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Research Paper

Beyond Western Secularism: Law, State and Religion in India and Indonesia

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ABSTRACT

This review article examines why the dominant Western vocabulary of secularism, grounded in separation, neutrality, non-establishment, and public reason, does not sufficiently explain postcolonial constitutional arrangements in India and Indonesia. In both jurisdictions, religion is not merely a private matter of conscience. Also, it is a social institution, a marker of community identity, a source of public authority, and a field through which State power is exercised. India and Indonesia serve as interesting sites for comparison because both are large postcolonial democracies with profound religious diversity that utilise different constitutional grammars. The democratic political system of India is based on constitutional secularism, equality of minorities, freedom of conscience, and socio-economic and political transformation. Indonesia speaks through Pancasila, belief in the One and Only God, religious harmony, public order and recognised pluralism. This article reviews liberal, postcolonial, socio-legal, and comparative constitutional scholarship to show that both systems move beyond the strict separationist model. Indian secularism operates through principled distance, judicial engagement, social reform and personal law pluralism. Indonesian constitutionalism operates through Pancasila-based recognition, bureaucratic classification and regulated religious pluralism. The article argues that these models should not be treated as imperfect versions of Western secularism. They are independent constitutional formations that reveal how law recognises, regulates, and restrains religion in plural societies. It therefore proposes a postcolonial analytical frame centred on recognition, regulation and restraint, while also examining the risks of majoritarian capture, minority vulnerability and legal hierarchy within both constitutional orders.

Keywords: *Secularism, Pancasila, constitutional law, law and religion, religious freedom, legal pluralism, postcolonial constitutionalism*

The constitutional relationship between law, State and religion is often examined through categories generated by Western liberal constitutionalism. In comparative legal scholarship, key concepts like secularism, non-establishment, toleration, liberty of conscience and public reason are prominent. Modern constitutional law is greatly shaped by this vocabulary. It explains why coercive public power should not be organised around

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sectarian authority. This shows why the State must not impose religious truth and why citizens must have the freedom of conscience. However, when this vocabulary is applied to postcolonial constitutional societies like India and Indonesia, its explanatory power is limited. These societies do not merely ask whether religion should be separated from the State. They argue over how constitutional law should deal with religion, when faith is socially embedded, politically mobilized, institutionally organized, historically wounded, and legally plural.

This article argues that India and Indonesia cannot be understood adequately through the classical Western binary of secular and religious constitutionalism. India is constitutionally secular, yet the Indian State does not withdraw from religion. It regulates temples, protects minority educational institutions, recognises religious denominations, permits personal law pluralism, undertakes social reform, and adjudicates upon the constitutional limits of religious practice. Indonesia, by contrast, is not a secular State in the classical liberal sense, but it is not a theocracy either. Its constitutional order is structured around 'Pancasila', especially the principle of belief in the One and Only God, while also committing itself to religious freedom, public order, national unity, and recognised pluralism. In both jurisdictions, law does not stand outside religion. It classifies religion, recognises religious communities, regulates religious conduct, and determines the circumstances in which religious claims may be protected, or reconstituted.

The problem is therefore conceptual, doctrinal, institutional, and political. Western secularism, particularly in its separationist form, assumes that religion can be placed primarily within the private sphere while the State acts through public reason. Locke's theory of toleration, Jefferson's metaphor of a wall between church and State and Rawls's account of public reason contributed to a constitutional imagination in which the legitimacy of public power depends upon reasons that are not confined to religious doctrine (Locke, 1689/2010). Rawls develops this question in terms of public reason and constitutional essentials (Rawls, 1993). Audi and Greenawalt similarly argue that coercive legal power should not rest solely upon religious justification, even where citizens themselves remain morally shaped by religious conviction (Audi, 2000). Greenawalt also recognises the difficulty of excluding religiously grounded judgment entirely from democratic deliberation (Greenawalt, 1995). Nussbaum's defence of liberty of conscience rests upon equal respect for religious and non-religious persons alike (Nussbaum, 2008). These theories remain indispensable, but they cannot fully account for constitutional systems in which religion is not merely private belief. It is also community, law, culture, family, education, political mobilisation, and national belonging.

India and Indonesia provide rich sites for revisiting these assumptions. Both are large postcolonial republics. Both inherited legal pluralism from colonial rule, with experienced deep religious diversity, identity-based political mobilisation, and disputes over the meaning of constitutional identity. Both possess strong constitutional courts and rights-based legal vocabularies. Yet, they adopt different constitutional languages. India emphasizes secularism, equality, freedom of conscience, minority rights, and constitutional transformation. The Pancasila principles of Indonesia support belief in God, inter-religious harmony, official religions, and public order. The value of the comparison lies precisely in the fact that the two jurisdictions face overlapping legal problems but respond according to different constitutional grammars. The review article argues that law, State, and religion should be treated as a dialectical relationship wherein each one is shaped by and shapes the other, rather than three diverse spheres that can be institutionally separated.

Indian constitutionalism complicates the Western model as a result of the fact that its secularism is neither indifference nor strict separation. Article 25 of the Constitution of India guarantees the freedom of conscience and the right freely to profess, practice, and propagate religion. It goes further and guarantees the freedom of religious denominations under Article 26, while Articles 29 and 30 guarantee cultural and educational rights. Article 14 and 15 guarantee equality before the law. At the same time, the Constitution allows the State to regulate secular activities associated with religion and permits the State to undertake social welfare and reform. Most importantly, the Supreme Court of India has recognized secularism as being part of the Constitution's basic structure in *S. R. Bommai versus Union of India*. However, Indian courts also developed the essential religious practices doctrine, where judges determine whether the practice forms an essential part of religion and thus constitutionally protected. It uncovers the unique contradiction of Indian secularism.
The Court protects religion by entering theological and institutional questions that a strict separationist model would ordinarily avoid.

Indonesia presents a different constitutional form. Article 29 of the 1945 Constitution declares that the State is based upon belief in the "One and Only God" and guarantees freedom of worship according to religion or belief. Pancasila does not create a formally Islamic State, but it makes theistic belief central to constitutional identity. The State recognises several religions, regulates religious education, controls the registration of religious identity, and has upheld legal restrictions on blasphemy in the name of public order and religious harmony. At the same time, the Indonesian Constitutional Court's decision recognising the administrative rights of adherents of indigenous beliefs shows that Pancasila can also be interpreted in a more inclusive direction. Indonesia cannot therefore, be described simply as theocratic, secular or liberal. It is better understood as a system of regulated religious pluralism, where constitutional protection is mediated through recognition, bureaucratic classification and public order.

This review article examines the theoretical and legal literature on secularism, postcolonial constitutionalism and religious pluralism through the comparative lens of India and Indonesia. It does not attempt to provide a full doctrinal account of every religious freedom controversy in the two jurisdictions. It offers instead a conceptual review of the principal models through which law, State and religion interact in these constitutional orders. Limited doctrinal discussion is used where necessary to strengthen the larger theoretical claims. The article engages liberal theories of secularism and public reason, postcolonial critiques of secular governance, theories of legal pluralism, and comparative constitutional scholarship on courts, recognition and religious freedom.

The central claim is that India and Indonesia reveal the inadequacy of treating secularism as a single universal doctrine. They show instead that constitutional secularism, religious pluralism and State engagement with religion operate as historically situated legal practices. In India, this practice is expressed through principled distance, social reform, minority protection and judicially mediated secularism. In Indonesia, it is expressed through Pancasila, religious harmony, State recognition and controlled pluralism. Both models move beyond Western secularism, not because they reject constitutionalism, but because they expose the limits of a theory that imagines religion primarily as private conscience and the State primarily as neutral arbiter. The broader contribution of this article is twofold. First, it argues that postcolonial constitutional experiences should not be treated as deviations from Western secular theory. They are independent sources of constitutional thought. Secondly, it proposes that the law, State and religion relationship should be analysed through the categories of

recognition, regulation, and restraint. Law recognises religion by deciding which communities, practices, and beliefs are legible to the constitutional order. It regulates religion through statutes, courts, administrative agencies, and public order doctrines. It restrains religion where equality, dignity, security, or constitutional morality are invoked. Yet law also restrains itself imperfectly, because it remains vulnerable to majoritarian politics, inherited categories, and institutional anxieties about social disorder.

The article proceeds in seven parts. After this introduction, Section 2 reviews Western theories of secularism and their conceptual limits. Section 3 examines postcolonial constitutionalism and the management of religion. Section 4 analyses India's model of secularism as principled distance and constitutional engagement. Section 5 examines Indonesia's Pancasila-based model of regulated religious pluralism. Section 6 compares the two models through constitutional vocabulary, judicial doctrine, legal pluralism and minority protection. Section 7 proposes a postcolonial framework for understanding law, State and religion beyond the inherited secular versus religious binary.

Western Secularism and Its Conceptual Limits:

Western secularism is often treated as the starting point for constitutional thinking on law and religion. Its familiar claim is that the State must not be governed by religious authority and that religious belief must not determine the coercive content of public law. This claim has been central to modern constitutionalism. It helped limit ecclesiastical domination, protect conscience, restrain sectarian violence and establish civil authority as a distinct sphere of public power. Yet difficulty arises when this historically specific model is treated as a universal constitutional template. Western secularism emerged from particular European and North American struggles over church authority, religious war, confessional establishment, Protestant dissent, and liberal citizenship. Its categories cannot be transferred mechanically to postcolonial constitutional societies where religion entered public life through different histories, including colonial legal pluralism, anti-colonial nationalism, community representation, personal law, minority vulnerability, and State-led reform.

The classic liberal formulation begins with the idea that civil government and religious salvation belong to different domains. Locke's A Letter Concerning Toleration argued that the proper concern of civil government was the protection of civil interests such as life, liberty, health, property, and outward peace, not the salvation of souls (Locke, 1689/2010). The State, in this account, lacks competence over religious truth because genuine belief cannot be produced by force. Coercion may produce conformity, but it cannot produce conviction. Locke's argument therefore placed conscience outside the legitimate reach of political compulsion. This was foundational for modern religious liberty, although it was not unlimited. Locke's toleration did not extend equally to all categories of belief, and his model remained shaped by the Christian conflicts of early modern Europe. It treated religion primarily as belief and worship rather than as a social order, a system of community authority or a source of personal law.

The American constitutional tradition translated a similar instinct into the language of non-establishment and free exercise. Jefferson's metaphor of a "wall of separation between Church and State" gave lasting symbolic form to the idea that public power should not be captured by religious institutions (Jefferson, 1802/1984). The First Amendment model became one of the most influential legal expressions of secular constitutionalism. It restrained the State from establishing religion and protected religious exercise. Yet even the American model has never been a simple story of separation. The Supreme Court of the United States

has moved across tests and standards, from purpose, effect, and entanglement in Lemon v. Kurtzman, to accommodationist approaches in later cases and continuing disputes over religious symbols, exemptions, public funding and conscience claims (McConnell et al., 2011). The point is not that the American model is incoherent. Rather, it shows that even within the West, secularism is contested, unstable and institutionally negotiated.

French laïcité represents another influential Western model. It is often understood as a stricter form of public secularism that seeks to secure neutrality in the public sphere by limiting visible religious presence within State institutions. Its history is rooted in conflict between republican authority and the Catholic Church. As Baubérot (2012) explains, French secularism cannot be understood merely as a general principle of neutrality. It is also a historically shaped republican project through which the State sought to emancipate citizenship from clerical power. This model has supported equality before the State, but it has also generated controversies concerning religious symbols, especially Muslim veils and headscarves in public institutions. These debates reveal a greater difficulty. A State may claim neutrality while enforcing a culturally specific conception of the proper secular citizen. What appears as neutral public order may, in effect, discipline minority religious expression.

The liberal theory of public reason develops the secular idea at a more abstract level. Rawls argued that in constitutional democracies marked by reasonable pluralism, citizens and officials should justify constitutional essentials and matters of basic justice through reasons that others may reasonably accept despite holding different comprehensive doctrines (Rawls, 1993). Public reason does not require citizens to abandon religious belief. It requires that coercive law, at least on fundamental matters, be justified in terms that do not depend exclusively upon sectarian doctrine. Rawls's approach is important because it shifts the question from institutional separation to legitimacy. The issue is not merely whether church and State are separate. The issue is whether the exercise of public power can be justified to free and equal citizens.

Audi and Greenawalt develop related but distinct arguments. Audi (2000) proposes that citizens in a liberal democracy have a prima facie obligation not to support coercive laws unless they have an adequate secular reason for doing so. Greenawalt (1995), while more flexible, explores the difficulty of religiously grounded political judgment in plural societies. These approaches seek to prevent the law from becoming an instrument of religious domination. Yet their limits become visible where the line between religious and secular reasons is historically entangled. In postcolonial societies, claims about family, education, caste, community autonomy, conversion, endowments, minority rights, and social reform often carry religious, cultural, and constitutional meanings at the same time. To require that such claims be translated neatly into secular reason may privilege elite constitutional speech over lived forms of moral and community reasoning.

Nussbaum's defence of liberty of conscience offers a more expansive account. She places dignity, equal respect, and non-humiliation at the centre of religious freedom (Nussbaum, 2008). Her approach is valuable because it protects both religious and non-religious consciences and resists majoritarian claims over State power. It also explains why religious liberty cannot be reduced to group privilege. The person, and not only the community, must remain central. Yet even this conscience-based framework requires adaptation in societies where religious identity is not only a matter of individual belief. In India, religion is tied to personal law, caste, temple entry, denominational autonomy, educational institutions, political mobilisation, and minority insecurity. In Indonesia, religion is tied to population

administration, recognised belief systems, Pancasila, blasphemy law, religious education, and local governance. A conscience-centred theory is necessary, but not sufficient.

A further limitation arises from the secularisation thesis. Classical sociology often assumed that modernity would progressively reduce the public significance of religion. Berger's early work on the sacred canopy suggested that modern pluralism weakens unified religious authority (Berger, 1967). Luckmann argued that religion in late modernity increasingly became private and invisible (Luckmann, 1967). Later scholarship questioned this assumption. Casanova showed that religion had not disappeared from public life. It had been de-privatised in many contexts and had re-entered debates on democracy, justice, human rights, nationalism, and social reform (Casanova, 1994). Taylor similarly showed that secular modernity does not simply mean the decline of belief. It means a changed condition of belief, in which faith becomes one possibility among others within a plural moral field (Taylor, 2007).

These critiques matter because they undermine the assumption that constitutional modernity naturally requires the privatisation of religion. In India and Indonesia, religion has not retreated from public life. Constitutional law has instead provided new techniques for recognising, regulating and contesting religious authority. The Indian Constitution protects religious freedom while authorising social reform. Indonesian constitutionalism affirms belief in God while committing itself to pluralism and rights. In both cases, law does not preside over a secular field from which religion has disappeared. It operates within a field where religion remains socially and politically consequential. Postcolonial and critical scholarship pushes this argument further. Asad argues that secularism is not merely the absence of religion from public life. It is a modern political formation through which the State defines what counts as religion and determines how religion may appear in public (Asad, 2003). This insight is crucial for the law. Secular power produces religion as a legal and administrative category. Courts, legislatures and bureaucracies decide which practices are religious, secular, essential, or which are superstitious, reformable and dangerous to public order. Sullivan makes a similar point in the American context by arguing that legal definitions of religion often privilege some forms of belief and practice over others (Sullivan, 2005). Mahmood further demonstrates that legal regimes committed to religious equality may reproduce hierarchy, when recognition itself is structured around dominant assumptions about religion (Mahmood, 2016).

This critique is directly relevant to India and Indonesia. In India, the State claims secular authority, but it decides whether a practice is essential to religion, whether a religious institution is denominational, whether a personal law rule is immune from constitutional scrutiny and whether public order permits restriction. In Indonesia, the State claims to protect religious harmony, but it identifies recognised religions, regulates religious identity in administration, criminalises blasphemy, and distinguishes acceptable belief from deviance. These are not accidental departures from secularism. They are examples of how modern law governs religion by making it legible to the State.

The conceptual limitation of Western secularism does not lie in its normative aspiration to protect conscience and restrain religious domination. That aspiration remains indispensable. Its limitation lies in its tendency to assume that religion can be uniformly separated from public law. In postcolonial constitutional orders, religion may be private belief, public identity, legal status, community membership, political vocabulary, and institutional authority at once. A theory that sees religion only as conscience misses its social embeddedness. A

theory that sees the State only as a neutral arbiter misses the State's role in producing legal categories of religion. A theory that treats secularism as a strict separation misses constitutional arrangements, where engagement with religion is not exceptional, but ordinary.

This does not mean that all 'postcolonial alternatives' are normatively superior. India's model of principled distance can enable social reform and minority protection, but it can also draw courts into theological adjudication and expose secularism to majoritarian reinterpretation. Indonesia's *Pancasila* model can prevent the formal establishment of an Islamic State and provide a shared framework for pluralism, but it can also make full citizenship dependent upon theistic recognition and religious conformity. Both models show the need to go beyond Western secularism without abandoning the constitutional values that secularism sought to protect. The task is not to reject liberty of conscience, equality, neutrality, or public reason. The task is to reconstruct them in a way that accounts for postcolonial histories, legal pluralism, community vulnerability and the State's power to recognise and regulate religion.

For this reason, the review article treats Western secularism as an important but incomplete conceptual inheritance. It provides a language of restraint, conscience, and equal citizenship, but it does not exhaust the constitutional possibilities available to plural postcolonial democracies. India and Indonesia compel comparative constitutional theory to move from the binary of separation and establishment towards a more layered inquiry into recognition, regulation, and restraint. This shift allows more precise questions to emerge. Who defines religion for constitutional purposes? Which religious communities are legally recognized ? When does State engagement promote equality, and when does it reproduce hierarchy? How do courts distinguish social reform from domination? How does public order protect peace without silencing the dissent? These questions cannot be answered adequately by Western secularism alone. They require a postcolonial constitutional analysis of law, State and religion as mutually constitutive forces.

Postcolonial Constitutionalism and the Management of Religion

The limits of Western secularism become clearer when constitutional law is examined in postcolonial settings. In these societies, religion rarely appears only as belief, worship or private conscience. It also appears as community identity, personal law, social organisation, minority status, cultural inheritance, political mobilisation and a field of historical injury. Postcolonial constitutionalism must therefore be understood as a project of managing inherited plurality under conditions of democratic aspiration, social inequality and contested nationhood. India and Indonesia are especially important because both States inherited plural legal arrangements from colonial rule and then attempted to transform them into constitutional orders capable of sustaining unity without formally erasing diversity.

Colonial rule did not merely govern territories. It reorganised social categories, classified communities and converted fluid normative practices into administratively manageable legal forms. In British India, colonial governance recognised and reshaped religious personal laws, codified certain areas of civil and criminal law and created a legal imagination in which communities were often understood through religious identity. The colonial State did not simply preserve Hindu, Muslim, Christian or customary norms as they existed. It selected, translated and institutionalised them through courts, legislation and administrative practice. As Derrett and Menski show, the modern form of personal law in India cannot be understood as an untouched continuation of religious tradition (Derrett, 1968). Menski similarly treats Hindu law and personal law as products of layered interaction between tradition, modernity

and State legal ordering (Menski, 2003). The result was a plural legal field in which religion became both a source of community autonomy and an object of State management.

Indonesia's colonial history followed a different route, but the pattern of legal classification was comparable. Dutch colonial governance worked through a plural legal structure involving European law, adat law and Islamic law. Hooker shows that Southeast Asian legal systems under colonial rule were marked by layered pluralism, where Islamic law, customary law and European legal concepts coexisted under the authority of the colonial State (Hooker, 1975). In Indonesia, the doctrine of receptie, associated with Snouck Hurgronje, subordinated Islamic law to adat by allowing Islamic norms to operate only where they were regarded as having been received into local custom. This did not remove religion from law. It placed religion under colonial supervision. Lev demonstrates that colonial legal pluralism in Indonesia transformed religious authority into a conditional and administratively mediated legal category (Lev, 1972).

The postcolonial State inherited these structures but could not simply abolish them. It needed to construct a national legal order while managing plurality that was already legally embedded. This is one of the central dilemmas of postcolonial constitutionalism. The State claims sovereign legal authority, but it also depends upon inherited forms of community recognition. It promises equal citizenship, but it often governs through differentiated legal categories. It invokes constitutional unity, but it must accommodate personal law, custom, local identity and religious institutions. The management of religion is not peripheral to constitutional order. It is one of the ways through which postcolonial States produce constitutional authority itself.

In India, this tension appears in the constitutional treatment of religion. The Constitution guarantees individual freedom of conscience and religious practice, but it also recognises denominational rights, minority educational rights and cultural rights. At the same time, it authorises the State to regulate secular activities associated with religion and to undertake social welfare and reform. Indian secularism therefore emerged not as a doctrine of non-interference, but as a constitutional technique for balancing religious liberty, social reform, minority protection and public order. Bhargava's concept of principled distance captures this arrangement more accurately than strict separation. The State may intervene in religion where equality and reform require intervention, yet it may also grant autonomy where justice requires restraint (Bhargava, 1998). Bhargava's later work develops this as a promise internal to Indian constitutional democracy rather than a departure from secularism (Bhargava, 2010).

This model has both emancipatory and problematic dimensions. It has allowed courts and legislatures to address exclusionary religious practices, caste-based inequalities, temple-entry restrictions and gender injustice. At the same time, it has empowered the State and courts to decide which practices are genuinely religious, which are secular and which are reformable. The essential religious practices doctrine is the clearest example. Beginning with The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, the Supreme Court of India developed a test under which only practices essential to religion receive constitutional protection. The doctrine appears protective, but it places judges in the position of theological arbiters. The Court must decide not only what the Constitution protects, but also what a religion truly requires.

Indonesia's postcolonial settlement took another form. The Indonesian Constitution did not adopt secularism as its governing vocabulary. It constitutionalised Pancasila, with belief in

the One and Only God as its first principle. Article 29 of the 1945 Constitution declares that the State is based upon belief in God and guarantees freedom of worship according to religion or belief. This framework avoided a formal Islamic State, but it also rejected a secular order in which religion would be treated as merely private. Feener shows that Muslim legal thought and modern legal institutions became deeply intertwined in Indonesia (Feener, 2007). Salim examines the gradual Islamisation of law through national and regional politics rather than through a single constitutional rupture (Salim, 2008). Crouch's work on West Java shows how law, courts and local administration shape concrete disputes over religion (Crouch, 2014). Lindsey and Pausacker document the tension between law, intolerance and democratic change after Reformasi (Lindsey & Pausacker, 2016).

The Indonesian model is therefore best understood as regulated religious pluralism. The State recognises religion as a legitimate basis of public identity, but it also controls the boundaries of recognition. The historical recognition of limited official religions, the regulation of religious education, the use of blasphemy laws, the role of the Ministry of Religious Affairs and the administrative treatment of indigenous beliefs all show that the Indonesian State does not merely protect religion. It defines which forms of belief are administratively legible and which remain vulnerable to exclusion. The Constitutional Court's decision upholding the blasphemy law reflects the strength of public order and religious harmony as constitutional values. Its later decision recognising the rights of indigenous belief adherents in population administration shows that the same constitutional vocabulary can also be interpreted in an inclusive direction. The tension between recognition and control remains unresolved.

Postcolonial Constitutionalism must therefore be analysed through legal pluralism. Legal pluralism does not simply mean the coexistence of different laws. It refers to the coexistence of different normative orders that claim authority over persons and communities. Griffiths distinguishes between weak legal pluralism, where the State recognises non-State norms under its own authority, and strong legal pluralism, where several normative orders coexist without being reducible to State law (Griffiths, 1986). Merry similarly shows that people move across State law, customary law and religious norms in everyday life (Merry, 1988). Galanter's distinction between law on the books and law in action is especially useful because formal doctrine operates within wider social fields of practice, authority and legitimacy (Galanter, 1989). In both India and Indonesia, religion operates within such plural normative fields. In India, personal laws, caste practices, religious institutions, community authorities and constitutional rights coexist in complex ways. A person may be governed simultaneously by State law, family norms, community expectations and religious authority. In Indonesia, State law interacts with Islamic law, local regulations, religious councils and regional autonomy, especially in Aceh. The legal order therefore does not replace religion. It absorbs, translates, disciplines and sometimes empowers it. This is why legal pluralism can be protective and dangerous at the same time. It may protect minority identity and community autonomy. It may also stabilise internal hierarchy, gender inequality and differentiated citizenship.

Postcolonial scholarship has warned against treating the State as an innocent manager of plurality. Nandy argues that elite secularism can sometimes undermine lived traditions of coexistence by imposing a statist and rationalist vocabulary upon religious life (Nandy, 1988). His critique does not require rejection of constitutionalism. It cautions against assuming that the secular State is always the guarantor of peace. Asad develops a deeper critique by showing that secularism is itself a form of power through which the modern State defines religion (Asad, 2003). Mahmood similarly demonstrates that legal regimes of

religious equality may reproduce hierarchy when recognition is structured around dominant religious forms (Mahmood, 2016). These critiques are important for India and Indonesia because both States manage religion through law while claiming to protect pluralism.

Baxi's work on constitutionalism and human rights adds another layer. For Baxi, constitutional rights become meaningful not merely through textual declaration but through social struggle (Baxi, 2002). Marginalised communities often give life to constitutional norms by invoking them against State inaction, majoritarian dominance and inherited hierarchy. This insight matters because religious freedom and equality in postcolonial societies are rarely secured by constitutional text alone. They are claimed, contested and reinterpreted through litigation, social mobilisation, political negotiation and public memory. In India, minority rights, anti-conversion laws, temple-entry disputes, personal law reform and citizenship controversies all show this dynamic. In Indonesia, the struggles of Ahmadiyah followers, Christians, Shia communities, indigenous belief adherents and non-believers illustrate the same tension between formal constitutional guarantees and lived vulnerability.

The management of religion in postcolonial constitutionalism therefore involves recognition, regulation and restraint. Recognition decides which communities, institutions and beliefs are legally visible. It can protect identity, but it can also create hierarchy. Regulation governs religious institutions, education, personal law, public worship, conversion, blasphemy and religious endowments. It can secure equality and public order, but it can also empower majoritarian control. Restraint limits religious power where it violates dignity, equality, liberty or public order. Yet restraint is often uneven because courts and legislatures may hesitate when dominant religious sentiment is involved.

India and Indonesia reveal the promise and danger of these techniques. India's constitutional model allows reformist intervention and minority protection, but it risks judicial overreach and majoritarian capture of secular vocabulary. Indonesia's Pancasila model prevents the formal establishment of a single religious State, but it risks making citizenship dependent upon theistic recognition and social harmony. Both systems show that postcolonial Constitutionalism cannot be understood through the question whether religion and State are separate. The more precise question is how law makes religion governable, how the State distributes recognition and how constitutional courts negotiate between pluralism, equality and order. A postcolonial review of law and religion must therefore move beyond inherited binaries. The central distinction is not simply secular versus religious, or separation versus establishment. The more revealing distinction is between constitutional models that recognise religion in ways that expand equal citizenship and those that recognise religion in ways that reproduce hierarchy. India and Indonesia stand between these possibilities. Their constitutional models are not deviations from Western secularism. They are historically situated attempts to govern religious plurality in societies where religion continues to shape law, identity, politics and public reason. This makes them central, not peripheral, to comparative constitutional law.

India

Secularism as Principled Distance and Constitutional Engagement

Indian secularism cannot be understood adequately through the Western idea of strict institutional separation between religion and State. The Indian constitutional model does not require the State to withdraw completely from religion. Nor does it authorise the State to establish, privilege or govern through one religious tradition. It creates a more complex

arrangement in which the State may engage with religion for constitutionally limited purposes such as equality, social reform, minority protection, public order and institutional regulation. Indian secularism is therefore better understood as a model of constitutional engagement rather than separation.

The historical background is crucial. Indian secularism emerged not from a European struggle between church and State, but from colonial communalisation, anti-colonial nationalism, caste hierarchy, Partition, minority insecurity and the need to hold together a deeply plural society. Colonial law had already classified communities through census, representation, personal law and legal categories. Separate electorates, communal representation and the juridical treatment of religious communities produced a political environment in which religion became a central category of collective identity. The framers of the Constitution were therefore not working with an abstract liberal problem of protecting individual conscience alone. They were responding to a concrete historical problem. They had to create a constitutional republic after Partition without allowing citizenship to be organised on religious lines.

The Indian Constitution answers this problem through a dense architecture of religious freedom and equality. Article 25 protects freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality, health and other provisions of Part III. It also allows the State to regulate secular activities associated with religious practice and to enact social welfare and reform. Article 26 protects the rights of religious denominations to manage their own affairs in matters of religion, establish institutions, own property and administer such property according to law. Article 27 prohibits compelling citizens to pay taxes for the promotion of a particular religion. Article 28 regulates religious instruction in educational institutions. Articles 29 and 30 protect cultural and educational rights of minorities. This scheme does not remove religion from constitutional law. It places religion within constitutional law and subjects it to an internal structure of liberty, equality, reform and institutional autonomy.

This explains why Bhargava's theory of principled distance remains one of the most persuasive accounts of Indian secularism. Unlike strict separation, principled distance allows the State to intervene in religious matters where intervention is needed to secure equality or reform. It also allows the State to refrain from intervention where autonomy and minority protection require restraint (Bhargava, 1998, 2010). The model is neither anti-religious nor communally majoritarian. It is meant to be guided by constitutional principle. The difficulty lies in the actual operation of those principles. Once the State is authorised to engage with religion, courts and legislatures must decide when intervention is reformist and when it is intrusive, when autonomy protects diversity and when it shields hierarchy, and when public order is a genuine constitutional concern rather than a coded expression of majority sentiment.

The Supreme Court's basic structure jurisprudence gives secularism a foundational constitutional status. In Kesavananda Bharati v. State of Kerala, the Court held that Parliament's amending power cannot destroy the basic structure of the Constitution. Later, in S. R. Bommai v. Union of India, secularism was expressly treated as part of that basic structure. The judgment is important because it located secularism not merely in the word inserted into the Preamble by the Forty-second Amendment, but in the deeper constitutional scheme of equality, liberty, democracy and federalism. The Court held that public power cannot be used to promote or identify the State with one religion. It also accepted that a State

government acting in a manner hostile to secularism may attract constitutional consequences under Article 356. Bommai therefore remains a doctrinal turning point because it links secularism with federalism, democracy and constitutional identity.

At the same time, Indian secularism has been shaped through the essential religious practices doctrine. In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, the Supreme Court held that religion includes not only belief but also practices regarded by the community as integral to religion. Later cases transformed this protective idea into a judicial test under which courts themselves determine whether a practice is essential to a religion. This has made Indian Courts unusually active in deciding religious questions. The doctrine has appeared in cases concerning temple administration, excommunication, animal sacrifice, denominational autonomy, women's entry into places of worship and religious symbols. It is here that Indian secularism differs most sharply from the Western separationist model. The Court protects religion by entering the internal content of religion.

The doctrine has been heavily criticised. Sen, Dhavan, Nariman, and Bhatia argue, in different ways, that the essential practices test confers theological authority on judges that they are neither institutionally suited for nor democratically accountable for (Sen, 2010). Dhavan and Nariman place the problem within the wider field of religious freedom and group life (Dhavan & Nariman, 2000). Bhatia shows how individual rights and group life become strained when courts authoritatively define religious practice (Bhatia, 2016). The doctrine also tends to privilege scriptural, elite or judicially acceptable versions of religion over lived practices. In *Indian Young Lawyers Association v. State of Kerala,* concerning the entry of women into the Sabarimala temple, the majority treated exclusion as unconstitutional and contrary to equality, dignity and constitutional morality. The judgment was celebrated by many as a rights-protective intervention, but it also reopened the question of how far Courts should enter religious autonomy. The review proceedings and continuing social contestation around Sabarimala show that constitutional adjudication may settle doctrine without settling social legitimacy.

Personal law presents another site of constitutional engagement. India has retained plural personal laws governing marriage, divorce, inheritance, adoption and family relations for different religious communities. This is often justified as accommodation and minority protection. Yet personal law pluralism also creates difficult questions of equality, especially for women within religious communities. In Mohd. Ahmed Khan v. Shah Bano Begum, the Supreme Court interpreted the rights of a divorced Muslim woman in a manner that triggered intense political controversy and led to legislative reversal. In Shayara Bano v. Union of India, the Court invalidated instant triple talaq, though the judges differed in reasoning. These cases demonstrate that personal law is neither purely religious nor purely private. It lies at the intersection of gender justice, minority autonomy, constitutional equality and political majoritarianism.

The regulation of conversion further reveals the tension between liberty of conscience and public order. Article 25 protects the right to propagate religion, but in *Rev. Stainislaus v. State of Madhya Pradesh*, the Supreme Court held that the right to propagate does not include a right to convert another person. This decision has become the doctrinal foundation for State anti-conversion laws. Older statutes targeted conversion by force, fraud, or inducement. Recent laws in States such as Uttar Pradesh, Madhya Pradesh and Uttarakhand have expanded this framework and are often associated in public discourse with allegations of love

jihad. These laws raise serious constitutional concerns because they affect personal liberty, interfaith marriage, privacy, decisional autonomy and minority religious practice. They show how the language of public order and protection may become a means of controlling religious mobility and inter-community intimacy.

Religious speech and public order constitute another important area. In Ramji Lal Modi v. State of Uttar Pradesh, the Supreme Court upheld the constitutionality of Section 295A of the Indian Penal Code, which penalised deliberate and malicious acts intended to outrage religious feelings. The Court accepted that such speech could be restricted in the interest of public order. The decision reflects a model of secularism in which the State protects religion not only from direct interference but also from insult considered likely to disturb social peace. Critics argue that such an approach may encourage a veto by offended groups and weaken robust democratic speech. This line of reasoning aligns public order with the protection of religious sensibility and shows how Indian secularism treats religion as a social force requiring careful State management rather than as a purely private concern.

More recent controversies show the fragility of Indian secularism under majoritarian pressure. The Ayodhya dispute is especially important. In M. Siddiq v. Mahant Suresh Das, the Supreme Court awarded the disputed site for construction of a Hindu temple while directing that alternate land be provided for a mosque. The Court acknowledged the illegality of the demolition of the Babri Masjid, but its final relief has been criticised by several scholars as a settlement that effectively validated the outcome of majoritarian mobilisation. Others defend the judgment as a pragmatic resolution to a long-standing dispute through property law rather than theological adjudication. Either way, the case shows that a formally secular court may still produce outcomes that carry deep symbolic consequences for constitutional identity. Ayodhya remains a critical node in the law, State and religion relationship because equality, faith, history, property, public order and national memory converge in one judicial moment.

The Citizenship Amendment Act, 2019 raises a different but related concern. The Act creates a fast-track route to citizenship for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Pakistan and Bangladesh, while excluding Muslims from the same statutory benefit. The government defends the law as a protective measure for persecuted minorities from neighbouring Islamic States. Petitioners have challenged it as violating equality, non-discrimination and secularism. Jayal argues that Indian citizenship after Partition was consciously framed around civic rather than religious membership (Jayal, 2013). Critics of the CAA contend that the Act marks a shift towards an ethno-religious understanding of the political community. The Act introduces religion into a core site of State power, namely citizenship, and therefore raises basic structure concerns linked to secularism.

The hijab litigation also demonstrates the uneven operation of secular constitutional reasoning. In Resham v. State of Karnataka, the Karnataka High Court upheld restrictions on the wearing of hijab in State pre-university colleges and held that hijab was not an essential religious practice in Islam. In Aishat Shifa v. State of Karnataka, the Supreme Court delivered a split verdict. Justice Hemant Gupta upheld the restriction, while Justice Sudhanshu Dhulia emphasised choice, education and personal liberty. The contrast between the explicit constitutional protection of the Sikh kirpan in Article 25 and the narrow judicial treatment of hijab claims has generated critical scholarship on asymmetry in the judicial imagination of religious symbols. Religious freedom, gender, education and minority identity intersect sharply in this field. The Indian model cannot, therefore be reduced to either secular

neutrality or religious accommodation. It is a constitutional practice of continuous engagement. At its best, it allows the State to confront caste exclusion, gender injustice, social hierarchy and religious domination while protecting minority autonomy. At its weakest, it permits courts and legislatures to define religion selectively, protect dominant sensibilities, delay adjudication of majoritarian legislation and treat minority practices as problems of discipline or order. Indian secularism is therefore both a promise and a site of contestation.

For the purposes of this review article, India shows why postcolonial constitutionalism requires a framework beyond Western secularism. The Indian State is neither a night-watchman State that leaves religion alone nor a confessional State that governs through religious doctrine. It is a reformist, regulatory and rights-bearing constitutional State that repeatedly enters the religious field. Its legitimacy depends on whether such entry is guided by equality, dignity and equal citizenship, or by majoritarian pressure and institutional anxiety. This is precisely why India remains central to comparative constitutional theory. It shows that secularism in plural societies is not a settled institutional arrangement. It is an ongoing constitutional struggle over recognition, regulation and restraint.

Indonesia

Pancasila, Religious Harmony and Regulated Pluralism

Indonesia presents a constitutional model that unsettles the ordinary vocabulary of secularism. It is not a secular State in the classical liberal sense, because the constitutional order expressly affirms belief in the One and Only God. It is also not a theocracy, because the State does not formally establish Islam as State law for the whole Republic and does not constitutionally collapse citizenship into membership of a single religious community. Its model is more accurately described as Pancasila-based regulated pluralism. Religion is placed within the constitutional identity of the State, but religious diversity is managed through recognition, administrative control, public order, harmony, and selective legal protection. Indonesia is therefore a pluri-religious constitutional order in which the State professes a theistic foundation, recognises a limited set of dominant religions, gradually accommodates certain indigenous beliefs and continues to deny full public legitimacy to atheism and radical heterodoxy.

The foundational constitutional source is Pancasila. Its first principle, Ketuhanan Yang Maha Esa, usually translated as belief in the One and Only God, gives Indonesian constitutionalism its distinctive grammar. The 1945 Constitution, particularly Article 29, states that the State is based upon belief in the One and Only God and guarantees freedom of worship according to religion and belief. Religious freedom in Indonesia is therefore not framed as freedom from religious premises. It is framed within a theistic constitutional order. The State assumes that religion is a positive component of national life, moral order and citizenship. Asshiddiqie argues that Indonesia is neither a religious State in the theocratic sense nor a secular State in the Western separationist sense. It is better understood as a religious nation-State that recognises God while maintaining a plural constitutional structure (Asshiddiqie, 2005). Latif similarly characterises Pancasila as a form of inclusive monotheism, in which the State promotes belief in God without formally imposing Islamic law or church law as national public law (Latif, 2011).

The historical compromise behind Pancasila is essential. During the constitution-making process in 1945, Islamic political forces sought stronger constitutional recognition for Islamic law. The Jakarta Charter initially contained the well-known seven words that would have

imposed an obligation upon Muslims to follow Islamic law. Their deletion on 18 August 1945 marked a decisive compromise. The new Republic would not be formally Islamic, but it would not be secular in the liberal sense either. Religion would remain foundational to the moral identity of the State, while the State would claim to protect several religious communities under a common constitutional umbrella. This compromise remains central to Indonesian constitutional politics. It allows Pancasila to be invoked inclusively as a framework for plural coexistence and restrictively as a justification for controlling religious difference.

The result is a model of recognised pluralism. Indonesian law has historically given full administrative recognition to a limited number of religions, including Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. This recognition is not merely symbolic. It affects identity documents, marriage registration, religious education, access to public services and the administrative legibility of citizens. In this sense, religious identity becomes part of the bureaucratic structure of citizenship. Menchik's concept of godly nationalism is useful because it describes a political order in which citizens are expected to be religious, but not necessarily Muslim, and in which atheism or non-recognised belief occupies a vulnerable position (Menchik, 2014). Unlike Indian secularism, which does not formally rank religions as recognised and unrecognised for citizenship purposes, Indonesian constitutionalism has long tied full civic recognition to administratively legible religion.

The Ministry of Religious Affairs plays a central role in this architecture. It is not merely a department dealing with religious welfare. It participates in the governance of religious education, places of worship, pilgrimage administration, Islamic courts, interreligious harmony and the relationship between State institutions and religious organisations. The Ministry's existence reflects the Indonesian view that religion must be actively administered for the sake of national unity. Yet this administrative role also creates hierarchy. Communities that fall within recognised categories are more easily protected, while indigenous beliefs, heterodox sects and non-theistic positions have historically faced exclusion or suspicion. Indonesia's institutional framework includes ministerial agencies, religious courts, semi-autonomous religious bodies and security institutions, all of which participate in the governance of agama and kepercayaan.

The Indonesian Ulema Council, or Majelis Ulama Indonesia, further complicates the boundary between State and non-State authority. Formally, MUI is not a State court or legislature. In practice, it exercises considerable normative influence through fatwas, halal certification, advice to government agencies and classification of deviant beliefs. Crouch and Lindsey show that MUI fatwas have often influenced official treatment of religious minorities, especially Ahmadiyah and other groups treated as heterodox (Crouch, 2012). Lindsey places this influence within the broader State regulation of Islamic economy and authority (Lindsey, 2012). This produces a form of para-State religious authority. The State does not fully delegate law-making power to religious scholars, but it frequently absorbs their normative judgments into administrative and legal practice. The result is neither liberal neutrality nor formal theocracy. It is a hybrid field in which State law, religious authority and bureaucratic practice jointly define the permissible boundaries of religious life.

Blasphemy law is the clearest example of this hybrid constitutional structure. Law No. 1/PNPS/1965 on the Prevention of Abuse and/or Defamation of Religion, read with Article 156a of the old Criminal Code, gave the State power to act against teachings or expressions regarded as defaming, distorting or abusing recognised religion. In Decision No. 140/PUU-

VII/2009, the Indonesian Constitutional Court upheld the blasphemy law. Petitioners argued that the law violated freedom of religion, equality and expression. The Court rejected that challenge and reasoned that the State had a constitutional responsibility to protect religion and maintain public order and harmony. The decision is emblematic of a majoritarian rights-limitation approach in which collective religious harmony is given priority over dissenting religious expression.

Crouch's analysis of the blasphemy decision is particularly important. She argues that the Court read Pancasila and Article 29 as requiring active State protection of religion rather than merely protection of individual conscience (Crouch, 2012). The Court's reasoning reflects a communitarian understanding of rights. Freedom of religion is protected, but only within a framework that treats recognised religions and social harmony as public goods. This reasoning differs from the Western liberal model, in which the State is generally expected to refrain from determining religious truth. In Indonesia, the State may intervene not only to protect persons from discrimination but also to protect religion itself from perceived insult or deviation.

The new Indonesian Criminal Code reinforces the continuing relevance of this issue. Indonesia's revised national penal code began enforcement on 2 January 2026, replacing the Dutch colonial-era code while retaining controversial provisions on blasphemy and morality (Associated Press, 2026). Human rights and religious freedom observers have warned that the new code preserves and may expand restrictions relevant to blasphemy, religious expression and minority protection (United States Commission on International Religious Freedom, 2024, 2025). Reuters also reported that the new code has generated concern over civil liberties, expression and possible misuse, even as the government presents it as an effort to align criminal law with Indonesian values (Reuters, 2025). This development matters because regulated pluralism is not merely an older feature of Indonesian constitutional law. It continues to shape the contemporary criminal law order.

The Indonesian Constitutional Court has not always moved in a restrictive direction. Decision No. 97/PUU-XIV/2016 on indigenous beliefs marked an important partial opening. Petitioners from penghayat kepercayaan, or indigenous belief communities, challenged the exclusionary population administration system that forced them either to leave the religion column blank or to identify with one of the recognised religions. The Court held that such exclusion violated equality and freedom of belief and required the State to allow indigenous belief adherents to record their beliefs on identity documents. This was a significant departure from the older New Order model of religious harmony, although it did not extend full protection to atheism or non-theistic dissent.

The decision is constitutionally significant for two reasons. First, it shows that Pancasila is not necessarily exclusionary. The first principle can be interpreted broadly enough to include indigenous and ancestral belief systems. Secondly, it shows that Indonesian constitutionalism can expand recognition without abandoning its theistic frame. The Court did not declare religion irrelevant to citizenship. It widened the circle of administratively recognised belief. This is both a gain and a limitation. It protects communities previously pushed to the margins, but it continues to organise citizenship through belief rather than through an entirely open freedom of conscience. As Bagir suggests, Indonesia's religious freedom jurisprudence is often caught between inclusion and classification (Bagir, 2018). The State may recognise more communities, but recognition remains the condition of full legal visibility.

Aceh represents the hardest case for Indonesian regulated pluralism. Under special autonomy arrangements following the Helsinki peace process, Aceh has been permitted to implement Islamic law in distinctive ways, including through Qanun Jinayat. The Aceh regime criminalises conduct such as alcohol consumption, gambling, seclusion, sexual relations outside marriage and same-sex relations, and it permits caning as punishment. Aceh is a critical site where pluri-religious constitutionalism is placed under strain by a regional project of Islamic moral ordering. The same constitutional framework that supports national pluralism is also invoked in Aceh to support sub-national Islamisation. The legal problem in Aceh is not simply that religious norms exist alongside State law. It is that religious norms become criminal law backed by State coercion. This raises deep questions of legality, equality, bodily integrity, privacy and minority protection. For supporters of Aceh's autonomy, the Qanun represents cultural and religious self-determination within a unitary State. For critics, it entrenches a hegemonic moral order and produces differentiated citizenship. Muslims in Aceh are subject to a distinctive criminal regime not applicable to Muslims elsewhere in Indonesia. Non-Muslims may not be automatically subject in all circumstances, but the social and legal environment still affects them. Aceh therefore reveals the axes of autonomy versus hierarchy, pluralism versus hegemonic morality and religious freedom versus religious discipline.

Aceh also reveals the limits of judicial review. In theory, regional laws must conform to the Constitution, national law, and Indonesia's human rights obligations. In practice, central judicial institutions have been reluctant to invalidate Aceh's Islamic criminal law framework. This reluctance reflects the political sensitivity of the autonomy settlement, the symbolic force of Islamic identity in Aceh, and the broader Indonesian preference for managing religious conflict through accommodation rather than confrontation. From the standpoint of comparative constitutional theory, Aceh shows how legal pluralism can shift from accommodation into punitive moral sovereignty when religious norms enter criminal law. Religious harmony is the organising justification that holds much of this architecture together. In Indonesian legal discourse, harmony is not merely a social value. It becomes a constitutional and administrative reason for restricting religious expression, regulating places of worship, monitoring deviant sects, and preserving public order. The 2006 'Joint Ministerial Regulation on Houses of Worship' requires local support and recommendations before places of worship may be built. In theory, this prevents conflict. In practice, as Crouch and Bagir indicate, it may allow local majorities to block minority worship spaces (Crouch, 2014). Bagir similarly identifies how regulatory models of harmony may burden minority religious communities (Bagir, 2018). Harmony is therefore double-edged. It can preserve peace, but it can also empower those who threaten disorder to veto minority rights.

Indonesia most clearly exposes the limits of Western secular categories at this point. A strict separationist model would ask whether the State is too close to religion. That is an important question, but it is not sufficient. The Indonesian problem is more specific. The State does not simply support religion. It supports religion through recognition, classification and harmony-based regulation. It distinguishes recognised from unrecognised belief, orthodox from deviant teaching, worship from disorder, and pluralism from instability. These distinctions are not merely theological. They are legal technologies of governance.

Indonesia's model, therefore moves beyond Western secularism in a different way from India. India formally adopts secularism but practises deep constitutional engagement with religion. Indonesia does not adopt secularism as its governing vocabulary, but it prevents formal theocracy through Pancasila's plural compromise. India's danger lies in majoritarian

capture of secular language and judicial overreach into religious doctrine. Indonesia's danger lies in making recognition and harmony the preconditions of religious freedom. In India, law often asks whether a practice is essential to religion. In Indonesia, law often asks whether a belief is recognised, harmonious and compatible with Pancasila. Indonesia demonstrates that postcolonial constitutionalism may protect pluralism without becoming secular in the Western sense. It also demonstrates that pluralism mediated through State recognition can produce hierarchy. Pancasila remains a powerful constitutional compromise because it prevents the Republic from becoming formally Islamic while maintaining religion as central to national identity. Yet the same framework can restrict non-recognised beliefs, criminalise dissent and subordinate individual conscience to public harmony. Indonesia's contribution to comparative constitutional theory lies precisely in this ambiguity. It is neither an exception to secularism nor a straightforward religious State. It is a constitutional order in which law, State, and religion are continuously co-produced through recognition, regulation and restraint.

COMPARATIVE REVIEW

Two Postcolonial Models Beyond Separation

The comparison between India and Indonesia becomes meaningful only if it moves beyond parallel description. The question is not merely whether India is secular and Indonesia is Pancasila-based. Nor is the question whether one system is more liberal, more religious or more plural than the other. The deeper comparative issue is how each constitutional order makes religion legally intelligible and politically governable. Both jurisdictions inherit plural societies, colonial legal categories, constitutional rights and courts with power to shape public law. Yet they construct the relation between law, State and religion through different legal grammars. India speaks through secularism, equality, liberty of conscience, minority protection, social reform and constitutional morality. Indonesia speaks through Pancasila, belief in the One and Only God, religious harmony, recognised religion, public order and national unity.

The first major point of comparison concerns constitutional vocabulary. India expressly identifies itself as a secular republic, although the word secular was inserted into the Preamble by the Forty-second Constitutional Amendment. Even before that formal insertion, the broader constitutional structure had already protected religious freedom, equality, non-discrimination, minority rights and State neutrality in matters of religious establishment. The Supreme Court's decision in S. R. Bommai v. Union of India gave secularism a foundational status by treating it as part of the basic structure of the Constitution. Indian constitutional secularism is therefore tied to equal citizenship, constitutional identity and restraint upon majoritarian capture of public power. Indonesia's vocabulary is different. The Constitution does not call Indonesia secular. Instead, Article 29 and Pancasila establish belief in the One and Only God as a foundational principle of the State. Religious freedom is protected, but within a theistic constitutional frame. The Indonesian State does not claim indifference to religion. It presents religion as a constitutive element of national life and public morality. This does not make Indonesia a theocracy, because Islam is not formally established as the national religion and several religions are recognised. Yet it also means that religion is not treated merely as private conscience. The constitutional vocabulary itself expects the citizen to exist within a religiously marked public order.

This contrast shows why Western secularism is inadequate as a universal model. India and Indonesia both reject simple privatisation of religion, but they do so differently. India constitutionalises secularism while permitting structured State engagement with religion.

Indonesia constitutionalises theism while preventing formal establishment of a single religious State. India's model may be described as secular but engaged. Indonesia's model may be described as religiously framed but plural. The two systems destabilise the binary between secular and religious constitutions. They reveal that constitutional orders may restrain religious domination without fully privatising religion, and may recognise religion without becoming theocratic.

The second point of comparison concerns recognition. In India, the Constitution recognises religion through rights rather than through a closed list of approved religions. Articles 25 and 26 protect religious freedom and denominational autonomy. Articles 29 and 30 protect the cultural and educational rights of minorities. The State does not generally require a citizen to belong to an officially recognised religion to access civic identity. However, Indian law classifies religious communities in other ways, particularly through personal law, minority educational status, temple administration and statutory regimes governing religious endowments. Recognition of religion is therefore dispersed across constitutional rights, legislative categories, and judicial doctrine.

Indonesia's recognition structure is more administrative and categorical. Historically, the State recognised a limited number of religions for purposes of identity documentation, education, marriage registration and access to public services. Indigenous belief communities were long placed in an uncertain position and were often compelled to identify with one of the recognised religions or leave the religion column blank. Decision No. 97/PUU-XIV/2016 partially corrected this by requiring recognition of indigenous beliefs in population administration. Yet the decision did not wholly dismantle the structure of religious legibility. It expanded recognition but retained the assumption that belief must be administratively classified. Religion is therefore publicly recognised but mediated by State classification and bureaucratic control.

This produces different forms of vulnerability. In India, minority vulnerability often arises when facially neutral doctrines are applied against communities already marked by social and political insecurity. Anti-conversion laws, disputes over religious dress, citizenship controversies, and the protection of religious sentiments all show how State power may operate through secular or public order language while disproportionately affecting minorities. In Indonesia, vulnerability often arises from the threshold question of recognition itself. Ahmadiyah, Shia communities, Christians in certain local contexts, indigenous belief adherents and non-believers encounter the State not only as regulator but as classifier. If their belief is treated as deviant, unrecognised, or disruptive of harmony, legal protection becomes conditional. The third comparative axis is legal pluralism. India and Indonesia both demonstrate that State law does not monopolise normative life. Religious norms, customary practices, community institutions, and public law interact continuously. Galanter's distinction between law on the books and law in action remains useful because formal doctrine only partly captures the way law operates within plural societies (Galanter, 1989). In India, pluralism is most visible in personal laws. Hindu, Muslim, Christian, Parsi and other legal regimes govern family matters in differentiated ways. This is often defended as an accommodation of diversity. Yet it also raises persistent questions of gender equality, internal reform, and constitutional scrutiny. Cases such as *Shah Bano and Shayara Bano* exhibit that personal law pluralism can protect identity while also becoming a site of political conflict and internal hierarchy.

Indonesia's legal pluralism is differently configured. National law coexists with Islamic norms, adat, religious courts, regional regulations and special autonomy arrangements. Aceh represents the most striking example because Islamic criminal law has been incorporated into regional positive law through Qanun Jinayat. This goes further than the Indian model. India accommodates religious personal law but does not formally create religious criminal law for a particular region. Indonesia, through Aceh's special autonomy, permits a regional Islamic penal regime within the broader national constitutional order. This makes Aceh a critical test case for pluri-religious constitutionalism because it converts one religious normative order into coercive criminal law backed by State punishment. Legal pluralism in Aceh becomes constitutionally strained by penal power, bodily discipline and regional religious identity.

The fourth point of comparison concerns courts. In India, the Supreme Court has become a central institution in defining the constitutional meaning of religion. Through the essential religious practices doctrine, the Court decides whether a practice is essential to a religion and therefore protected. Through basic structure doctrine, it secures secularism as a constitutional identity principle. Through equality and dignity jurisprudence, it intervenes in religious practices that are argued to violate fundamental rights. The Indian judiciary performs several roles at once. It is a guardian of secularism, an arbiter of religious authenticity, a reformist institution and sometimes an institution deferential to dominant social sentiment.

The Indonesian Constitutional Court performs a different but comparable function. It interprets Pancasila, Article 29, religious freedom and public order. In the blasphemy law decision, it upheld State restrictions in the name of religious harmony. In the indigenous beliefs decision, it expanded recognition for historically excluded belief communities. These decisions show that the Court can operate both as a guardian of regulated religious order and as an institution of limited pluralist correction. Butt and Lindsey's work on Indonesian constitutionalism shows that the Court's role after Reformasi has been central to defining the relationship between rights, democracy, Pancasila and State power (Butt & Lindsey, 2012). However, the Court's rights-protective capacity remains constrained by the constitutional weight given to religious harmony and public order.

A deeper similarity emerges here. Both courts use constitutional language to discipline religion and to protect it. Indian courts protect religious freedom but also decide what is truly religious. Indonesian courts protect religious harmony but also decide which forms of belief deserve recognition. In Asad's terms, both courts participate in the production of religion as a legal category (Asad, 2003). In Mahmood's terms, both constitutional systems reveal how legal recognition may reproduce hierarchy even when expressed through equality or pluralism (Mahmood, 2016). The institutional style differs, but the underlying operation is comparable. Law does not merely respond to religion. It reshapes religion through doctrine. The fifth comparative issue is the role of public order and harmony. In India, public order is expressly listed as a limitation on religious freedom under Article 25. It appears in cases concerning religious processions, conversion, speech, religious offence and institutional regulation. The difficulty is that public order may operate both as a genuine peace-preserving principle and as a mechanism through which threatened disorder by dominant groups limits minority rights. The logic of anticipated disorder can shift the burden onto vulnerable communities. If the exercise of a right is likely to provoke hostile reaction, the State may restrict the right rather than discipline the hostility.

In Indonesia, the equivalent vocabulary is religious harmony. Harmony is not merely a social ideal. It functions as a legal and administrative principle. It justifies blasphemy regulation,

control of places of worship, monitoring of deviant sects and limitations on religious expression. Crouch and Bagir show that harmony-based governance may protect peace but can also legitimise local majoritarian pressure (Crouch, 2014). Bagir further demonstrates how minority protection may be weakened when the enjoyment of religious freedom depends upon local consensus (Bagir, 2018). The Indonesian model turns social harmony into a constitutional value that may override individual conscience. India and Indonesia therefore face a similar risk in different language. Public order in India and harmony in Indonesia can both become instruments through which majority sentiment acquires legal force.

The sixth comparative issue concerns majoritarianism. In India, majoritarianism often appears through the political and legal dominance of Hindu identity, especially in disputes concerning cow protection, temple politics, conversion, citizenship and historical religious sites. The constitutional vocabulary of secularism remains formally intact, but its meaning is increasingly contested. The danger is not the abandonment of secularism as a word. The danger is its reinterpretation in a way that treats majority religious culture as national culture and minority claims as exceptional demands. In Indonesia, majoritarianism operates differently because the State is already theistically framed and Islam is demographically dominant. Yet Pancasila prevents the direct conversion of Indonesia into a formally Islamic State. Majoritarian pressure, therefore often works through blasphemy prosecutions, religious councils, local regulations, public morality campaigns and restrictions on heterodox groups. The Indonesian danger is not simply the religious establishment. It is the use of recognised religious orthodoxy as a condition of full civic acceptability. Both systems contain tensions between majority projects and minority protection, although Indonesia manages this through theistically anchored pluralism, while India does so through secularism and principled distance.

Despite these risks, neither model should be reduced to failure. India's constitutional order continues to provide rights-based resources for minorities, women, dissenters and reform movements. The basic structure doctrine, equality jurisprudence and constitutional morality remain available as legal tools against majoritarian capture. Indonesia's constitutional order also contains resources for inclusion. The indigenous beliefs decision shows that Pancasila can be read expansively. Civil society, scholars, minority communities, and some judicial actors continue to contest exclusionary interpretations of religious harmony. The constitutional field in both jurisdictions is therefore not closed. It remains dialectical. The comparison ultimately shows that postcolonial constitutional models of law and religion operate through recognition, regulation, and restraint. India recognises religion through rights and plural legal arrangements, regulates it through social reform and judicial doctrine, and restrains it through equality, dignity, and public order. Indonesia recognises religion through Pancasila and administrative categories, regulates it through ministries, criminal law, and restrains it through public order, recognised pluralism, and limited rights review. Both models seek to prevent religious conflict and protect pluralism. Both also risk reproducing hierarchy.

This is why the comparison matters for theory. It confirms that secularism should not be understood as a single institutional formula. It is better understood as a family of historically situated constitutional practices. Some of these practices use the language of secularism. Others use the language of religious harmony or plural recognition. The relevant normative question is not whether a constitution resembles the Western separationist ideal. The more important question is whether its model of religion-State engagement protects equal citizenship, freedom of conscience, minority security and democratic legitimacy. India and

Indonesia both offer partial answers. Their successes and failures together help build a more grounded postcolonial theory of law, State and religion.

Towards a Postcolonial Theory of Law, State and Religion

The comparative review of India and Indonesia suggests that the relationship between law, State and religion cannot be understood adequately through the inherited binary of separation and establishment. The Western secular model remains normatively important because it protects conscience, resists clerical domination and insists that coercive public power must be justified before citizens as free and equal persons. Yet, as a universal explanatory model, it becomes insufficient in postcolonial constitutional societies where religion is embedded in legal pluralism, community identity, minority protection, public morality and constitutional imagination. India and Indonesia do not merely depart from Western secularism. They show why constitutional theory must be widened beyond it.

A postcolonial theory of law, State and religion must begin from the fact that religion in plural societies is not reducible to private belief. It may be private conscience, but it is also family law, educational authority, ritual practice, group identity, public memory, minority status, institutional property, political mobilisation and moral vocabulary. The State, correspondingly, is not merely a neutral referee standing outside religion. It names religion, classifies religious communities, decides the legal status of practices, determines eligibility for recognition, regulates religious institutions and adjudicates competing claims of liberty, equality, dignity and order. Law is therefore not external to religion. It is one of the principal instruments through which religion becomes publicly legible and constitutionally governable. This is the central reason why the article adopts recognition, regulation, and restraint as its analytical frame. Recognition refers to the legal act by which the State decides which religious communities, practices, identities, and institutions are visible within the constitutional order. Recognition may be protective. In India, minority educational rights under Article 30, denominational rights under Article 26 and freedom of conscience under Article 25 provide legal protection to religious communities and individuals. In Indonesia, the recognition of multiple religions under Pancasila and the Constitutional Court's decision on indigenous beliefs exhibit that recognition can open access to citizenship, identity documents, and public legitimacy. Yet recognition may also generate hierarchy. It may distinguish between recognised and unrecognised beliefs, mainstream and deviant communities, essential and non-essential practices, legitimate religion and suspect heterodoxy. Recognition is therefore not a neutral act. It is a distribution of constitutional visibility.

Regulation refers to how the State governs religious life through constitutional doctrine, legislation, administrative agencies, criminal law, public order powers, and institutional supervision. In India, regulation appears in temple administration, social reform legislation, anti-conversion laws, religious endowments, personal law reform, and judicial review of religious practices. In Indonesia, regulation appears in the blasphemy law, the Ministry of Religious Affairs, population administration, religious education, places of worship, religious councils, and Aceh's Qanun Jinayat. Regulation can be emancipatory where it dismantles exclusion, caste hierarchy, gender injustice, or coercive religious authority. It can also be oppressive where it criminalises dissent, disciplines minority practice, enables majoritarian veto, or converts religious orthodoxy into public law. The normative quality of regulation therefore depends upon whether it expands equal citizenship or narrows it.

Restraint refers to constitutional limits imposed both on religion and on the State. Religion may be restrained where it violates equality, dignity, bodily integrity, public order or the

freedom of others. The State must also be restrained where it seeks to impose orthodoxy, privilege majority sentiment, classify citizens unequally or enter theological questions without constitutional necessity. This dual character of restraint is especially important in postcolonial societies. A State that refuses to intervene in oppressive religious practices may abandon vulnerable persons within communities. A State that intervenes too readily may reproduce domination in the name of reform, harmony or public order. The constitutional challenge is therefore not whether the State should engage religion, but under what principles, by what methods and with what safeguards.

India illustrates the promise and danger of this model. Its constitutional secularism is not a doctrine of absence. It is a doctrine of structured engagement. The Indian State may intervene in religion to secure social reform and equality, but it must not identify itself with one religion or allow public power to become majoritarian. The basic structure doctrine, especially after S. R. Bommai v. Union of India, gives secularism a foundational status. At the same time, the essential religious practices doctrine shows how judicial protection can become judicial control. By deciding what is essential to religion, courts may narrow lived religion into doctrinal forms acceptable to judicial reason. Similarly, personal law pluralism may preserve community identity, but it may also sustain internal inequalities unless subjected to principled constitutional scrutiny. Indian secularism is therefore neither mere neutrality nor simple reform. It is a contested constitutional practice in which recognition, regulation and restraint are constantly renegotiated.

Indonesia illustrates a different configuration. Its constitutional order is openly theistic but formally plural. Pancasila prevents the State from becoming a straightforward Islamic theocracy, yet it also prevents religion from being treated as purely private. The Indonesian State recognises religion as part of national identity and public order. This model has allowed multiple religious communities to exist within a common constitutional framework, but it has also made recognition a condition of full civic legitimacy. Blasphemy law, religious harmony regulations and administrative classification show how the State protects religion not only as individual conscience but also as a collective public value. The indigenous beliefs decision demonstrates the inclusive potential of Pancasila, but the continued vulnerability of atheists, heterodox groups and minority communities shows the limits of recognition-based pluralism. Indonesia therefore requires a theory that can understand a State that is neither secular nor theocratic, but constitutionally religious, administratively plural and normatively hierarchical.

The comparison also reveals that legal pluralism is not inherently progressive. It is often celebrated as a way of respecting diversity, but its effects depend upon the surrounding constitutional structure. In India, personal law pluralism can protect minority autonomy, but it can also shelter patriarchal or exclusionary practices. In Indonesia, adat and Islamic norms can reflect local identity and historical memory, but Aceh's Islamic criminal law shows how pluralism may become punitive when local religious morality is backed by State coercion. Legal pluralism is therefore best understood as ambivalent. It may create space for cultural autonomy, but it may also fragment citizenship and expose vulnerable persons to community power. A postcolonial theory of law and religion must therefore ask not only whether pluralism exists, but who benefits from it, who is burdened by it, and what constitutional limits govern it. Public order and harmony also require rethinking. Liberal theory often treats public order as an external limitation on rights. In practice, public order is frequently produced by the very conflicts it claims to manage. In India, religious freedom may be restricted where the State anticipates disorder. Yet this can reward those who threaten violence against the minority exercise of rights. In Indonesia, harmony operates as a central

constitutional and administrative value. It can prevent conflict, but it can also silence dissent by treating minority differences as a threat to social peace. A postcolonial theory must therefore distinguish genuine peacekeeping from majoritarian appeasement. Constitutional law must not allow public order or harmony to become a vocabulary through which the most easily offended or politically dominant groups acquire veto power over the liberties of others.

The role of Courts is equally ambivalent. Courts can protect minorities, develop rights, discipline State power and articulate constitutional morality. They can also defer to majoritarian anxieties, convert social prejudice into legal doctrine or claim competence over religious questions that exceed judicial capacity. In India, the Court has sometimes acted as a guardian of secularism and equality, but it has also produced unstable doctrine through essential practices. In Indonesia, the Constitutional Court has expanded recognition for indigenous beliefs, but it has also upheld blasphemy regulation in the name of religious harmony. Courts are therefore not merely neutral interpreters of constitutional text. They are institutions that help produce the constitutional meaning of religion. Their judgments determine which religious claims appear rational, which appear deviant, which are protected, and which are disciplined.

A postcolonial theory must also resist treating the global South as an archive of exceptions to Western constitutionalism. India and Indonesia are not imperfect versions of European or American secularism. They are constitutional orders shaped by their own histories of colonial rule, anti-colonial mobilisation, plural legal inheritance, communal conflict, religious reform, and democratic negotiation. Their experience should generate theory, not merely receive it. This does not require rejecting liberal values. Freedom of conscience, equality, non-discrimination, dignity, and democratic legitimacy remain indispensable. But these values must be reconstructed in light of the specific ways in which postcolonial States recognise and regulate religion.

The theoretical move proposed here is therefore modest but important. Instead of asking whether a State is secular in the Western sense, comparative constitutional law should ask how the State allocates recognition, how it regulates religious life and how it restrains both religious and State power. This approach allows more precise evaluation. A formally secular State may still privilege a majority religion in practice. A formally theistic State may still protect pluralism in some contexts. A plural legal system may secure autonomy for some while exposing others to hierarchy. A court may speak the language of rights while producing outcomes shaped by social power. The value of the recognition, regulation, and restraint framework is that it makes these complexities visible. India and Indonesia, read together, display that constitutional governance of religion is not a settled institutional formula. It is a continuing struggle over the meaning of citizenship, the boundaries of community, the authority of Courts, the reach of State power and the place of conscience in public life. Both jurisdictions reveal the dangers of majoritarian capture, but both also contain resources for constitutional renewal. India's resources lie in equality, basic structure secularism, Constitutional morality, and rights-based reform. Indonesia's resources lie in the inclusive possibilities of Pancasila, constitutional recognition of belief, democratic contestation, and the gradual widening of administrative legitimacy for marginalised communities. The future of law and religion in both systems will depend on whether these resources are used to deepen equal citizenship or to stabilise hierarchy under the language of order, harmony, or tradition.

A theory beyond Western secularism must therefore not be anti-secular. It must be more precise than conventional secularism. It must preserve the emancipatory promise of secular constitutionalism while recognising that postcolonial societies require different institutional vocabularies and legal techniques. Such a theory must accept that religion will remain public, but insist that public religion cannot override equal citizenship. It must accept that the State may engage with religion, but insist that engagement must be justified by constitutional principle rather than political convenience. It must accept that pluralism matters, but insist that pluralism cannot become a cover for internal domination or external exclusion. The constitutional future of India and Indonesia lies in this difficult middle ground. Neither strict separation nor religious establishment captures their experience. Both systems operate through continuing negotiation between liberty and order, autonomy and reform, recognition and hierarchy, pluralism and majoritarianism. Their comparative study allows secularism to be rethought not as a single Western doctrine, but as a family of constitutional practices through which societies attempt, imperfectly but necessarily, to secure freedom and equality amid deep religious diversity. This is the principal theoretical contribution that postcolonial constitutionalism can make to the global study of law, State and religion.

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