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# BALANCING EQUALITY AND AFFIRMATIVE PROTECTION FOR RELIGIOUS MINORITIES: A LEGAL ANALYSIS

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## ABSTRACT

The balance between equality and special protections for religious minorities is a challenging issue in modern constitutional law. Equality before the law is a core value in democracies, but protecting religious minorities often requires special measures. This raises an important question: Is it possible for the law to treat everyone equally while also providing additional protections to minorities, or do these protections create new forms of inequality? This article looks at this issue from both theoretical and constitutional perspectives, focusing on India's legal system. By examining constitutional rules, court decisions, and key cases like *Shayara Bano v. Union of India*, the article argues that special protections do not necessarily conflict with equality, but they must be designed carefully to prevent reverse discrimination. The study finds that true balance between equality and minority rights comes from using substantive equality instead of just formal equality.<sup>1</sup>

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<sup>1</sup> Vrinda Narain, "Chapter 14 Reconciling Constitutional Law, Gender Equality and Religious Difference" (Brill, 2021).

## INTRODUCTION

The balance between equality and special protections for religious minorities is one of the most complex and debated topics in constitutional law. Modern democracies are founded on the idea that everyone should be treated equally under the law, no matter their religion, race, or background<sup>2</sup>. Yet, these systems also recognize that some groups, especially religious minorities, have faced discrimination and exclusion in the past. To address this, many constitutions include special protections to preserve the identity, culture, and rights of these communities<sup>3</sup>. This creates a core question: is it possible for the law to treat everyone equally while also giving extra protections to religious minorities, or do these protections create new forms of inequality? This article examines this issue by looking at the idea of equality, India's constitutional approach, court decisions, and the wider effects of protecting minorities.

## CONCEPTUAL TENSION: FORMAL EQUALITY AND SUBSTANTIVE EQUALITY

This debate centres on the difference between formal equality and substantive equality. Formal equality means treating everyone the same under the law, with no exceptions<sup>4</sup>. It is based on the belief that fairness comes from applying the same rules to all. But this view often overlooks the social and historical inequalities that different groups face. Substantive equality recognizes that treating everyone the same does not always lead to fair results. Instead, it supports different treatment to address disadvantages and help create equal opportunities<sup>5</sup>.

When it comes to religious minorities, formal equality means that the same laws apply to everyone, no matter their religion. Substantive equality, on the other hand, supports special protections so minority groups can keep their cultural and religious traditions and take part in society equally. The main question is whether treating groups differently helps or harms equality. Some say that any difference in treatment goes against equality, while others believe that real equality is not possible without these special measures. This ongoing debate is at the

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<sup>2</sup> IJLLR Journal, "Equality before Law and Equal Protection of Laws under the Constitution of India" IJLLR Journal, 2022 available at: <https://www.ijllr.com/post/equality-before-law-and-equal-protection-of-laws-under-the-constitution-of-india> (last visited March 26, 2026).

<sup>3</sup> "Article 29: Protection of interests of minorities," Constitution of India available at: <https://www.constitutionofindia.net/articles/article-29-protection-of-interests-of-minorities/> (last visited March 26, 2026).

<sup>4</sup> "Formal equality," BC's Office of the Human Rights Commissioner available at: <https://bchumanrights.ca/glossary/formal-equality/> (last visited March 26, 2026).

<sup>5</sup> "Substantive equality," BC's Office of the Human Rights Commissioner available at: <https://bchumanrights.ca/glossary/substantive-equality/> (last visited March 26, 2026).

core of legal and constitutional discussions.

## **CONSTITUTIONAL FRAMEWORK**

The Constitution of India takes a thoughtful approach to balancing equality and protecting minorities. Article 14 guarantees equality before the law, and Article 15 bans discrimination based on religion. At the same time, the Constitution recognises the rights of religious minorities. For example, Articles 25 to 28 ensure freedom of religion, while Articles 29 and 30 protect the cultural and educational rights of minorities<sup>6</sup>.

This system shows a clear attempt to balance equality and diversity. The Constitution does not follow a strict idea of equality. Instead, it allows the state to treat groups differently if there are clear reasons and a valid goal. In this way, equality in the Indian Constitution is not just about treating everyone the same, but also about taking steps to address social inequalities<sup>7</sup>.

However, this flexible approach also brings challenges. Having both general equality rules and special rights for minorities can lead to questions about fairness and consistency. While these protections aim to support inclusivity and diversity, some may see them as exceptions to equality. This setup shows how difficult it is to balance uniformity and diversity in a diverse society.

## **JUSTIFICATION OF AFFIRMATIVE PROTECTION**

Affirmative protection for religious minorities is important because it helps address past injustices and supports real equality. These groups often face ongoing challenges like social exclusion, economic hardship, and pressure to assimilate<sup>8</sup>. Without extra protections, they may find it hard to keep their identity and take part in society.

Affirmative measures play several key roles. They help fix past imbalances by offering opportunities and protections to those who faced discrimination. They also help keep cultural and religious diversity alive, which is important in a diverse society. Finally, they make sure

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<sup>6</sup> DR. J.N. PANDEY, *Constitution Law of India*, Fifty ninth edition (Central Law Agency).

<sup>7</sup> Aishwarya Agrawal, "Social Equality and Justice in the Indian Constitution" LawBhoomi, 2025 available at: <https://lawbhoomi.com/social-equality-and-justice-in-the-indian-constitution/> (last visited March 27, 2026).

<sup>8</sup> "Economic Exclusion and Discrimination: The Experience of Minorities and Indigenous Peoples - GSDRC," 2006 available at: <https://gsdrc.org/document-library/economic-exclusion-and-discrimination-the-experience-of-minorities-and-indigenous-peoples/> (last visited March 27, 2026).

minority groups have a voice in democracy<sup>9</sup>.

Seen this way, affirmative protection is not about giving special privileges but about making real equality possible. It shows that treating everyone the same can sometimes keep unfairness in place, so different treatment may be needed for fairness. Still, these measures must be well-designed and carefully applied. If they go too far or are not targeted well, they can cause problems like resentment and division.

## **JUDICIAL BALANCING OF EQUALITY AND MINORITY RIGHTS**

The judiciary helps manage the balance between equality and affirmative protection. Courts often decide if a law or practice finds the right balance between these ideas. To do this, they use constitutional interpretation, legal reasoning, and the doctrine of reasonable classification.

Most important example is the case of *Shayara Bano v. Union of India*<sup>10</sup>. Here, the Supreme Court looked at the practice of instant triple talaq in Muslim personal law. The Court decided this practice was unconstitutional because it violated the rights to equality and dignity. This ruling showed that religious practices, even if protected as minority rights, cannot go against basic constitutional values. The *Shayara Bano* judgment is part of a wider trend where courts try to balance religious freedom with fundamental rights. Instead of removing minority protections, the judiciary sets limits to prevent discrimination or injustice. This shows that affirmative protection and equality can work together if courts carefully balance them<sup>11</sup>.

In *Bijoe Emmanuel v. State of Kerala*, the Supreme Court protected the religious freedom of Jehovah's Witness students who refused to sing the national anthem because of their beliefs. The Court ruled that making them participate would violate their rights under Article 25. This case highlights the Court's willingness to defend minority religious practices, as long as they do not harm public order or the rights of others, and supports tolerance in a diverse society<sup>12</sup>.

In *The Ahmedabad St. Xavier's College v. State of Gujarat*, the Supreme Court looked at the rights of minority educational institutions under Article 30. The Court decided that minorities have the right to set up and manage schools of their choice, and that too much state control

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<sup>9</sup> Eduardo Ruiz Vieyetz, "Religious Diversity, Minorities and Human Rights: Gaps and Overlaps in Legal Protection," 15 *Religions* 87 (2024).

<sup>10</sup> Jagdish Singh Khehar, *Shayara Bano vs. Union of India and Ors*, 2017.

<sup>11</sup> *Ibid.*

<sup>12</sup> REDDY, O. CHINNAPPA, *Bijoe Emmanuel v. State of Kerala*, 1986.

would violate this right. However, the Court also said that reasonable rules can be made to maintain academic standards. This case shows how the Court tries to balance school independence with government oversight<sup>13</sup>.

The Supreme Court also considered individual freedom in religion in *Shafin Jahan v. Ashokan K.M.*, also called the Hadiya case. The Court confirmed that an adult woman has the right to choose her religion and life partner, and said this choice is an important part of personal liberty under Article 21. The decision made it clear that individual rights cannot be overruled by family or society, even if those pressures come from religion<sup>14</sup>.

In *Rev. Stainislaus v. State of Madhya Pradesh*, the Supreme Court upheld laws that ban conversion by force, fraud, or inducement. The Court decided that the right to spread religion under Article 25 does not include the right to convert someone else. This case shows how the Court tries to balance religious freedom with the need to keep public order and prevent exploitation<sup>15</sup>.

Together, these cases show that the Indian judiciary does not see equality and minority protection as opposites. Instead, the courts take a balanced approach, allowing for special protection while making sure it does not violate fundamental rights or the Constitution. The courts often point out that minority rights are meant to create fairness and inclusion, not special privilege. Through these decisions, the judiciary continues to help maintain the balance between equality and diversity in a constitutional democracy.

## **RISKS OF INEQUALITY AND MISUSE**

While protecting religious minorities is important, it also comes with some risks. One main concern is reverse discrimination, where giving special protections to minorities might put other groups at a disadvantage. This can make people feel things are unfair and weaken social unity.

Another problem is that legal systems can become fragmented. In countries such as India,

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<sup>13</sup> “*The Ahmedabad St. Xaviers College ... vs State Of Gujarat & Anr* on 26 April, 1974,” available at: <https://indiankanoon.org/doc/703393/> (last visited March 29, 2026).

<sup>14</sup> “*Shafin Jahan vs Asokan K.M.* on 8 March, 2018,” available at: <https://indiankanoon.org/doc/18303067/> (last visited March 29, 2026).

<sup>15</sup> “*Rev. Stainislaus vs State Of Madhya Pradesh & Ors* on 17 January, 1977,” available at: <https://indiankanoon.org/doc/1308071/> (last visited March 29, 2026).

different religious communities often follow their own personal laws. This can result in people having different rights and responsibilities, especially in areas like marriage, divorce, and inheritance<sup>16</sup>. These differences raise concerns about whether the system is consistent and fair.

There is also a risk that minority protections could be misused for political reasons. Sometimes, these protections are used to win votes, which can lead to policies that focus on short-term political goals instead of long-term social justice. This kind of misuse can make affirmative measures seem less legitimate and increase divisions in society.

These challenges show why it is important to design and apply minority protections carefully. Affirmative measures should be fair, open, and checked regularly to make sure they achieve their goals without causing new inequalities.

## **INDIVIDUAL RIGHTS AND GROUP RIGHTS**

One of the more complicated parts of this debate is the tension between individual rights and group rights. Minority protections are usually seen as collective rights that help preserve a community's identity and autonomy. Still, people within these groups can have different interests and views, especially about issues like gender equality and personal freedom.

Problems come up when group practices limit the rights of individuals. When this happens, courts have to find a balance between the community's autonomy and the rights of its members. Recent court decisions, like in the Shayara Bano case, show a stronger focus on individual rights. Courts are more often saying that protecting a minority's identity should not take away basic human rights<sup>17</sup>.

This change shows a wider commitment to constitutional values like dignity, equality, and freedom. Group rights still matter, but they should be used in ways that respect individual rights. This helps make sure that protecting minorities does not allow unfair treatment.

## **CONCLUSION**

Whether the law can balance equality and affirmative protection for religious minorities is not

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<sup>16</sup> "Navigating Through Diversity: Personal Laws and Cultural Rights of Indian Minorities Law Notes by The Law Institute," 2025 available at: <https://thelaw.institute/human-rights-in-india/diversity-personal-laws-cultural-rights-indian-minorities/> (last visited March 27, 2026).

<sup>17</sup> Ibid.

an easy question to answer. It depends on legal principles, social realities, and political factors. Still, this article argues that equality and affirmative protection do not conflict. Instead, they work together as part of a larger commitment to justice and fairness.

The main idea is to see equality as more than treating everyone the same. Sometimes, different treatment is needed to fix existing inequalities. Well-designed affirmative protections can help minority communities take part in society and keep their identity. However, these measures should be closely monitored to avoid misuse or unfairness.

The courts play an important role in keeping this balance. By interpreting the constitution and reviewing laws, judges make sure that protections for minorities match basic rights and principles. Important cases like *Shayara Bano v. Union of India* show that constitutional values are more important than practices that harm equality and dignity.

In summary, the goal is not to pick between equality and protecting minorities, but to bring them together in a way that supports justice, inclusion, and social unity. Laws can treat everyone fairly and still offer special protections, as long as equality means fairness in results, not just treating everyone the same. Finding this balance is an ongoing task that needs regular review as society changes.