

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.
All rights reserved.**

ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

ROLE OF RELIGION IN INDIAN LAW FRAMING: CONSTITUTIONAL MORALITY, SECULARISM, AND THE DYNAMICS OF RELIGIOUS INFLUENCE IN INDIA

AUTHORED BY - M GOVINDARAJAN

ABSTRACT

Religion has historically occupied a central place in the social, political, and legal evolution of India. From ancient Dharmashastra traditions and Islamic jurisprudence during the Mughal era to colonial legal codification and the secular constitutional framework adopted after independence, religion has continuously shaped Indian law-making. This paper critically examines the role of religion in Indian law framing within the constitutional and judicial context of India. It argues that while religion remains an influential force in legislation, public morality, and identity politics, the Indian constitutional framework prioritizes constitutional morality over religious orthodoxy. Through an examination of constitutional provisions, judicial precedents, and scholarly debates, this paper concludes that religion continues to significantly influence Indian law framing, but constitutional supremacy and transformative constitutionalism increasingly guide legal development in modern India.

INTRODUCTION

India is one of the most religiously diverse societies in the world. Hinduism, Islam, Christianity, Sikhism, Buddhism, Jainism, Zoroastrianism, Judaism, and several indigenous faiths coexist within a single constitutional framework. Religion in India is not merely a matter of personal belief; it is deeply intertwined with social identity, culture, customs, family relations, political mobilization, and legal norms. Consequently, the framing of laws in India has historically reflected religious influences and continues to engage with religious considerations even in the modern secular constitutional order.

The relationship between religion and law in India is both complex and unique. Unlike strict secular models such as that of France, which enforce a rigid separation between religion and the State, Indian secularism adopts a model of “principled distance” where the State may engage with religion to ensure equality, reform, and social justice. Thus, Indian secularism does not imply the exclusion of religion from public life; rather, it seeks equal respect for all

religions while maintaining constitutional supremacy.

The framing of laws in India has evolved through several historical phases. Ancient Hindu legal traditions were derived from Dharmashastras, Manusmriti, and customary practices. Islamic rule introduced principles of Islamic jurisprudence into governance and judicial administration. British colonial administration codified several laws while preserving religious personal laws relating to marriage, inheritance, adoption, and succession. After independence, the Constituent Assembly faced the difficult task of creating a secular democratic republic in a deeply religious society. The result was a Constitution that guaranteed religious freedom while also empowering the State to reform oppressive religious practices.

The role of religion in Indian law framing remains highly relevant today. Legislative debates on issues such as cow protection, anti-conversion laws, triple talaq, same-sex marriage, temple administration, and the Uniform Civil Code reveal the continued influence of religion on legal discourse. Judicial decisions frequently address conflicts between religious practices and constitutional rights, raising important questions regarding secularism, constitutional morality, and judicial activism.

This paper seeks to examine how religion influences law framing in India and whether such influence strengthens or weakens constitutional democracy. The central thesis of this paper is that religion continues to play a significant role in Indian law framing, but the Indian constitutional framework increasingly prioritizes constitutional morality, equality, and individual rights over religious orthodoxy. The paper further argues that the judiciary has emerged as a crucial institution in balancing religious freedom with constitutional values.

The paper adopts a doctrinal and analytical approach, relying upon constitutional provisions, legislative developments, landmark judicial decisions, and scholarly interpretations. It examines both supportive and critical perspectives regarding the involvement of religion in law-making.

HISTORICAL EVOLUTION OF RELIGION AND LAW IN INDIA

Ancient Hindu Legal Traditions

The earliest legal systems in India were deeply connected with religion. Ancient Hindu law was primarily derived from religious scriptures such as the Vedas, Smritis, Dharmashastras,

and commentaries by jurists like Yajnavalkya and Manu. The concept of “Dharma” governed social conduct, morality, legal obligations, and governance.

The Manusmriti played a particularly significant role in shaping social and legal structures. It regulated caste hierarchy, marriage, inheritance, punishment, and gender relations. Law was not viewed as distinct from religion; rather, legal duties were considered religious obligations. Ancient Hindu law recognized: Varna-based social organization; patriarchal family structures; religious duties as legal obligations; and divine authority as the source of law. However, ancient legal traditions were not entirely rigid. Customary practices varied across regions and communities, and local customs often prevailed over textual interpretations.

Islamic Influence During Medieval India

The establishment of Muslim rule in India introduced Islamic legal principles into governance. During the Delhi Sultanate and Mughal Empire, Islamic jurisprudence influenced criminal law, taxation, administration, and judicial systems. The Mughal legal system applied Shariat principles to Muslims, and customary and community laws to non-Muslims in personal matters. The Qazis administered justice based on Islamic legal principles. However, rulers like Akbar adopted relatively pluralistic approaches and permitted substantial legal autonomy to non-Muslim communities.

Colonial Legal System and Religious Personal Laws

British colonial administration fundamentally transformed the Indian legal system. Initially, the British East India Company allowed Hindus and Muslims to follow their own religious laws in matters relating to marriage, succession, inheritance, and family relations. The colonial state codified criminal and commercial laws while preserving religious personal laws. The British enacted the Indian Penal Code, 1860; the Indian Evidence Act, 1872; the Code of Civil Procedure; and the Code of Criminal Procedure. However, personal laws remained religion-based.

The British policy of legal pluralism institutionalized religious identity within the legal framework. This approach had long-term consequences for independent India. The colonial administration also initiated social reform legislation affecting religious practices, including the Abolition of Sati through the Bengal Sati Regulation, 1829; the Widow Remarriage Act, 1856; and the Child Marriage Restraint Act, 1929. These reforms demonstrated that the State could intervene in religious customs to uphold social justice.

CONSTITUTIONAL FRAMEWORK RELATING TO RELIGION

The Constitution of India establishes a secular democratic republic while guaranteeing religious freedom. The constitutional scheme reflects a balance between individual rights, religious autonomy, and State intervention for reform.

Preamble and Secularism

The Preamble declares India to be a “sovereign socialist secular democratic republic.” Although the term “secular” was formally inserted by the Forty-Second Constitutional Amendment in 1976, secular principles were already embedded within the Constitution. Indian secularism differs from Western secularism. It does not require complete separation between religion and the State. Instead, it mandates equal respect for all religions and permits State intervention for social reform.

Equality and Non-Discrimination (Articles 14, 15, and 16)

Article 14 guarantees equality before law and equal protection of laws. Religious practices violating equality principles may be subjected to constitutional scrutiny. Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Similarly, Article 16 ensures equality of opportunity in public employment and prohibits religious discrimination.

Freedom of Religion (Articles 25 and 26)

Article 25 guarantees freedom of conscience and the right to profess, practice, and propagate religion. However, this right is subject to public order, morality, health, and other fundamental rights. Article 25(2) empowers the State to enact social reform legislation and regulate secular activities associated with religion. Article 26 grants religious denominations the right to establish religious institutions, manage religious affairs, and own and administer property, subject to public order, morality, and health.

Educational and Financial Provisions (Articles 27 and 28)

Article 27 prohibits compelling individuals to pay taxes for promoting a particular religion. Article 28 restricts religious instruction in State-funded educational institutions, ensuring the non-sectarian character of public education.

Directive Principles and Uniform Civil Code

Article 44 directs the State to endeavor to secure a Uniform Civil Code (UCC) for citizens.

The provision reflects constitutional aspirations toward legal uniformity while acknowledging religious diversity.

SECULARISM IN INDIAN CONSTITUTIONAL JURISPRUDENCE

Meaning of Indian Secularism

Indian secularism is based upon equal respect for all religions, religious neutrality of the State, State intervention for reform, and the protection of minority rights. The Indian model does not advocate strict separation between religion and State. Instead, it seeks harmony among religions while ensuring constitutional supremacy.

S.R. Bommai v. Union of India (1994)

In *S.R. Bommai v. Union of India*, (1994) 3 SCC 1, the Supreme Court declared secularism a basic feature of the Constitution. The Court held that the State cannot promote any particular religion. The judgment emphasized religious tolerance, constitutional neutrality, and the prevention of theocratic governance. This case remains one of the most significant constitutional interpretations of secularism in India.

Kesavananda Bharati v. State of Kerala (1973)

In *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, the Supreme Court evolved the Basic Structure Doctrine. Though secularism was not explicitly mentioned, later judgments recognized it as part of the Constitution's basic structure. The doctrine prevents Parliament from destroying secular constitutional principles through amendments.

RELIGION AND PERSONAL LAWS IN INDIA

Nature of Personal Laws

India maintains a plural legal system in family matters: Hindu law, Muslim personal law, Christian law, and Parsi law. Personal laws govern marriage, divorce, inheritance, adoption, and succession.

Hindu Law Reforms

After independence, the Hindu Code Bills transformed Hindu personal law through 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. These reforms introduced monogamy, divorce rights, and women's inheritance rights. The reforms demonstrated the

State's willingness to modernize religious laws.

Muslim Personal Law

Muslim personal law largely remains uncodified and is based on the Quran, Hadith, Ijma, and Qiyas. The Muslim Personal Law (Shariat) Application Act, 1937 recognizes Islamic principles in personal matters. Debates surrounding Muslim personal law often involve gender justice, religious freedom, and minority rights.

The Shah Bano Case

In *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945, the Supreme Court granted maintenance rights to a divorced Muslim woman under Section 125 of the Code of Criminal Procedure. The judgment promoted gender justice and supported the idea of a Uniform Civil Code. However, religious groups opposed the decision, arguing that it interfered with Islamic law. Parliament later enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986, effectively limiting the judgment's impact. The controversy revealed tensions between religious autonomy, minority rights, gender equality, and secular constitutionalism.

Shayara Bano v. Union of India (2017)

In *Shayara Bano v. Union of India*, (2017) 9 SCC 1, the Supreme Court invalidated instant triple talaq (*talaq-e-biddat*). The Court held that arbitrary divorce violated constitutional principles of equality and dignity. This judgment marked a significant shift toward prioritizing constitutional morality over religious orthodoxy.

ESSENTIAL RELIGIOUS PRACTICES DOCTRINE

Origin and Determination of the Doctrine

The Supreme Court developed the “essential religious practices” doctrine in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282. The Court held that only essential and integral religious practices receive constitutional protection under Article 25. Under this framework, courts frequently determine whether a practice is essential to religion or merely secular/optional, allowing judicial scrutiny of religious customs.

Criticism and Support

Critics argue that judges lack theological expertise, that courts should not define religious

essentials, and that the doctrine enables excessive judicial intervention. Conversely, supporters argue that it prevents the misuse of religion, protects fundamental constitutional rights, and effectively enables necessary social reform.

RELIGION, SOCIAL REFORM, AND CONSTITUTIONAL MORALITY

Temple Entry and Caste Discrimination

The Constitution permits State intervention to eliminate discriminatory religious practices. In *Sri Venkataramana Devaru v. State of Mysore*, AIR 1958 SC 255, the Supreme Court upheld temple entry rights for marginalized communities despite denominational claims, effectively balancing religious freedom with social equality.

The Sabarimala Case

In *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1, the Supreme Court permitted entry of women of menstruating age into the Sabarimala temple. The Court held that exclusion violated equality, dignity, and constitutional morality. The judgment generated intense religious and political controversy but firmly emphasized constitutional morality as superior to social or religious morality. Constitutional morality includes equality, liberty, dignity, and non-discrimination.

RELIGION AND LEGISLATIVE POLICY

Cow Protection Laws

Cow protection has historically been influenced by Hindu religious sentiments. Article 48 of the Constitution directs the State to prohibit cow slaughter. Consequently, several States enacted stringent anti-cow slaughter laws. Supporters argue cultural significance, economic considerations, and agricultural utility, while critics highlight concerns regarding religious majoritarianism, minority discrimination, and vigilantism.

Anti-Conversion Laws

Several States enacted laws regulating religious conversions. These laws prohibit conversions through force, fraud, or inducement. Supporters argue such laws prevent exploitation, whereas critics argue they violate the individual freedom of religion and the right to propagate religion under Article 25.

Uniform Civil Code Debate

The Uniform Civil Code remains one of the most controversial constitutional issues. Arguments supporting the UCC emphasize equality before law, gender justice, national integration, and a secular legal framework. Arguments opposing the UCC focus on minority autonomy, religious freedom, and cultural pluralism. The debate reflects the continuing tension between secularism and religious diversity.

RELIGION AND ELECTORAL POLITICS

Religion frequently influences electoral politics and legislative agendas. In *Abhiram Singh v. C.D. Commachen*, (2017) 2 SCC 629, the Supreme Court prohibited candidates from soliciting votes on religious grounds under the Representation of the People Act, reinforcing secular democratic principles. Critics argue religious majoritarianism threatens minority rights, constitutional secularism, and democratic neutrality, while supporters claim democratic majorities have the right to shape legislative priorities.

JUDICIAL REVIEW AND RELIGIOUS FREEDOM

The Indian judiciary plays a central role in balancing religious freedom, equality, social reform, and constitutional supremacy.

Bijoe Emmanuel v. State of Kerala (1986)

In *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615, Jehovah's Witness students refused to sing the national anthem due to religious beliefs. The Supreme Court protected their rights under Article 25, strengthening individual religious freedom and tolerance.

Ismail Faruqui v. Union of India (1994)

In *Ismail Faruqui v. Union of India*, (1994) 6 SCC 360, the Court held that mosques are not essential to Islamic worship in every circumstance. The judgment remains controversial for its interpretation of essential practices.

Ayodhya Judgment

In *M. Siddiq (D) Thr. Lrs v. Mahant Suresh Das*, (2020) 1 SCC 1, the Supreme Court resolved the long-standing Ayodhya dispute. The Court granted the disputed land for Ram Temple construction and directed the allocation of alternate land for a mosque. The judgment attempted to balance legal principles with social peace, though critics questioned whether historical faith

influenced judicial reasoning.

RELIGION, GENDER JUSTICE, AND CONSTITUTIONAL RIGHTS

The abolition of instant triple talaq reflects increasing judicial emphasis on gender equality and constitutional morality. Furthermore, cases involving women's entry into religious institutions—such as Sabarimala, Haji Ali Dargah, and the Shani Shingnapur Temple—demonstrate judicial willingness to challenge patriarchal religious practices.

Religious morality historically influenced laws criminalizing same-sex relations. In *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1, the Supreme Court decriminalized homosexuality under Section 377 IPC. The Court emphasized individual dignity, privacy, and constitutional morality over social morality. Though not directly about religion, the judgment addressed and dismantled religiously influenced moral frameworks within law-making.

MINORITY RIGHTS AND RELIGIOUS AUTONOMY

Articles 29 and 30 protect the cultural and educational rights of minorities, allowing religious minorities to establish and administer educational institutions. In *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481, the Supreme Court clarified minority educational rights and institutional autonomy, strengthening constitutional protection for religious minorities.

COMPARATIVE PERSPECTIVE: INDIA AND OTHER SECULAR DEMOCRACIES

The United States follows a strict separation between church and State under the Establishment Clause, while France adopts *laïcité*, completely excluding religion from public institutions. In contrast, India adopts a model of multi-religious accommodation, active State engagement with religion, and reform-oriented secularism, reflecting its unique historical and cultural realities.

CRITICISMS AND COUNTER-ARGUMENTS OF RELIGIOUS INFLUENCE

Critics argue that religious majorities influence legislation disproportionately, undermining minority rights and risking communal polarization. They claim courts inconsistently apply the essential religious practices doctrine and constitutional morality principles, and note that political considerations often delay comprehensive personal law reforms.

Conversely, supporters argue that religion forms an essential component of Indian cultural identity and legal traditions. They claim that legislation influenced by religious values can reflect democratic will, that legal pluralism appropriately accommodates diverse communities, and that the recognition of religious traditions can promote long-term social stability in a deeply diverse society.

CONSTITUTIONAL MORALITY VERSUS RELIGIOUS MORALITY

One of the central constitutional debates in India concerns the relationship between constitutional morality and religious morality. Constitutional morality refers to adherence to democratic values, equality, liberty, human dignity, and the rule of law. Dr. B.R. Ambedkar emphasized constitutional morality as essential for democratic governance, warning against social tyranny, religious orthodoxy, and majoritarian domination. Recent judicial developments increasingly prioritize constitutional morality over traditional or religious morality, as seen in the Sabarimala, Navtej Johar, and triple talaq decisions.

ANALYSIS AND CONCLUSION

Religion continues to influence Indian law in multiple ways, including legislative priorities, electoral politics, personal laws, judicial interpretation, and public morality. However, the Constitution establishes clear limits on religious influence. Modern Indian constitutionalism increasingly embraces transformative principles aimed at social justice, gender equality, and individual dignity, with the judiciary acting as a constitutional guardian.

In conclusion, legal development in India cannot be fully understood without examining the intersection of religion, society, and governance. The Indian constitutional framework adopts a distinctive model of secularism that seeks to balance religious freedom with constitutional principles of equality, liberty, dignity, and social justice. Ultimately, the Indian constitutional project seeks not the elimination of religion from public life, but the harmonization of religious freedom with the transformative ideals of justice, equality, and human dignity.

REFERENCES

CASES

Abhiram Singh v. C.D. Commachen, (2017) 2 SCC 629.

Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615.

Indian Young Lawyers Ass'n v. State of Kerala, (2019) 11 SCC 1.

Ismail Faruqui v. Union of India, (1994) 6 SCC 360.

Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

M. Siddiq (D) Thr. Lrs v. Mahant Suresh Das, (2020) 1 SCC 1. *Mohd. Ahmed Khan v. Shah*

Bano Begum, AIR 1985 SC 945. *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

S.R. Bommai v. Union of India, (1994) 3 SCC 1.

Shayara Bano v. Union of India, (2017) 9 SCC 1.

Sri Venkataramana Devaru v. State of Mysore, AIR 1958 SC 255.

The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282.

T.M.A. Pai Found. v. State of Karnataka, (2002) 8 SCC 481.

STATUTES AND CONSTITUTIONAL PROVISIONS

INDIA CONST. pmb.

INDIA CONST. arts. 14–16.

INDIA CONST. arts. 25–30.

INDIA CONST. art. 44.

Hindu Marriage Act, No. 25 of 1955, INDIA CODE. Hindu Succession Act, No. 30 of 1956, INDIA CODE.

Muslim Personal Law (Shariat) Application Act, No. 26 of 1937, INDIA CODE.

Muslim Women (Protection of Rights on Divorce) Act, No. 25 of 1986, INDIA CODE.

Representation of the People Act, No. 43 of 1951, INDIA CODE.

BOOKS AND ARTICLES

DURGA DAS BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA (LexisNexis 24th ed. 2022).

GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (Oxford Univ. Press 1966).

H.M. SEERVAI, CONSTITUTIONAL LAW OF INDIA (4th ed. 1996).

M.P. JAIN, INDIAN CONSTITUTIONAL LAW (8th ed. 2018).

RAJEEV BHARGAVA, THE PROMISE OF INDIA'S SECULAR DEMOCRACY (Oxford Univ. Press 2010). UPENDRA BAXI, THE INDIAN SUPREME COURT AND POLITICS (Eastern Book Co. 1980).