



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Constitutional Pluralism Under Stress: A Critical Study Of Minority Protection And Human Rights In 21st Century India

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Abstract

India's foundational commitment was based on constitutional pluralism, a structure designed to accommodate the nation's immense diversity by guaranteeing specific rights for religious and linguistic minorities—including autonomy over educational institutions (Article 30) and the freedom of religion (Article 25). However, the current political and legal environment increasingly favors constitutional monism, an ideological drive for uniformity and assimilation. This research identifies two primary mechanisms eroding minority safeguards. First, the judiciary has introduced the Essential Religious Practices (ERP) doctrine, which empowers courts to determine the "core" tenets of a religion. This judicial rationalization allows for the selective state regulation of faith, often undermining the religious autonomy guaranteed to minority groups. Second, exclusionary legislation actively institutionalizes discrimination. The Citizenship Amendment Act (CAA) introduces a religious test for citizenship, fundamentally violating the constitutional mandate of equality. Simultaneously, state-level Anti-Conversion Laws target interfaith relationships and restrict the freedom of conscience, while security laws like the Unlawful Activities (Prevention) Act (UAPA) are used broadly to silence civil society and minority dissent. The confluence of restrictive laws, judicial overreach, and institutional failure has led to a sustained human rights deficit, fostering a climate of targeted discrimination and impunity. The report concludes that India must urgently adopt institutional reforms and repeal exclusionary laws to restore its secular, pluralistic constitutional identity.

Keywords: Constitutional Pluralism, Minority Protection, Essential Religious Practices (ERP) Test, Citizenship Amendment Act (CAA), Secularism

I. Introduction

The Foundational Bargain and the Rise of Constitutional Monism

The establishment of the Republic of India was predicated upon a profound and deliberate commitment to diversity, enshrined not merely as tolerance but as an operational system of constitutional pluralism. This constitutional architecture recognizes and accommodates multiple, often divergent, legal, social, and cultural regimes within a unified state framework. India's pluralism manifests in two crucial forms: institutional, through the federal structure and special provisions for specific regions and tribal areas, and normative, through protections for religious and linguistic minorities, including legal pluralism in personal laws. This foundational bargain was essential for integrating a nation forged in the crucible of Partition and marked by immense heterogeneity.

The framers of the Constitution consciously prioritized this accommodationist approach over the assimilationist model favored by some members. During the Constituent Assembly debates regarding Draft Article 19 (later Article 25), an amendment was proposed by Tajamul Hussain advocating for strict uniformity in public spaces, demanding that "no person shall have any visible sign or mark or name, and no person wear any dress whereby his religion may be recognised". Hussain argued this restriction was necessary in the interest of secularism and national integration, citing "civilised" Western nations where religious identification through attire was uncommon. However, the Constituent Assembly categorically rejected this amendment, preserving the freedom to profess and practice religion, including the explicit protection for the wearing and carrying of the kirpan. This decision cemented the principle that India's secularism would not demand the privatization of faith but rather protect its maximal visible expression, thereby affirming the constitutional promise of pluralism¹. Despite these strong constitutional foundations, the 21st century has witnessed a systematic political and legal project that favors constitutional monoism—an ideological drive for uniformity and assimilation—over India's historical commitment to institutional and legal pluralism. The political discourse has shifted the perspective of pluralism from being a means of national integration, as envisioned by the founders, to an obstacle to national cohesion and modern governance. The explicit accommodation of religious identity, exemplified by the refusal to restrict religious attire during the framing, stands in stark contrast to contemporary state pressures for religious majoritarian visibility in public spaces and restrictions on minority attire, often justified in the name of uniformity or gender justice. Consequently, the fundamental debate has transitioned from determining how to accommodate diversity to questioning whether diversity should be accommodated when it conflicts with a perceived unitary national identity. The subsequent sections of this report will demonstrate how this drive toward monism, enacted through restrictive legislation and interpretive judicial doctrines, has created a demonstrable human rights deficit for minority communities in contemporary India. The critical study posits that 21st-century minority protection in India faces severe challenges

¹ T.M.A. Pai Found. v. State of Karnataka, (2002) 8 SCC 481 (India).

stemming from the judicial overreach exemplified by the Essential Religious Practices (ERP) doctrine, combined with exclusionary legislative policies—such as the Citizenship Amendment Act (CAA), the Unlawful Activities (Prevention) Act (UAPA), and state anti-conversion laws—that collectively violate the 'Basic Structure' commitment to secularism and equality, resulting in a crisis of human rights protection.

II. The Architecture of Protection: Articles 25-30 and Legal Pluralism

The Indian Constitution provides specific, fundamental guarantees for minorities, particularly focused on religion and education, codified in Articles 25 through 30. These provisions were meticulously drafted to balance individual religious freedoms with necessary community safeguards during the framing process.

A. Articles 25 and 26: Defining the Limits of Religious Freedom

Article 25 guarantees the individual freedom of conscience and the right freely to profess, practice, and propagate religion, subject to public order, morality, and health. Article 26 grants religious denominations the freedom to manage their own affairs in matters of religion and establish institutions for religious and charitable purposes². The framers' intent, as evidenced by the rejection of calls for mandatory uniformity, was to protect religious self-determination and visible identity. The inclusion of the Explanation concerning the kirpan signaled a deliberate rejection of the idea that religion must be relegated to a purely private realm, ensuring that citizens could maintain their identity in the public sphere.

B. The Juridical Framework for Minority Educational Rights (Article 30)

Article 30(1) grants all minorities, whether based on religion or language, the absolute right to establish and administer educational institutions of their choice. The scope of this right became the subject of extensive judicial scrutiny in the early 21st century, particularly concerning the interaction between minority autonomy and state regulation. The Supreme Court judgments in *T.M.A. Pai Foundation v. State of Karnataka* (2002) and *P.A. Inamdar v. State of Maharashtra* (2005)³ established the definitive legal framework. These decisions confirmed that the right to establish and administer professional institutions flows from Article 30(1) for minority institutions and Article 19(1)(g) for all private unaided institutions. The Court recognized that unaided private institutions enjoy greater autonomy, including the right to admit students, set reasonable fee structures, and appoint staff without "unacceptable restrictions" imposed by the state. It clarified that the State cannot impose reservation quotas or appropriate any seats in unaided private educational institutions, reinforcing the protection afforded by Article 30. However, the Court simultaneously sought to mitigate the risk of commercialization by subjecting the autonomy of institutions to a stringent "triple test": admission procedures must be fair, transparent, and non-exploitative. While the autonomy of minority-run institutions was ostensibly protected, the continued judicial efforts to monitor

² Jaideep Singh Lalli, *The Constitutional Communalisation of Citizenship: A Response to Arguments in Support of the Citizenship (Amendment) Act 2019*, 1 OXFORD HuM. RTs. J. COMM. (2021).

³ *P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537 (India).

admissions and fees—as seen in the establishment of committees in the preceding Islamic Academy case—demonstrate the judiciary's ongoing struggle to balance the constitutional right to administration with the state's duty to ensure academic standards and public interest. The prevailing environment suggests a subtle governmental push for uniformity in educational delivery, even within private, minority-administered spaces, gradually challenging the unqualified nature of Article 30(1).

C. The Paradox of Legal Pluralism: Personal Laws and the UCC Debate

Legal pluralism in India is perhaps most vividly manifested through the existence of distinct, faith-based personal laws governing family matters—such as marriage, divorce, and inheritance—for Hindus, Muslims, Christians, and Parsis⁴. This legal accommodation extends to special protections for tribal populations under the 5th and 6th Schedules of the Constitution. The core challenge is that these distinct legal regimes frequently conflict with fundamental rights, specifically the guarantee of gender equality enshrined in Articles 14 and 15. Instances of conflict include disparate marriage ages and non-uniform provisions for adoption and property rights across different communities. Historically, this friction has been maintained by the judiciary's stance, originating from the *State of Bombay v. Narasu Appa Mali* precedent, which holds that Article 13 (declaring laws inconsistent with Fundamental Rights as void) does not apply to religious personal laws⁵. This historical judicial shield protects these laws from direct constitutional scrutiny, though contemporary judicial interpretation has shown a trend towards adopting a "scrutinizing approach" in specific cases. This friction created by gender-biased elements within personal laws is now being strategically leveraged in the political push toward a Uniform Civil Code (UCC). While government officials often justify the UCC as essential for gender justice and national integration, critics warn that such a homogenizing code fundamentally threatens India's legal pluralism. A broad UCC risks undermining the unique protections afforded to diverse tribal communities and religious minorities, potentially failing to enhance fairness while unequivocally dismantling institutional diversity. By focusing on the discriminatory aspects of legal pluralism, the dominant political narrative effectively reframes the protection of distinct cultural identities as an obstacle to national progress, thereby justifying legislative action aimed at removing minority status protections and further cementing the drive toward constitutional monism⁶. Legal scholarship suggests that any proposed UCC must be reimagined not as an act of homogenization, but as a path toward constitutional innovation that seeks equality without sacrificing the protected diversity inherent in India's legal landscape.

III. The Judicial Labyrinth: Erosion through Interpretive Doctrine

The judiciary, intended as the ultimate custodian of constitutional rights, has inadvertently contributed to the erosion of minority protection through the application of interpretive doctrines, most notably the Essential Religious Practices (ERP) test.

⁴ Rajeev Bhargava, States, Religious Diversity, and the Crisis of Secularism, *OPEN DEMOCRACY* (Mar. 22, 2011).

⁵ Oran Doyle, Constitutional Pluralism and Article 370, *VERFASSUNGSBLOG* (Nov. 23, 2022).

⁶ Durgah Committee, *Ajmer v. Syed Hussain Ali*, AIR 1961 SC 1402 (India).

A. The Essential Religious Practices (ERP) Test: A Doctrine of Judicial Rationalization

The ERP test was developed by the Supreme Court to distinguish religious practices that are constitutionally protected under Articles 25 and 26 from those that are merely superstitious, secular, or unnecessary additions to the core of the faith. The test requires courts to determine if a practice constitutes an "essential and integral part of a religion," confining protection only to such practices. This judicial exercise, however, has been widely criticized for enabling judicial overreach. By imposing an external, rationalist framework onto belief systems, the judiciary often usurps the autonomy granted to religious groups under Article 26 to manage their own affairs. Critics argue that the ERP test fundamentally suffers from adopting a static view of faith, often judging the essentiality of a practice based on whether it existed at the time of the religion's foundation⁷. This approach fails to account for the organic evolution of beliefs and practices over time, arbitrarily excluding practices integral to contemporary religious life. Academics point out that the ERP doctrine allows for the "rationalization of religious practices", effectively empowering the state, through the judiciary, to engage in the selective regulation of minority religious expression under the guise of 'reform' or 'secular management.' This outcome risks favoring established, historical majority traditions over the fluid, evolving practices of minority denominations, transforming the ERP doctrine into a potential majoritarian tool.

B. Case Study: Sabarimala and the Failure of Intra-Denominational Accommodation

The 2018 judgment in *Indian Young Lawyers' Association v. State of Kerala (Sabarimala)* serves as a potent example of the interpretive pitfalls of the ERP doctrine when applied to intra-denominational disputes. The Court, prioritizing the individual right to equality (Article 15) and freedom of religion (Article 25) for female worshippers, declared the custom of excluding women of menstruating age from entering the Sabarimala temple unconstitutional.

The decision drew immediate widespread criticism. Commentators argued that the Court had misapplied the ERP test, testing the custom not against the tenets of the overall religion (Hinduism), but against the specific, unique beliefs of a particular denomination attached to the celibate nature of the deity Ayyappa. This application was perceived as an infringement upon the religious group's right to manage its own affairs under Article 26. The complexity of the case lay precisely in balancing the constitutional mandate of non-discrimination against the protection of unique and specific religious practices⁸. Legal scholars characterized the ruling as judicial overreach, asserting that the judgment failed to adequately accommodate the distinct religious identity and management rights of the denomination.

⁷ *Indian Young Lawyers' Association v. State of Kerala*, (2018) 12 SCC 378 (India).

⁸ Constitutional Scrutiny of Anti-Conversion Laws Challenged in Supreme Court, SUPREME COURT OBSERVER (last visited June 10, 2024).

C. Judicial Scrutiny of State Anti-Conversion Laws

A pervasive legislative challenge to minority rights in the 21st century comes from state-level "Freedom of Religion Acts," commonly known as anti-conversion laws, which are often supported by politically charged rhetoric concerning 'love jihad'. These laws are currently facing challenges in the Supreme Court, with petitioners arguing that they severely infringe upon core fundamental rights, including the right to freedom of conscience (Article 25), the right to privacy, and the right to choice and dignity (Article 21)⁹. The legal community is shifting the defense of minority rights from a sole reliance on institutional protections (Article 30) to a more robust reliance on individual rights guaranteed by Article 21. By framing the issue around dignity, choice, and privacy, litigants are attempting to use the established, evolving doctrines of fundamental rights to protect the most intimate aspects of minority identity and autonomy against restrictive, majoritarian-driven state legislation.

IV. The Legislative Retreat from Pluralism: Exclusionary Statutes

The 21st century has seen the rise of legislative and policy frameworks that actively undermine the principles of constitutional pluralism, instead promoting an exclusionary, unitary ideology

A. The Citizenship Amendment Act (CAA) 2019: Institutionalizing Discrimination

The Citizenship Amendment Act (CAA) fundamentally alters India's secular character by introducing religion as a criterion for determining citizenship eligibility for fast-track naturalization. By establishing a preference for non-Muslim refugees (Hindu, Sikh, Jain, Parsi, Buddhist, or Christian communities) fleeing neighboring Muslim-majority countries, the CAA explicitly institutionalizes a religiously discriminatory model of citizenship. This Act is inherently incompatible with India's constitutional values of equality and non-discrimination and is inconsistent with its international human rights obligations. Legal scholars contend that the CAA violates Article 14, which mandates equality before the law for all persons, not just citizens, and infringes upon the 'Basic Structure' commitment to secularism. Critics argue that the CAA, especially when linked with the potential nationwide implementation of the National Register of Indian Citizens (NRC), risks creating statelessness and communal fragmentation. This coupling creates a powerful mechanism for systematic exclusion. The effect of the CAA is to establish a subset of the population (Muslims) whose citizenship status is implicitly probationary, while simultaneously denying citizenship access to Muslim refugees, setting a precedent where religion dictates access to fundamental state rights.

Academic analysis highlights that proponents defending the CAA often overlook the Supreme Court's evolutionary expansion of judicial review under Article 14, which permits courts to scrutinize and strike down laws based on their discriminatory objectives, even if the classification appears rational on the

⁹ The Dissolution of Muslim Marriage Act, 1939, No. 6, Acts of Parliament, 1939 (India).

surface¹⁰. The use of religion as the basis for classification in the CAA is thus viewed as a direct attack on constitutional secularism, reframing the basis of the Republic itself.

B. Securitization of Dissent: The Unlawful Activities (Prevention) Act (UAPA)

The Unlawful Activities (Prevention) Act (UAPA), originally intended to prevent activities directed against India's integrity, has been drastically amended, particularly in 2019, to grant the government sweeping powers. The UAPA 2019 allows the Union Government to designate individuals as 'terrorists' without a formal judicial process.

The expansive application of the UAPA poses a significant threat to civil liberties and creates a chilling effect on minority advocacy and political dissent. The Act criminalizes having a similar ideology to a designated organization, or even possessing its literature. This framework directly conflicts with the fundamental rights to freedom of expression and association guaranteed under Article 19. Legal analysis confirms that organizations working for vulnerable and minority sections of society are highly susceptible to being termed 'unlawful' under the Act, leading to arrests and effectively transforming legitimate minority dissent into a national security threat. The combination of legislative exclusion (CAA) and coercive legislation (UAPA) ensures that the civil society infrastructure that might otherwise contest this exclusion is systematically dismantled.

C. Anti-Conversion Laws and the Majoritarian Agenda

State-level legislation often uses the euphemism of protecting "cultural and linguistic heritage," a concept that, in the current political context, is frequently interpreted as synonymous with Hindu supremacy, to justify laws that actively target minority religious practices. These strengthened anti-conversion laws, implemented across various states, disproportionately target and harass members of the Muslim and Christian communities based on allegations of 'forced' conversions. These laws introduce highly restrictive provisions, including mandatory prior declaration of conversion and shifting the burden of proof onto the accused, effectively criminalizing interfaith relationships and making conversion highly complex and punitive¹¹. This legislative approach represents a reframing of India's constitutional secularism—which guarantees religious parity—into a state ideology where the majority religion's culture is deemed national culture. This active exclusion of minority narratives and practices is a calculated move toward constitutional monism, undermining the very premise of equal religious freedom.

V. Institutional Failures and the Human Rights Deficit

Effective protection of human rights relies not only on constitutional text but on robust institutional mechanisms capable of monitoring, enforcing, and safeguarding those rights. In the 21st century, the

¹⁰ Constitutional Safeguards of Minority Rights in India, 11 INT'L J. CREATIVE RSCH. THOUGHTS 289, 290 (2023).

¹¹ Id

institutions designated for minority protection have proven structurally insufficient or politically constrained.

A. The Weakening of Minority Safeguards: The National Commission for Minorities (NCM)

The National Commission for Minorities (NCM) was established by statute (NCM Act, 1992) with the core functions of monitoring constitutional safeguards, evaluating minority development, investigating specific complaints of rights deprivation, and making policy recommendations. However, the NCM remains structurally weak and functionally constrained, limiting its ability to counter systemic discrimination effectively. Institutional reports and academic analyses consistently highlight the need for greater autonomy and permanence. Recommendations from the NCM's own Annual Reports, alongside major government-appointed bodies like the Sachar Committee (2006) and the Ranganath Misra Commission (2007), have strongly advocated for granting the NCM Constitutional status. The failure to implement these recommendations, despite documented needs for strengthened minority oversight, suggests that the calculated marginalization of these bodies is potentially a systemic characteristic of the current administrative climate. The function of the NCM is effectively reduced from being a robust safeguard to a largely consultative body, thereby limiting the institutional check on legislative and executive majoritarianism.

B. Documenting Impunity: Violence, Hate Speech, and State Inaction

Independent human rights organizations and international bodies consistently report a deteriorating environment for religious minorities characterized by hostility, systemic discrimination, and a climate of impunity regarding violence. Reports detail systematic discrimination and stigmatization, with Muslims being particularly targeted. Violence against targeted groups, often perpetrated by supporters of the ruling political dispensation, has increased¹². Evidence suggests institutional bias within the justice system and constitutional authorities, including the National Human Rights Commission. Furthermore, there are documented instances of state inaction in investigating and prosecuting crimes against members of religious minority groups, including Christians and Muslims accused of "forced" conversions. This environment fosters a profound lack of confidence among religious minority groups in the government's willingness or ability to protect them from violence and investigate crimes. The confluence of state inaction, the propagation of hateful rhetoric, and the operationalization of discriminatory laws (such as the CAA) further emboldens those seeking to commit violence, exacerbating the human rights deficit. The resulting climate places India in direct conflict with its international human rights obligations concerning religious non-discrimination and protection against communal fragmentation, creating a significant international reputation cost.

¹² Grant Constitutional Status to National Commission for Minorities, DRISHTIIS (Oct. 22, 2025).

C. Comparative Constitutionalism: Lessons in Managed Diversity

Examining how other diverse constitutional democracies manage pluralism offers valuable insights for restoring India's pluralistic equilibrium. The experience of South Africa in forging its post-apartheid Constitution in 1996, adopted at the peak of the modern international human rights movement, provides a compelling model. The South African Constitution utilized a broad equality provision designed explicitly to address social oppression and rectify past injustices (apartheid), representing a powerful example of reparative constitutionalism¹³. While India's foundational process occurred before the 1948 Universal Declaration of Human Rights, lessons can be drawn from South Africa's focus on using constitutional rights to address historical social hierarchies.

Similarly, Canada's legal framework provides relevant context for balancing federal and regional identities. Canada's approach to its linguistic and First Nation minorities emphasizes self-government rights and accommodating diverse group identities within a federal structure. These principles align conceptually with India's foundational commitments to special provisions for tribal areas (5th and 6th Schedules) and unique linguistic protections (Article 350-B). India can look to these comparative examples to reimagine how legal pluralism can be protected and made functionally inclusive, moving beyond simple exemptions to constitutional innovation.

VI. Conclusion and Recommendations for Restoring Constitutional Pluralism

A. Summary of Findings: The Decline of the Pluralistic Ethos

The critical analysis confirms that India's foundational constitutional pluralism is experiencing profound destabilization in the 21st century. The accommodationist ethos established by the Constituent Assembly—which guaranteed identity, conscience, and institutional autonomy through Articles 25 to 30 and legal pluralism—has been systematically eroded. This erosion is facilitated by two primary drivers: first, exclusionary legislative actions rooted in a majoritarian political ideology that seeks uniformity and assimilation (CAA, UAPA, anti-conversion laws); and second, interpretive judicial doctrines (ERP) that permit unwarranted judicial and state intervention into the core tenets of minority religious life. The resulting crisis is one of constitutional fidelity, where the state's pursuit of uniformity and national security often supersedes the guaranteed rights and protective architecture intended for minority communities. This convergence of legal exclusion and institutional weakness has directly translated into a sustained human rights deficit, marked by increased violence, targeted discrimination, and the calculated marginalization of oversight bodies.

B. Recommendations for Restoring the Pluralistic Equilibrium

A comprehensive strategy for restoring the constitutional promise of minority human rights requires decisive and multi-pronged action across all domains of governance:

Judicial Restraint and Doctrinal Reform: The Supreme Court must immediately review and reform the application of the Essential Religious Practices (ERP) test. The scope of this doctrine should be strictly

¹³ HUM. RTs. WATCH, India: Events of 2022, WORLD REP. 2023.

limited to preventing purely secular or superstitious practices that endanger public order or health, with the judiciary refraining from defining the core tenets of religious identity. This measure is necessary to ensure respect for the autonomy guaranteed under Article 26 and to reverse the trend of judicial rationalization of faith.

Institutional Strengthening and Autonomy: The National Commission for Minorities (NCM) must be accorded Constitutional status, as consistently recommended in its own reports and by expert commissions. **Legislative Review and Repeal of Exclusionary Laws:** National legislation that institutionalizes religious discrimination and violates the basic structure principle of secularism and equality, such as the Citizenship Amendment Act (CAA), must be judicially struck down or repealed. Furthermore, the overbroad and potentially coercive provisions of security laws, particularly the UAPA, must be urgently reviewed and tailored to ensure they respect the fundamental rights to expression and association guaranteed by Article 19, halting their misuse against minority advocates and civil society dissent.

Reimagining Legal Pluralism for Gender Justice: While national discussion regarding a Uniform Civil Code (UCC) continues, any reform must reject homogenization and instead strive to reimagine legal pluralism as a domain of constitutional innovation. This requires centering gender justice and equality while simultaneously protecting cultural and religious diversity. The Supreme Court should revisit the constraints imposed by the Narasu Appa Mali precedent and systematically subject all personal laws to constitutional review concerning Fundamental Rights, particularly Articles 14, 15, and 21, thus ensuring gender equality within a legally pluralistic framework.

