(2) permits the State to enact legislation for social welfare and reform as well as to regulate or restrict secular activities related to religious practice.<sup>4</sup>

Subject to public order, morality, and health, Article 26 grants religious denominations the authority to own and manage property, create and maintain institutions, and conduct their religious affairs.<sup>5</sup> The Constitution, however, makes a distinction: whereas property administration must adhere to statutory law, the power to oversee religious affairs is a basic right.<sup>6</sup>

The Indian secularism model, which strikes a balance between social justice goals and individual liberties, is reflected in these articles. Practices that have secular or societal ramifications can be restricted to promote equality and the general good, even while religious belief and worship are completely protected.<sup>7</sup>

### 1.3 Judicial Perception of the Right to Freedom of Religion

Subject to public order, morality, health, and other fundamental rights, Article 25(1) provides everyone the freedom of conscience and the right to profess, practice, and spread religion.<sup>8</sup>

This tension was anticipated by Dr. B.R. Ambedkar during the Constituent Assembly Debates. He warned that if personal laws were entirely shielded under religious freedom, the legislature would be hindered in pursuing social reforms. He maintained that legislation pertaining to

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<sup>3</sup> India Const. art. 25, cl. 1.

<sup>4</sup> India Const. art. 25, cl. 2.

<sup>5</sup> *India Const.* art. 26.

<sup>6</sup> *The Comm'r, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282.

<sup>7</sup> *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615; *Ismail Faruqui v. Union of India*, (1994) 6 SCC 360.

<sup>8</sup> *India Const.* art. 25, cl. 1.

things like inheritance or tenancy should be outside the scope of religion and that it should only be used for fundamental beliefs and rituals.<sup>9</sup>

In *The Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt*,<sup>10</sup> the Supreme Court initially heard this case. The Madras Hindu Religious and Charitable Endowments Act, 1951, were contested in the case on the grounds that it infringed upon religious autonomy. In his majority ruling, Justice B.K. Mukherjea maintained that religion does not have to be theistic and could consist of doctrines, beliefs, observances, rituals, and rites that adherents of the faith consider necessary.

The Court made a significant distinction between:

- Religious matters, which are safeguarded under Article 26(b), and
- Religiously related secular acts that could be governed by Article 25(2)(a).<sup>11</sup>

It maintained that religious groups are free to choose what vital rituals are, as long as they don't interfere with public health, morals, or order. But according to Article 26(d), property administration was regarded as a secular activity and was therefore governed by the state.<sup>12</sup>

When the Bombay Public Trust Act, 1950, which gave a Charity Commissioner the authority to supervise religious trusts, was contested in *Ratilal Panachand Gandhi v. State of Bombay*, this stance was upheld.<sup>13</sup> The Court allowed the state to regulate secular administration while upholding the authority to oversee internal religious concerns.

The Supreme Court was once more requested to decide the boundaries of Article 26(b) in *Durgah Committee, Ajmer v. Syed Hussain Ali*. A law governing the administration of the Durgah was contested by the Khadims as unconstitutional. The Court maintained the statute, making it clear that the only activities that are protected are those that are fundamental to religion.<sup>14</sup> Superstitions and superfluous rituals do not deserve constitutional protection, Justice P.B. Gajendragadkar stressed.

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<sup>9</sup> *Constituent Assembly Debates*, Vol. VII (Dec. 6, 1948).

<sup>10</sup> *Shirur Mutt*, AIR 1954 SC 282.

<sup>11</sup> *India Const.* art. 25, cl. 2(a); art. 26(b).

<sup>12</sup> *Shirur Mutt*, AIR 1954 SC 282.

<sup>13</sup> *Ratilal Panachand Gandhi v. State of Bombay*, AIR 1954 SC 388.

<sup>14</sup> *Durgah Committee, Ajmer v. Syed Hussain Ali*, AIR 1961 SC 1402.

Notably, the Court cautioned that religious organizations cannot decide what is considered an essential practice on their own. Courts must evaluate theological texts, customs, and public conscience in order to make decisions about internal disputes.

In Indian constitutional law, the "essential practices doctrine" has taken center stage. Scholars contend that it runs the risk of judicial overreach and theological entanglement, even as it gives courts the authority to protect fundamental religious freedoms.<sup>15</sup> However, this theory has aided the judiciary in balancing the right to religious freedom with constitutional principles like equality and social change.

All things considered, Indian courts have developed a complex, pluralistic, and constitutionally grounded perspective on religious freedom. The Supreme Court has confirmed in historic decisions that although religion is protected by Articles 25 and 26, this freedom is not unqualified—it cannot defend actions that go against the larger constitutional goals of equality, justice, and human dignity.

#### **1.4 The Free Exercise of Religion**

Article 25[1] a person has a two -fold:-[a] freedom of conscience, [b] freedom to profess, practice and propagate religion. The preceding cases point out that the Supreme Court of India has held a principled approach towards religion when appealed for judicial definition of 'religion' and 'matters of religion' protected under articles 25 (1) and 26 (b) of the Constitution. As a general rule, it has maintained a liberal definition of religion - as assumed in most of the liberal democratic States- covering in its ambit belief, doctrines and moral codes, rituals and observances, ceremonies and modes of worship.<sup>16</sup> However, in some cases, the Supreme Court did not hesitate to pass a strict definition of 'matters of religion' as protected under clause (b) of article 26 of the Constitution limiting them only to those essentials and obligatory overt acts necessary to express one's faith.<sup>17</sup>

In the context of a religiously plural society like India, where conflicting value systems often compete with each other, the principled approach of the Supreme Court on religious matters is to promote religious freedom that secures human dignity. Therefore, the Court may apply a

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<sup>15</sup> See, e.g., P. Ishwara Bhat, *Law and Social Transformation in India* 214–215 (2012).

<sup>16</sup> *Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Tirtha Swamiar of Shri Shirur Mutt*, AIR 1954 SC 282, at 290.

<sup>17</sup> *Mhm. Hanif Qureshi vs. State of Bihar*, AIR 1958 SC 731, at 739.

liberal or a conservative approach towards religion depending on which of the two better promotes religious liberty consistent with a set of values that protect the sanctity of human life and provide a life-affirming space for all to live in dignity.

Religion thrives in India and it remains an integral aspect of Indian ethos. Its popular practices are multifarious and often unrestrained as shown by Dr. B.R. Ambedkar during the debates in the Constituent Assembly.<sup>18</sup> In this context, the principled approach founded on reason as held by the Indian Supreme Court regarding religion is an important requirement to keep religions to be authentic in their practices. Such an interpretation of religion would remind believers to shed away non-religious and, at times, even unreligious accretions added to religious practices. It would enlighten the followers of various faith traditions not to thwart the legitimate activities of the State to further the cause of human dignity. The individual person's religious freedom as guaranteed by the Constitution of India is provided in clause (1) of article 25. Some say<sup>54</sup> that this part of the article seemed to have been based on the clause (1) of article 2 of the Constitution of Eire (1937).<sup>19</sup> Others say<sup>65</sup> that the tenor of article 25 resonates with the Karachi resolution on the fundamental right adopted by the Indian National Congress in 1931 that declared, Every citizen shall enjoy freedom of conscience and the right freely to profess and practice his religion, subject to public order and morality.<sup>20</sup>

Mr. Justice Mukerjea who spoke for the Court said, Article 25 of the Constitution guarantees to every person and not merely to the citizens of India, the freedom of conscience and the right freely to profess, practice and to propagate religion. Hence in the next section, we shall discuss the different aspects of the religious freedom protected under article 25 (1).

### 1.5 Freedom of Conscience

According to Article 25 of the Indian Constitution, freedom of conscience refers to a person's internal freedom to choose how they choose to relate to God or their spiritual beliefs.<sup>21</sup> Indian courts have made it clear that this includes the freedom to subscribe to any doctrine or belief that advances one's spiritual growth.<sup>22</sup> Public order, morality, health, and the other clauses in

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<sup>18</sup> CAD, vol. 7, p. 781.

<sup>19</sup> Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Tirtha Swamiar of Shri Shirur Mutt, AIR 1954 SC 282, at 290.

<sup>20</sup> Donald E. Smith, op.cit. p. 102

<sup>21</sup> *India Const.* art. 25, cl. 1.

<sup>22</sup> *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615

Part III of the Constitution all affect this freedom, thus it is not unqualified.<sup>23</sup>

Dr. Donald E. Smith pointed out that inadequate drafting may be the cause of the Constitution's seeming limitations on freedom of conscience.<sup>24</sup> However, it appears that these restrictions are in place on purpose in order to strike a balance between social order, public benefit, and individual religious freedom.

For instance, Article 23(1) guards against forced labor and human trafficking.<sup>25</sup> This includes defense against being forced to do anything against one's will, even if it's done for religious reasons. Article 23's clause (2) allows mandatory service for public objectives as long as it doesn't discriminate on the basis of caste, religion, race, or class.<sup>26</sup> This makes it possible for the government to enforce civic obligations, such as military service, without violating people's right to conscience.

### **1.6 Freedom to Profess Religion**

People can freely express their beliefs through symbols, rituals, and public statements thanks to the freedom to profess a religion.<sup>27</sup> It covers activities such as taking part in processions, worshiping in public, or dressing in religious garb.<sup>28</sup> However, social peace and public order continue to govern this privilege.

The petitioners in *Mohd. Hanif Quareshi v. State of Bihar* contended that the killing of cows on Bakrid was a necessary part of Islam. The Court disagreed, concluding that the claim lacked doctrinal support.<sup>29</sup> As a result, the act was not eligible for Article 25 constitutional protection.

Religious expression in public is frequently governed by laws. In order to maintain public order, authorities are permitted to control religious meetings under Section 144 of the Criminal Procedure Code of 1973 and Section 30(1) of the Police Act of 1861.<sup>30</sup> For example, the court confirmed the validity of the Calcutta Police Commissioner's ban on loudspeakers in mosques

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<sup>23</sup> *India Const.* art. 25, cl. 1.

<sup>24</sup> Donald E. Smith, *India as a Secular State* 120 (1963).

<sup>25</sup> *India Const.* art. 23, cl. 1.

<sup>26</sup> *India Const.* art. 23, cl. 2.

<sup>27</sup> *India Const.* art. 25.

<sup>28</sup> *Commissioner of Police v. Acharya Jagadishwarananda Avadhuta*, (2004) 12 SCC 770.

<sup>29</sup> *Mohd. Hanif Quareshi v. State of Bihar*, AIR 1958 SC 731.

<sup>30</sup> Police Act, No. 5 of 1861, § 30; CrPC, No. 2 of 1974, § 144.

during prayer periods.<sup>31</sup> Therefore, Article 25 protects profession and belief, but not at the expense of public harmony.

### 1.7 Freedom to Practice Religion

As long as one's religious views are sincere and necessary, Article 25 protects the right to practice them. The Bombay Act that forbade Hindu bigamy was upheld by the Court in *State of Bombay v. Narasu Appa Mali*, establishing that social reform legislation supersede religious traditions.<sup>32</sup> According to Justice Mukherjea, these rights are safeguarded unless they infringe upon public health, morals, or order.

The Court ruled in *Ratilal Panachand Gandhi* that only acts considered essential to a religion are entitled to constitutional protection.<sup>33</sup> The same idea was used in *Mohd. Hanif Quareshi*, when the Court determined that although cow sacrifice had religious significance, Islam did not require it.<sup>34</sup>

In Indian jurisprudence, this "essential practices doctrine" has taken center stage. The Supreme Court made it clear in *Tilkayat Shri Govindlalji Maharaj* that courts, not communities, decide what is considered fundamental.<sup>35</sup> Nonetheless, some legal scholars, such as Dr. P.C. Jain, have contended that this strategy compromises personal religious beliefs.<sup>36</sup>

### 1.8 Freedom to Propagate Religion

The right to spread religion is expressly protected by Article 25, which is uncommon among constitutions around the world.<sup>37</sup> The phrase refers to the peaceful spread of religious ideas rather than coerced conversions.<sup>38</sup> The final draft of Article 25 strikes a balance between protecting the right to persuade and prohibiting coercion or undue influence.

### 1.9 The Exercise of Religion Subject to State Restriction

Despite being essential, religious freedom is not unfettered. The Indian Constitution allows for

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<sup>31</sup> *Ahmed v. State of West Bengal*, AIR 1993 Cal 252.

<sup>32</sup> *State of Bombay v. Narasu Appa Mali*, AIR 1952 Bom 84.

<sup>33</sup> *Ratilal Panachand Gandhi v. State of Bombay*, AIR 1954 SC 388.

<sup>34</sup> *Mohd. Hanif Quareshi v. State of Bihar*, AIR 1958 SC 731.

<sup>35</sup> *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, AIR 1963 SC 1638.

<sup>36</sup> P.C. Jain, *Constitutional Law of India* 376 (2014).

<sup>37</sup> *India Const.* art. 25, cl. 1.

<sup>38</sup> *Rev. Stainislaus v. State of Madhya Pradesh*, AIR 1977 SC 908.

restrictions on this freedom in order to protect morality, public health, and order.<sup>39</sup>

The State is authorized by Article 25(2) to enact social welfare programs and control secular religious activity.<sup>40</sup> Therefore, any religious practice that interferes with equality or the general welfare is governed by the law.

### 1.10 Subject to Law

While religious freedom is guaranteed by Article 25(1), it is made clear that it is subject to other constitutional obligations.<sup>41</sup> Shri K. Santhanam underlined during Constituent Assembly Debates that India will not follow a paradigm in which all religious activities were permitted without limitations.<sup>42</sup> The Supreme Court has also confirmed that reasonable limits are allowed under Article 25.<sup>43</sup>

The Calcutta High Court ruled in one case that a pupil may not insist on conducting rituals against school policy.<sup>44</sup> This ruling emphasizes how institutional discipline and larger community goals coexist with the constitutional protection of religion.

### 1.11 Religious Freedom as Customary International Law

Article 18 of the Universal Declaration of Human Rights (UDHR), which affirms the right to freedom of thought, conscience, and religion, has had a significant impact on the incorporation of religious freedom in customary international law.<sup>45</sup> Because it is widely accepted by governments, the UDHR has persuasive authority even though it is not legally binding.

### 1.12 Regional Instruments on Religious Rights

The freedom of conscience and religion in the Americas is protected by Article 12 of the American Convention on Human Rights (ACHR), with the exception of any limitations imposed by law for reasons of morality, public health, or public order.<sup>46</sup> In a similar vein, the right to worship in public or private is guaranteed by the American Declaration of the Rights

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<sup>39</sup> *India Const.* art. 25, cl. 1.

<sup>40</sup> *India Const.* art. 25, cl. 2.

<sup>41</sup> *India Const.* art. 25, cl. 1.

<sup>42</sup> *Constituent Assembly Debates*, Vol. VII (Dec. 1948).

<sup>43</sup> *Shirur Mutt*, AIR 1954 SC 282.

<sup>44</sup> *Sk. Md. Riazuddin v. Principal, St. Xavier's College*, AIR 2007 Cal 7.

<sup>45</sup> *Universal Declaration of Human Rights*, G.A. Res. 217A, art. 18, U.N. Doc. A/810 (1948).

<sup>46</sup> *American Convention on Human Rights*, art. 12, Nov. 22, 1969, O.A.S.T.S. No. 36.

and Duties of Man.<sup>47</sup>

By balancing individual rights with state interests in security and societal values, these regional instruments apply universal human rights concepts to local circumstances.

## CHAPTER II

### COMPARATIVE ANALYSIS

#### 2.1 Introduction

Articles 25 to 28 of the Indian Constitution provide religious freedom. However, Articles 14 and 15's equality provisions frequently interact with this right. In order to balance these rights, the judiciary plays a critical role, especially when it comes to issues of gender discrimination in religious activities.

When the Indian Constitution was being drafted, there was discussion about secularism. Despite being rejected, K.T. Shah's suggestion to add the word "secular" to the Preamble was eventually approved in 1976 with the passage of the 42nd Amendment.<sup>48</sup> In contrast to Western approaches, Indian secularism permits the state to interact with religion in order to promote equality and change.

In *S.R. Bommai v. Union of India*, the Supreme Court ruled that secularism is a fundamental aspect of the Constitution.<sup>49</sup> The case of *Ismail Faruqui v. Union of India* also highlighted the importance of religious equality and coexistence in India's secular fabric.<sup>50</sup> However, courts also make a distinction between religious acts that are important and those that are not; only the former are protected by Article 25 of the constitution.<sup>51</sup> Globally, democratic states' constitutions safeguard religious freedom, which is acknowledged in Article 18 of the UDHR.

#### 2.2 India

India's distinct secularism aims to balance constitutional democracy with religious plurality. The judiciary has had difficulty resolving the conflict between customary personal laws and constitutional principles of equality, notwithstanding its secular position. India gave citizenship

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<sup>47</sup> *American Declaration of the Rights and Duties of Man*, art. III, 1948.

<sup>48</sup> Constituent Assembly Debates, Vol. VII (Dec. 6, 1948).

<sup>49</sup> *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

<sup>50</sup> *Ismail Faruqui v. Union of India*, (1994) 6 SCC 360.

<sup>51</sup> *The Comm'r, Hindu Religious Endowments v. Lakshmindra Thirtha Swamiar*, AIR 1954 SC 282.

rights precedence over religious majoritarianism after gaining independence, enshrining safeguards for gender equality and religious freedom.<sup>52</sup>

The Supreme Court held in *Indian Young Lawyers Association v. State of Kerala* that it was against Articles 14, 15, and 25 to prevent women who were menstruating from entering the Sabarimala Temple. In a contentious statement, Justice D.Y. Chandrachud compared the exclusion to untouchability under Article 17. In a same vein, the Bombay High Court ruled that limitations on women's admittance were illegal in the *Haji Ali* case, citing gender equality over religious autonomy.<sup>53</sup> The Court invalidated immediate triple talaq in *Shayara Bano v. Union of India*, but it did so on the grounds of religious invalidity rather than constitutional equality.<sup>54</sup>

Judicial involvement in discriminatory religious practices is still uneven, notwithstanding advancements. A consistent rights-based strategy grounded in constitutional morality has been demanded by activists.<sup>55</sup>

### 2.3 USA

Religious freedom is firmly protected by the U.S. Constitution. Both the establishment of religion and limitations on its free practice are prohibited by the First Amendment. The Fourteenth Amendment gave the states additional safeguards.<sup>56</sup>

The U.S. Supreme Court highlighted the "wall of separation" between church and state in the case of *Everson v. Board of Education*.<sup>57</sup> *Obergefell v. Hodges*, which legalized same-sex marriage more recently, sparked conflicts between religious liberty and LGBTQ+ rights.<sup>58</sup> These instances highlight the constant balancing act between individual liberties and changing social mores.

### 2.4 Sri Lanka

An example of how majoritarianism might jeopardize national integrity is Sri Lanka. The Tamil minority was alienated by Sinhala-majority policies after independence in 1948, including the

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<sup>52</sup> *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

<sup>53</sup> *Dr. Noorjehan Safia Niaz v. State of Maharashtra*, 2016 SCC OnLine Bom 5394.

<sup>54</sup> *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

<sup>55</sup> Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 126 (1999).

<sup>56</sup> *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

<sup>57</sup> *Everson v. Bd. of Educ.*, 330 U.S. 1 (1947).

<sup>58</sup> *Obergefell v. Hodges*, 576 U.S. 644 (2015).

Sinhala Only Act and state partiality for Buddhists.<sup>59</sup> A civil war that lasted almost thirty years resulted from the Tamil people's persistent rejection of their requests for autonomy.

Mass violence, evictions, and long-term instability resulted from the state's reluctance to address Tamil issues and its constitutional emphasis on Buddhism, which weakened democratic inclusion.

## 2.5 Conclusion

Different approaches to striking a balance between religious freedom and constitutional ideals are revealed via comparative analysis. Like other pluralistic democracies, India finds it difficult to balance individual rights, gender equality, and religious liberty. Sri Lanka illustrates the perils of exclusionary nationalism. For India, the advancement of an inclusive and egalitarian secularism still depends on ongoing judicial engagement with constitutional morality, especially in the context of gender justice.

## CHAPTER III CONCLUSION AND SUGGESTIONS

Although religious freedom is protected as a fundamental right by the Indian Constitution, its actual implementation frequently conflicts with the values of equality, dignity, and nondiscrimination. Through the "essential practices" theory, the judiciary has made great progress in defining the parameters of this right and has, in certain instances, invalidated discriminatory practices that have their roots in patriarchy and orthodoxy.

India's distinct secularism model, which allows the state to intervene in religious affairs for change, presents both opportunities and obstacles. The defense of minority rights must be informed by constitutional morality and a dedication to substantive equality in order to fully realize the Constitution's goal of inclusive citizenship.

In India, a number of actions can be made to advance inclusive secularism and improve the protection of minority rights. First, to lessen subjectivity and ambiguity in its application, the "essential religious practices" notion has to be clarified by legislation or the courts. Second, in

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<sup>59</sup> *K.M. de Silva, A History of Sri Lanka* 529 (1981).

order to make sure that personal laws are in line with the constitutional ideals of gender equality and dignity, they need to be reviewed from a rights-based perspective. Third, public awareness and constitutional literacy efforts are to be encouraged. Judicial personnel should also be trained in comparative constitutional law.

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