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RELIGIOUS FREEDOM, CONSTITUTIONAL MORALITY AND INDIVIDUAL RIGHTS: A COMPARATIVE STUDY OF INDIA AND THE USA

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ABSTRACT

Incorporating freedom of religion, equality, and autonomy presents greatest difficulties in constitutional design. This study examines arguments in the United States of America and India, especially regarding constitutional morality, conscience, collective autonomy, and individual rights, using the doctrinal and comparative approaches to examine select constitutional, jurisprudential, and empirical materials on social and legal regulation of religion. The approach finds that Indian law incorporates both broad positive rights and activist judicial review. Especially, through the essential practices doctrine and the concept of constitutional morality. Conversely, American law refuses to address theological issues of essentiality, and evokes sincerity, neutrality, general application, and strict scrutiny. Neither system is fully satisfactory. Indian law can promote equality and dignity, while American law can preserve separation of theology and state. However, India's law can transform judges into the arbiters of religious orthodoxy. The author combines both systems to provide equal therapeutic and coercive claims. Consequently, courts will need to balance theology, align religious claims, and marginalize the claims that violate the conscience of others. A court can establish a limit on orthodoxy of religion through constitutional morality.

KEYWORDS: Religious Freedom; Constitutional Morality; Individual Rights; Secularism; Comparative Constitutional Law.

1.1 INTRODUCTION

Constitutions of India and United States vary in how they separate and regulate religion and public administration. India's Constitution has detailed Articles that secure the right to equality, liberty of conscience, right to practice and maintain religion, and autonomy of religion and minority right to education. These Articles, by virtue of Articles 14, 15, 19, 21, and 25-30, assure protection of the right to equality.¹ Indian social order, along with the right to choose new social norms, provides a structure to Indian secularism to sustain pluralism. Austin describes the Fundamental Rights and the Constitutional transformation as two integrally related concepts.² Consequently, most of Indian legal challenges on religious freedom become disputes on equality and dignity and distribution of power in the State and its institutions.

The United States' Constitution employs a rather brief structural approach. The First Amendment constrains the legislature from making laws concerning the establishment of religion or the prohibition of its unhindered practice. Restraint on other levels is due to the Fourteenth Amendment of incorporation.³ Thus, most of the challenges on religious freedom in the United States take the form of challenges to equality and dignity. Christopher Eisgruber and Lawrence Sager⁴ contended, and so did Martha Nussbaum⁵, that the best approach to religious freedom is the principle of equal liberty, without the assumption of religion invariably holding a preferred status.

The main issue is not whether religion deserves rights in the Constitution, but how protection for rights is harmonized for collective religious rights claims that invade individual rights to equality, autonomy, and regulation of the public sphere. This Article examines two doctrines, Indian constitutional morality, and essential religious practices, and U. S. doctrines of sincerity, neutrality and strict scrutiny. It further argues India is vulnerable to excessive judicial theology, while the U. S. is vulnerable to permitting formal neutrality in rules that have differential impacts on the public. A valid comparative analysis of the two should provide a framework of sincere conscience with a restriction of governmental discrimination against religion, allow legitimate association, and refuse coercion.⁶

¹ The Constitution of India, arts. 14, 15, 19, 21, 25-30.

² Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50 (Oxford University Press, New Delhi, 2nd edn., 1999).

³ U.S. Const. amends. I, XIV.

⁴ Christopher L. Eisgruber and Lawrence G. Sager, *Religious Freedom and the Constitution* 52 (Harvard University Press, Cambridge, 1st edn., 2007).

⁵ Martha C. Nussbaum, *Liberty of Conscience: In Defence of America's Tradition of Religious Equality* 19 (Basic Books, New York, 1st edn., 2008).

⁶ Stijn Smet, "Comparative Constitutional Interpretation of Religious Freedom", 69 *International & Comparative Law Quarterly* 611 (2020).

1.2 CONSTITUTIONAL ARCHITECTURE OF RELIGIOUS LIBERTY

The two systems defend religion in separate ways and structures of their Constitutions. India has explicit guarantees of religion in concert with equality, reform, and minority rights, and the U. S. has two religious clauses, whose integration has been done by the judiciary. The analysis will therefore begin with structures, rather than with vague concepts of secularism.⁷

1.2.1 India: Rights, Reform and Constitutional Morality

Indian secularism does not mean a complete separation of church and state, or a completely hands-on approach by the state to manage religion. Articles 25 and 26 of the constitution protect the right to have a belief, profess a belief, practice a belief, propagate a belief, manage a belief, and administer a belief. However, these rights are subject to the public order, morality, health and other fundamental rights. Gary Jacobsohn describes the Indian case as a particular type of constitutional accommodation where the state is able to use its power to protect pluralism and may choose to reform.⁸ Rajeev Dhavan also shows that Indian religious freedom has been the articulation of an equilibrium among the liberty of the individual, the autonomy of the group, and the state's regulatory power, as opposed to non-interference.⁹ The challenge in forming a theory of secularism, therefore, is to set limits to the state's interference, as well as limits to the power of religion.

1.2.2 United States: Non-Establishment, Free Exercise and Neutrality

The United States model rests on a different starting point. The Establishment Clause is used to set restraints to the state's sponsorship or preference of a particular religion, while the Free Exercise Clause is used to protect a person's right to have a belief and practice a belief. Even with the incorporation of the religion clauses, the result of the interaction of these clauses is not absolute separation. The state is allowed to accommodate religion and to interact with religious institutions. The state cannot classify among denominations or punish religious practice. The main doctrinal issues then, are neutrality, coercion, history and tradition, and strict scrutiny of laws that discriminate.¹⁰

This structure is also representative of the judiciary's stronger preference for remaining neutral on theological matters. Civil courts in the U. S. evaluate the sincerity of religious claims and differentiate religious claims from purely secular ones, but the Religion Clauses prevent civil courts from deciding what is the correct interpretation of a belief. Stijn Smet's research

⁷ Deepa Das Acevedo, "Secularism in the Indian Context", 38 *Law & Social Inquiry* 138 (2013).

⁸ Gary Jeffrey Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context* 50 (Princeton University Press, Princeton, 1st edn., 2003).

⁹ Rajeev Dhavan, "Religious Freedom in India", 35 *The American Journal of Comparative Law* 209 (1987).

¹⁰ Kent Greenawalt, *Religion and the Constitution, Volume 1: Free Exercise and Fairness* 35 (Princeton University Press, Princeton, NJ, 1st edn., 2006).

on comparative constitutional systems also indicates that the judicial resolution of religious issues necessitates the use of the concepts of the tolerance and respect, but the expression and function of these concepts are different in various legal systems. American separation of church and state reduces one form of judicial overreach, but it does not eliminate difficult choices.¹¹ Courts have to decide where the line is between religious accommodation and positive discrimination in favor of a religion, and whether religious liberty can be subordinated to a more important interest or the rights of other people.

1.2.3 Comparative Baseline: Two Secular Constitutionalism's

The baseline comparison is thus asymmetrical. India integrates religious freedom with transformative rights and approves State-sponsored legal reform of secular activities related to religion. The U. S. is more frequently engaged with the issue of State-sponsored coercion of religion, participation of religion with pressure, preference of religion by the State, or burdens on sincere religious exercise. Neither model is more protectionist. India can purpose more directly to overcome socially embedded exclusion, while American neutrality can constrain judges from deciding what a religion demands. The more constructive comparative study is on what institutional arrangement most successfully combines the prevention of coercion of religious communities with the autonomy of religious communities.¹²

1.3 INDIAN JURISPRUDENCE: FROM RELIGIOUS AUTONOMY TO INDIVIDUAL RIGHTS

Indian religious freedom jurisprudence progressed from securing denominational autonomy to facing explicit issues of equality, gender, and personal choice. In the process, the constitutional language of rights has expanded, but so has the controversy on whether judges determine the religious essentiality versus the constitutional harm.¹³

1.3.1 Essential Religious Practices and Judicial Theology

The Essential Religious Practices (ERP) doctrine was first cited in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*¹⁴. The Court differentiated issues of religion which fall under Article 26 from issues of secular administration which may be regulated. However, this differentiation transformed into an inquiry on whether a given practice was religious, to whether that practice was essential to the

¹¹ Stijn Smet, "Comparative Constitutional Interpretation of Religious Freedom", 69 *International & Comparative Law Quarterly* 611 (2020).

¹² Gary Jeffrey Jacobsohn, *The Wheel of Law: India's Secularism in Comparative Constitutional Context* 50 (Princeton University Press, Princeton, 1st edn., 2003).

¹³ Rajeev Dhavan, "Religious Freedom in India", 35 *The American Journal of Comparative Law* 209 (1987).

¹⁴ AIR 1954 SC 282.

religion. This developed the power of the Courts, and Ronojoy Sen has analysed how the Courts developed rationality in the sphere of Hindu religious practices by distinguishing legitimate religion from superstition and unacceptable practices.¹⁵ However, the problem is structural. As constitutional judges, they do not determine the essence of religion.

Recent empirical studies lend further credence to this criticism. Pranav Verma's study of 43 essentiality cases up to August 2022 finds that essentiality was successful in about 16% of the cases.¹⁶ While the figure in Verma's study suggests that essentiality does not always work as a neutral gateway, further empirical study is needed to determine the range of factors that may be important in determining whether essentiality may be successful. The analysis of Verma's study also relies on the premise that essentiality claims are routinely successful in religious autonomy cases. Serious analysis, however, should distinguish sincerity from constitutional permissibility. In such analysis, the judiciary should determine whether the plaintiff is sincere and should assess the harm caused by the government or the third party from the perspective of the ordinary rights analysis rather than whether the plaintiff's practice is essential to the faith.

1.3.2 Equality, Gender and Constitutional Morality

Verma's study places the State's orthodoxy in conflict with conscience in *Bijoe Emmanuel v. State of Kerala*¹⁷. The Court recognized the right of Jehovah's Witnesses to respectfully stand during the National Anthem while maintaining their right to refrain from singing the Anthem. The case is significant because conscience, in this case, was recognized as an individual right as opposed to a right that is dependent on the approval of an institution. This should be maintained in Article 25. When the State requires symbolic conformity, the question becomes whether the claim is sincere and whether the loss of the right is justified by a constitutionally sufficient interest.

Secularism was strengthened within the framework of structure in *S.R. Bommai v. Union of India*¹⁸. The Supreme Court would then consider secularism as one of the features of the basic structure of the Indian Constitution. The principle does not mean the state has to be antagonistic towards religion. It is the constitution of the state that needs to be kept ahead of public power when the state decides to adopt a policy of preference or exclusion based on religion. The direct conflict of the case was in the *Indian Young Lawyers Association v. State of*

¹⁵ Ronojoy Sen, "The Indian Supreme Court and the Quest for A "Rational" Hinduism", 1 *South Asian History and Culture* 86 (2009).

¹⁶ Pranav Verma, "The Fate Of "Essential Religious Practices" In India's Constitutional Courts", 83 *The Journal of Asian Studies* 701 (2024).

¹⁷ (1986) 3 SCC 615.

¹⁸ (1994) 3 SCC 1.

*Kerala*¹⁹. This was regarding the exclusion of women of a particular age from the Sabarimala temple. In the case, the majority of the judges asserted the right of an individual to religious freedom as a right of equality and dignity. In contrast, the minority of the judges believed that the court needs to practice restraint and consider religion. This case is a good example of the dilemma of religious identity.

1.3.3 Conscience, Personal Choice and Ongoing Reconsideration

The Sabarimala case shows why there is a need to control constitutional morality. Gautam Bhatia's case of transformative constitutionalism states that the need for anti-exclusion gives everyone the right of equal membership, and these principles enable the courts to step in when religious principles of civic exclusion are implemented.²⁰ However, this does not mean there is justice court oversight. The distinction should be between practices that not only create association, but also create disabilities to persons. In August 2026, the reference arising from *Kantaru Rajeevaru v. Indian Young Lawyers Association*²¹ remained under consideration by a nine-judge Bench, which heard oral arguments through May 14, 2026.²² This case shows that most of the considerations are still under review.

Outside institutional worship, personal autonomy has fared better. In *Shafin Jahan v. Asokan K.M.*²³, the Supreme Court reversed the High Court's annulment of a married woman's choice to convert and marry a man of another religion. This case represents an important development in the protection of adult autonomy against the anxiety of a family, and against paternalistic suspicion, even when it is justified by religious differences. The choice across community boundaries is religious freedom here, instead of a community's internal control. This is a stronger view compared to essentialism, as the Court is not required to analyse religious precepts. The Court is required to analyse if a competent adult can choose intimately or has faith and can have a family, and if there is a non-State or State interference, then they must carry this out without any duress.

1.3.4 Religious Dress and Minority Educational Autonomy

In the rights to religious dress, the autonomy is illustrated as a challenge to implement in the institutional settings. The judgment in *Aishat Shifa v. State of Karnataka*²⁴ caused a split. One opinion rested on the presence of uniforms and religious practices. The other rested on Bur-

¹⁹ (2019) 11 SCC 1.

²⁰ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* 114 (HarperCollins Publishers India, New Delhi, 1st edn., 2019).

²¹ (2020) 9 SCC 121.

²² Argument Transcripts, available at: <https://www.sci.gov.in/argument-transcripts-2/> (last visited on August 24, 2026).

²³ (2018) 16 SCC 368.

²⁴ 2022 SCC OnLine SC 1394.

den and Choice. Sumit Sonkar argues that the 'essential religious practices doctrine' is most perilous when the doctrines of religious freedom and gender equality converge.²⁵ The better question is whether the rule is justified and serves the goal of the institution. In addition, is the Bar to education due to an institutional Dress code threshold appropriate?

Minority-based education poses a question of institutional autonomy. The Uttar Pradesh Board of Madrasa Education Act, 2004 was enacted by the State of Uttar Pradesh in *Anjum Kadari v. Union of India*²⁶. The Supreme Court upheld most of this provision. The Court noted that while life guarantees the right of every person to have access to education, it does not mean that the State has a duty to provide education. Education within the framework of Article 29(1) and Article 30(1) of the Constitution does not afford complete immunity from the State and from hostility towards a particular religious community. This Article also upholds the character of educational institutions. It also states that minority educational institutions are not exempt from providing instruction of a qualitative nature to students, within the framework of child welfare. The State must strike a balance by ensuring that the character of minority institutions is not eroded by a regulatory framework directed towards the realization of legitimate goals of secularism.

Figure 1 illustrates the state of recognized Madrasas before the Supreme Court of India as 560 state funded institutions, 3, 834 permanently recognized and 8,970 temporarily recognized non funded institutions, providing education and training to 192,317, 437,237 and 604,834 students respectively, with a total of 1,234,388 students.²⁷

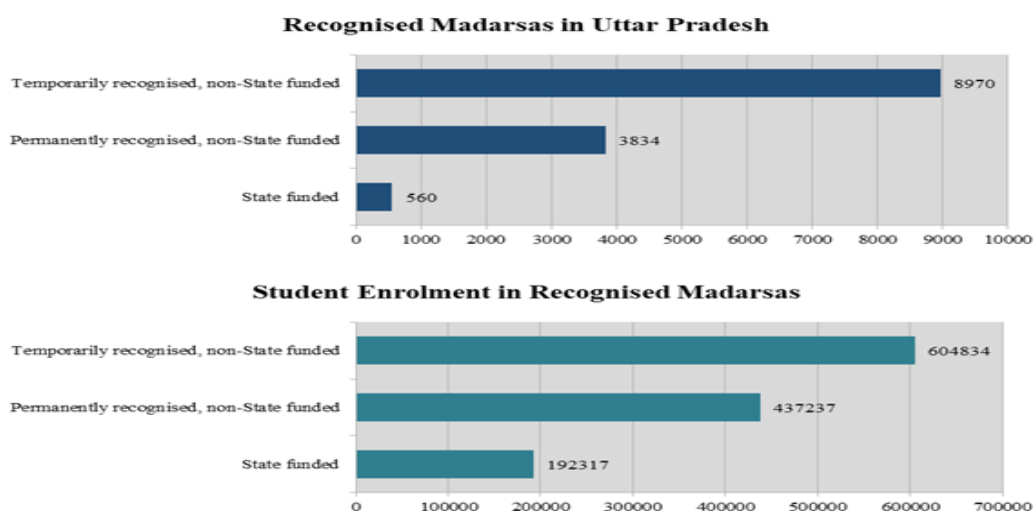


Figure 1. Recognised Madarsas and student enrolment in Uttar Pradesh: (a) recognised institutions and (b) enrolled students.

²⁵ Sumit Sonkar, "Balancing Faith and Equality: Examining the Adequacy of the Doctrine of Essential Religious Practices from Gender Perspectives in India", 12 *Oxford Journal of Law and Religion* 121 (2023).

²⁶ 2024 SCC OnLine SC 3129.

²⁷ 2024 SCC OnLine SC 3129.

1.4 UNITED STATES JURISPRUDENCE: NEUTRALITY, ACCOMMODATION AND CONSCIENCE

The American doctrine regarding religion tends to utilize a specific set of judicial filters. The focus is generally on whether the government has created a law that restricts a belief, or favours a particular practice, or forces participation, or does not grant a practice the same rights as other practices. This position tends to restrict the extent of the permissible theological examination, although recent judgments have advanced accommodation claims in public domains that have been hotly contested.²⁸

1.4.1 Incorporation and the Freedom to Believe

The modern interpretation of the Free Exercise Clause commences with the doctrine of incorporation and distinguishing belief from conduct. In *Cantwell v. Connecticut*²⁹, the US Supreme Court provided free exercise protection from government intervention and stated that the freedom to believe was absolute, while believing that conduct could be controlled. This formulation is necessary since it shields conscience from constitutionalizing every conduct that is religiously motivated. The government cannot dictate belief, punish conversion or demand the affirmation of orthodoxy, but they can control conduct through Constitutional laws and the First Amendment. The main concern has therefore not been whether conduct can be controlled, but the degree of justification that is warranted when conduct that is controlled is religion and it is singled out for discrimination.

Incorporation and institutional development were simultaneous. The *Everson v. Board of Education of Ewing Township*³⁰ case use of the Establishment Clause against the States helped establish the separation of church and state. Although later decisions have moved beyond some of the more metaphorical language, the basic prohibition of governmental establishment and preference of one religion over another remains. This creates a constitutional issue that does not exist in exactly the same form in India. When it comes to balancing the interests of the government with the interests of religion, there is a need to draw a line so that preferential treatment does not cross into establishment. In the spirit of contemporary doctrine, the two clauses are meant to be complementary. The main lesson to be learned from the comparison of these issues is that public neutrality is most important in balancing the competing interests of governmental hostility and religious preference.

²⁸ Kent Greenawalt, *Religion and the Constitution, Volume 1: Free Exercise and Fairness* 11 (Princeton University Press, Princeton, NJ, 1st edn., 2006).

²⁹ 310 U.S. 296 (1940).

³⁰ 330 U.S. 1 (1947).

1.4.2 Neutral Laws, Religious Targeting and Strict Scrutiny

*Employment Division, Department of Human Resources of Oregon v. Smith*³¹ decided the modern rule on neutral legislation. According to the Court, the Free Exercise Clause does not require the government to provide an exemption to a neutral and generally applicable law to avoid the burdening of religious practice. The main purpose of this rule is to make the law workable and avoid an excess of judicial work. This rule, however, has a large gap. Generally applicable rules have a significant burden on minor faiths. Thus, the focus of later decisions was on whether a law was neutral and generally applicable, whether there was a discretionary exemption, and whether there was a secular comparator or a practice that was not religious. This principle is reflected in *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*³². Since the ordinances were specifically aligned with ritual animal sacrifice, they were invalidated because they were not regulating comparable acts equally. This case offers a significant advantage of the American system; the court is able to identify acts of religious discrimination and determine if animal sacrifice is a part of Santeria, without having to establish the essential of the theology. The issues are the object of the governmental action and the classification and fit. Compelling interest is only met if means are tailored to the goal. This provides a strong methodology to India, and while the Indian Constitution allows for more sweeping reform, this structure cannot be adopted verbatim to the American system.

1.4.3 Equality, Public Institutions and Individual Exercise

Neutrality has its limits and is best illustrated in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*³³. In this case, the Supreme Court found the state ruling to be against the Free Exercise Clause of the Constitution because sufficient neutrality was lacking when addressing the religious objections of the baker. This was a deliberate narrow opinion, and did not establish a right that allows an individual to violate the law of anti-discrimination. It has significant methodological value; in order to maintain the right of religious opinion, a case must be adjudicated without criticism of religion, but neutrality does not determine the outcome of the balance of religious opinion and the equal civil right of the customer.

Another barrier affecting public institutions is *Kennedy v. Bremerton School District*³⁴. In this case, the U. S. Supreme Court ruled in favor of a public-school football coach in that his personal postgame prayers were guaranteed by the Free Exercise Clause of the First Amendment and the Free Speech Clause. The Court also overruled the assumption that the presence of

³¹ 494 U.S. 872 (1990).

³² 508 U.S. 520 (1993).

³³ 584 U.S. 617 (2018).

³⁴ 597 U.S. 507 (2022).

visible private religious conduct by a government employee violates the Establishment Clause. The case is important for the right of the individual as the state is not required to de-secularize employees. At the same time, the analysis should take into account the potential for religious conduct to be coercive, and in schools, where the authority-based relationship can mean that private religious conduct is different from religious conduct among adults.

1.4.4 Recent Expansion of Parental and Institutional Claims

The decision concerning parental rights in the case of *Mahmoud v. Taylor*³⁵, in 2025, was particularly notable. The Court extended the right of challenge of a public school curriculum and the right to an opt out of that public school curriculum. The Court also noted the right of parents to seek an order for a public school to stop obstructing the religious development of their children. The case illustrates the difficulties of providing a right to public schools to give broad opt out rights. This can be balanced with the right to not be coerced to be in an unequal educational environment. The principles of burden and feasibility, among others, are also applicable.

In *Catholic Charities Bureau, Inc. v. Wisconsin Labor and Industry Review Commission*³⁶, the Court supported the principle of institutional religious neutrality. The Court delivered a unanimous decision, and it rejected a test adopted by the State which asked whether the organisations' charitable activities were sufficient in their religious form. This is essentially the same as the concern over the essentiality doctrine in India. The government should not grant protection to an organisation considered religious by the judges or administrators based on a particular definition of religion, for example by requiring that the organisation not conduct evangelization or serve only the members of the religion. The better question is whether the organisation has a sincere belief, whether the organisation is structured legally, and whether regulatory criteria are neutral. This supports the multiple forms of religious service, and it does not exempt any institutions from generally applicable obligations.

1.5 COMPARATIVE EVALUATION: CONSTITUTIONAL MORALITY, NEUTRALITY AND RIGHTS

There are deeper substantive differences than differences in language. India is more forthright in asking how the principles of constitutional equality may be used to modify the relationship of the state to religion. The United States is more forthright when they ask how the state has

³⁵ 606 U.S. 522 (2025).

³⁶ 605 U.S. 238 (2025).

been treating religion neutrally. An adequate solution must confront the issue of judicial competence as well as third party rights and the potential for coercion.³⁷

1.5.1 Essentiality and Sincerity

The essentiality and sincerity theories begin in different positions. Essentiality gives the courts the power to decide what is the most important part of a religion by the analysis of texts, history, and practice.³⁸ Sincerity poses a more limited question of evidentiary concern; namely, whether the challenger actually believes what he or she claims.³⁹ The second question is certainly not value free, but it is less theologically concerned. Because of this, India should substitute the essentiality theory for a two stage rights analysis. First, the challenger must prove a sincere religious or conscience burden. Second, the court must examine whether the challenged State or private conduct is legally and constitutionally appropriate when balancing the principles of equality, liberty, and proportionality of coercion and order of the Constitution.

1.5.2 Constitutional Morality and Neutrality

United States neutrality differs from India's in certain aspects and areas. The United States neutrality does prompt equal treatment, and it prevents or at the very least discourages governmental hostility. However, a neutral rule can lead to an unequal burden. Strict neutrality can correct this problem and is better than the United States neutrality as it is more likely to draw a line in religious issues. This synthesis should be paired with anti-subordination. This principle states that government cannot rank or show preference to or against any religion, and that religious accommodations will not be set up to impose a burden on vulnerable third parties. Equality is not hostility to religion; it is a restriction on how State power and legally institutional power can be exercised.⁴⁰

1.5.3 Individual Rights and Collective Autonomy

The strongest principle that can be drawn upon is the freedom of individual conscience.⁴¹ This principle is the underlying basis for the protection from compelled patriotic displays, for the Parental rights to religious upbringing, for the right to prayer, and for the right to inter-faith marriage. Even though the freedom of individual conscience can be exercised and prac-

³⁷ Stijn Smet, "Comparative Constitutional Interpretation of Religious Freedom", 69 *International & Comparative Law Quarterly* 611 (2020).

³⁸ Pranav Verma, "The Fate of "Essential Religious Practices" in India's Constitutional Courts", 83 *The Journal of Asian Studies* 701 (2024).

³⁹ Anna Su, "Judging Religious Sincerity", 5 *Oxford Journal of Law and Religion* 28 (2016).

⁴⁰ Kent Greenawalt, *Religion and the Constitution, Volume 1: Free Exercise and Fairness* 201 (Princeton University Press, Princeton, NJ, 1st edn., 2006).

⁴¹ Martha C. Nussbaum, *Liberty of Conscience: In Defence of America's Tradition of Religious Equality* 19 (Basic Books, New York, 1st edn., 2008).

ticed collectively, and thus, in relation to the state, collective religious autonomy must also be recognized as having a constitutional right because institutions do not have unlimited authority to control their members. If exit is not possible, and if access to public benefits is conditional to compliance with the institution, then claims of collective autonomy must be scrutinized with greater detail by the court.

1.5.4 Empirical Context and Its Limits

Empirical measures cannot ascertain meaning in constitutions, but they can challenge complacent thinking on the operation of legal systems within society. The 2026 Pew Research Centre report, using data from 2023, scored India at 6.4 on the Government Restrictions Index and at 8.8 on the Social Hostilities Index, and scored the USA at 2.1 and 1.3 respectively. These data cover composite indices and do not constitute court orders.⁴² They should not be used to rank constitutional doctrines mechanically. Nevertheless, formal rights guarantees exist within significant disparities in regulatory systems and social conflict. Therefore, when doctrines are assessed, emphasis should be placed on institutional capacity, social vulnerability and the enforcement of rights and not solely on the text of the constitution.

The current policy also supports the need to differentiate doctrinal analysis from external assessment. The 2026 Annual Report of the United States Commission on International Religious Freedom described the deterioration of the situation of religious freedom in India in 2025 and again advocated the designation of India as a Country of Particular Concern. That designation was made in accordance with the Commission's policy and not a legally binding assessment of the Constitution of India.⁴³ It should be assessed by all parties, including the Indian government, in a critical and open manner. Its importance lies in contemporary accusations levied against the security of the minority, the enactment of anti-conversion laws, and government practices that impede the effective enjoyment of the rights. Constitutional comparative analysis is at its strongest when it distinguishes legal doctrine, empirical analysis, and advocacy is not collapsed into a single statement.

Figure 2 shows differences in scores relating to 2023 restrictions and hostilities toward religion. India scored 6.4 for government concerns and 8.8 for social hostilities, while the US scored 2.1 and 1.3 respectively. The higher the score, the more social and governmental restrictions.⁴⁴

⁴² Samirah Majumdar and Vivian Jacobs, "More Countries Had Elevated Levels of Social Hostilities Involving Religion in 2023" (Pew Research Centre, 2026).

⁴³ United States Commission on International Religious Freedom, "2026 *Annual Report*" 28 (2026).

⁴⁴ Samirah Majumdar and Vivian Jacobs, "More Countries Had Elevated Levels of Social Hostilities Involving Religion in 2023" (Pew Research Centre, 2026).

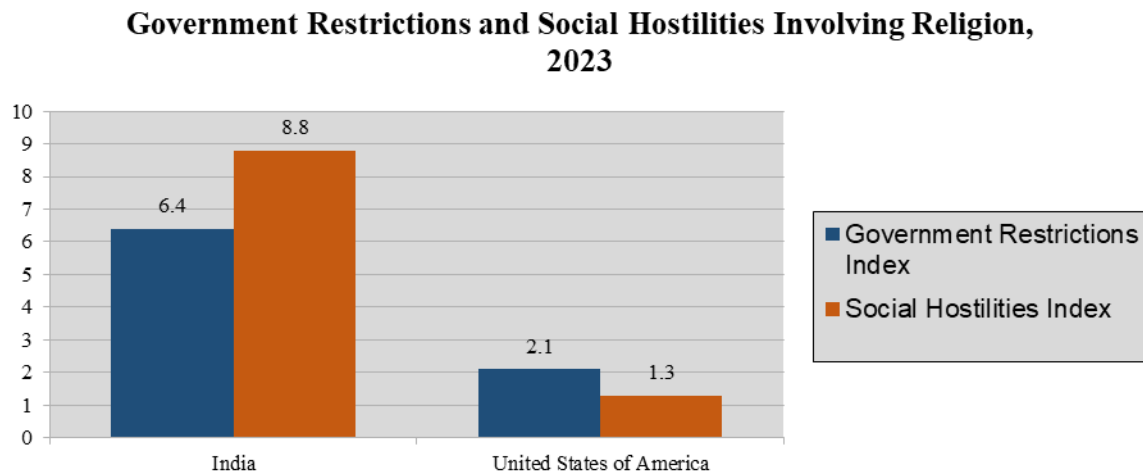


Figure 2. Government restrictions and social hostilities involving religion, 2023.

1.6 CONCLUSION

The only constitutionally meaningful religious freedom is that of a believer and the non-believer's conscience and equal capacity to make decisions when faced with religious and government power. India and the US illustrate different problems relating to judicial theology in India, and the overreliance on formal neutrality in the US.⁴⁵

Indian doctrine should sustain the Constitution's original promise of equality toward transformation in the narrowing of the judiciary's definition of religion. The essential religious practices test has developed an alarmingly theological slant, and when coupled with the absence of particular rights, constitutional morality is in danger of erosion. Reconstruction of this test should protect religious and conscientious practices in the first instance and ask if the restriction or accommodation meets a standard of constitutional equality in the context of other relevant considerations. This would likely strengthen both Articles 25 and 26 of the Indian Constitution, as liberty of religion would no longer be a concern of the judiciary about the practice, and if judged to be ancient, of an obligatory nature or central to the faith.⁴⁶

From the US, a notable contribution of the principle of sincerity, neutrality and denominational non-preference should not conceal inequalities or third party burdens. Comparatively, the goal is not to align on a particular doctrine; rather, it is to align on a doctrinal question

⁴⁵ Stijn Smet, "Comparative Constitutional Interpretation of Religious Freedom", 69 *International & Comparative Law Quarterly* 611 (2020).

⁴⁶ Pranav Verma, "The Fate of "Essential Religious Practices" in India's Constitutional Courts", 83 *The Journal of Asian Studies* 701 (2024).

that is more disciplined. Religious pluralism and individual rights are not alternative constitutions. Appropriately, each supply conditions for the other to be substantive.⁴⁷

1.7 SUGGESTIONS

The comparative study provides insights for practical changes that support pluralism while giving priority to sincere conscience, equal citizenship and neutrality of institutions, non-coercion and demonstrable constitutional harm, in situations where religious autonomy, governmental regulation, and the rights of individuals interact in either of the two systems.

1. Replace theological essentiality with sincerity and rights review: In cases before Indian courts, sincere religious or conscientious belief has to be assessed, after which the burden has to be tested under the equality, liberty, proportionality and public-order standards. This should minimize the necessity for courts to engage in theology and should ensure that the conduct is examined for its harm.
2. Define constitutional morality through constitutional provisions: Courts should define the text of the Constitution while identifying the right and structural principle performing the legal work to invoke constitutional morality. Clarity will be enhanced if the doctrine is related to equality, dignity, liberty, or fraternity.
3. Adopt an explicit anti-coercion inquiry: When determining cases of religious liberty, the Court should consider whether a person is pressured by the State, family, or institution to believe or carry out a religious practice. The Court should consider the person's practical economic dependency as well as the significant power disparity within the relationship, not whether they consented to it or have the option to leave.
4. Protect institutional autonomy by function: Religious institutions deserve complete independence from the state in any matters pertaining to doctrine, worship and leadership as well as purely ecclesiastical matters. However, religious institutions must allow for reasonable and appropriate regulation related to education, finance, employment or public benefits when done equitably and rationally to serve the state's secular interests.
5. Strengthen accommodation with third-party safeguards: Where the reasonable accommodation of conscience does not impose a significant burden on others, it should be pursued. The courts should consider who carries the burden and whether it is serious, avoidable and fairly distributed.

⁴⁷ Christopher L. Eisgruber and Lawrence G. Sager, *Religious Freedom and the Constitution* 52 (Harvard University Press, Cambridge, 1st edn., 2007).

6. Use neutrality as a floor, not a complete equality test: Indian courts can use the United States neutrality doctrine to identify cases of religious targeting and denominational preference. They should continue to review cases involving substantive equality, where laws that appear neutral and non-discriminatory in form and structure actually maintain or deepen exclusion or disproportionately impact the vulnerable religious or gender groups.
7. Require proportionality in public-institution disputes: Schools, universities and other public authorities must demonstrate the substantial need within their institutions for the restrictions they impose on religious expression. The decision-makers must evaluate broader options rather than imposing exclusionary consequences.
8. Separate empirical evidence from constitutional conclusions: Courts and scholars must consider religious freedom indexes and policy reports as contextual resources and not as surrogates for legal analysis. The description must be clear to avoid confusion of description for constitutional analysis.
9. Improve reasoned treatment of minority educational institutions: Regulators have to distinguish between the academic and child-welfare standards, and those measures that erode the religious and minority character of an institution. Written reasons, uniform criteria and reviewable proportionality would lessen the stigma and assimilation.
10. Develop a comparative rights framework for future cases: Borrowing between Indian and United States jurisprudence can be done using sincerity, neutrality, coercion, autonomy, equality, and harm, as opposed to simply using labels. This method respects differences in various constitutional systems, histories, and forms of available remedies.

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