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Principled Distance and Pancasila: A Comparative Constitutional Review of Secularism in India and Indonesia

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ABSTRACT: This review article examines the constitutional models of principled distance in India and Pancasila-based religious harmony in Indonesia as two postcolonial alternatives to the classical Western separationist account of secularism. This paper contends that India and Indonesia cannot be apprehended through the binary of secularism and theocracy. India is constitutionally secular, but constitutional practice allows continuous State engagement with religion related to social reform, minority protection, denominational autonomy, personal law and judicial review. Indonesia does not call itself secular, but its Pancasila rejects the idea of a formal Islamic State and creates an environment of belief in One God that accepts religious plurality through public order, religious harmony and administrative recognition. The article reviews liberal, postcolonial, socio-legal and comparative constitutional scholarship to assess whether these two models protect constitutional pluralism or reproduce hierarchy through legal classification and State regulation. It argues that principled distance and Pancasila are not failed copies of Western secularism. These are the constitutionally evolving arrangements that came about historically through legal pluralism of colonialism, anti-colonial nationalism, religious diversity and postcolonial anxiety of unification. Significantly, both can be easily captured by the majority. Secularism in India might be undermined when courts or legislatures favour the dominant religious sentiment under the guise of public order or constitutional identity. In Indonesia, harmony may become restrictive when recognition is conditioned upon theistic conformity or bureaucratic legibility. The article concludes that postcolonial constitutional pluralism requires a careful balance between recognition, reform, and restraint.

KEYWORDS: Principled distance, Pancasila, secularism, religious harmony, constitutional pluralism, India, Indonesia, religious freedom, comparative constitutional law

INTRODUCTION

The relationship between law, State and religion remains one of the most difficult questions in comparative constitutional law. In many constitutional democracies, the issue is often approached through the vocabulary of secularism, neutrality, non-establishment, religious freedom and liberty of conscience. This vocabulary has strong theoretical value. It explains why the State should not become the instrument of a particular religious authority. It also explains why coercive public power should not be justified only by reference to sectarian doctrine. Yet the experience of postcolonial constitutional societies shows that the classical Western model of separation between religion and State does not exhaust the constitutional possibilities available to deeply plural societies.

India and Indonesia are particularly important in this regard. Both are large postcolonial republics. Both inherited complex legal pluralism from colonial rule. Both contain deep religious diversity and have experienced intense debates over identity, nationhood and the place of religion in public life. Yet they speak through different constitutional languages. India describes itself as a secular republic, protects liberty of conscience and minority rights, and has developed a doctrine of secularism as a basic feature of the Constitution. Indonesia, by contrast, is not constitutionally secular in the Western sense. Its constitutional order is structured around Pancasila, especially the principle of belief in the One and Only God, while also rejecting the formal establishment of an Islamic State. The result is a model of religiously inflected constitutional pluralism.This review article examines two models that

are central to understanding these jurisdictions. The first is India's model of principled distance, most closely associated with Rajeev Bhargava. It rejects both strict separation and religious establishment. It allows the State to engage with religion when such engagement is required for equality, reform, social justice, or minority protection. The second is Indonesia's Pancasila model of religious harmony. At the core of its constitutional identity is a belief in God and seeks to accommodate several recognised religions, but within the framework of unity, order, and public morality.

The comparison is valuable because the two models both deviate from Western separationism, but they do so in different ways. Although Indian secularism is formally committed to equal respect and constitutional neutrality, it allows State intervention in religious institutions, personal law and social practices. Indonesian constitutionalism is formally theistic. But, it is also trying to avoid theocratic takeover. The way it does this is by recognizing several religions. Further, it makes Pancasila a common national philosophy. India, therefore represents an engaged secular model. Indonesia represents a religiously grounded plural model. Both are postcolonial constitutional settlements. Both contain emancipatory promise. Both also contain real risks.The central argument of this article is that principled distance and Pancasila must be understood as historically situated constitutional models of managing pluralism. They are not defective versions of American separation or French laïcité. They emerged from different histories, including colonial classification, anti-colonial nationalism, legal pluralism, religious diversity and anxieties over national unity. At the same time, neither model is normatively immune from critique. Principled distance may degenerate into selective intervention if courts and legislatures favour dominant religious sentiment or enter religious doctrine without adequate constitutional discipline. Pancasila may degenerate into controlled pluralism if the State recognises only certain forms of belief and uses harmony to silence dissent.

The article proceeds in seven parts. The second section situates principled distance and Pancasila against the background of Western secularism and its limitations. The third section analyses Indian secularism as a model of principled distance. The fourth section examines Indonesian constitutionalism as a model of Pancasila-based religious harmony. The fifth section reviews the role of legal pluralism, recognition and State regulation in both systems. The sixth section offers a comparative assessment of the promise and limits of the two models. The final section concludes by proposing that the constitutional governance of religion in postcolonial societies should be assessed through the quality of recognition, the legitimacy of regulation and the restraint imposed both on religious power and on State power.

2. SECULARISM, PRINCIPLED DISTANCE AND PANCASILA IN COMPARATIVE PERSPECTIVE

Classical Western secularism developed in response to specific historical conflicts. In Europe and North America, the problem of law and religion was shaped by church establishments, religious wars, Protestant dissent, clerical authority and the rise of liberal citizenship. Locke's theory of toleration argued that civil government was concerned with civil interests and not the salvation of souls (Locke, 1689/2010). Jefferson's metaphor of a wall between church and State gave enduring symbolic form to the American constitutional instinct that religious authority and public power should remain institutionally distinct (Jefferson, 1802/1984). Rawls later recast the issue as one of public reason, arguing that constitutional essentials and matters of basic justice should be justified through reasons that citizens may reasonably share despite holding different religious or moral doctrines (Rawls, 1993).

These theories remain valuable because they protect conscience and limit sectarian domination. Yet they are not universal descriptions of how constitutional orders manage religion. The American model itself has never been a pure separationist settlement. The United States Supreme Court has moved between separation, accommodation and neutrality in cases involving public funding, school prayer, religious exemptions and symbolic endorsement (McConnell et al., 2011). French laïcité, often treated as the strictest model of secular public order, also reflects a particular republican history of conflict with clerical Catholic power. Bauberot's work shows that laïcité is not merely neutrality. It is a historically shaped republican project that seeks to organise citizenship by controlling the public visibility of religion (Bauberot, 2012).

The difficulty begins when such models are treated as the normal form of secular constitutionalism. In postcolonial societies, religion has rarely been confined to private belief. It has operated as personal law, community status, cultural identity, institutional authority, political mobilisation, and sometimes as the language of minority survival. Colonial law deepened this complexity by classifying communities, governing family relations through religious categories, and translating fluid practices into legal doctrine. Postcolonial States, therefore inherited not only religious diversity, but also legally organised religious diversity. They could not simply declare separation and leave religion alone.

This is where the Indian idea of principled distance becomes important. Bhargava argues that Indian secularism cannot be captured by strict separation because the Indian State may need to intervene in religion to secure equality and social reform, while also granting autonomy where justice requires non-interference (Bhargava, 1998, 2010). Principled distance does not mean equal hostility to all religions. Nor does it mean equal support in all circumstances. It means that the State's relation with religion must be guided by constitutional principles such as liberty, equality, dignity and inter-community fairness. The State may intervene in one context and refrain in another, provided its conduct is principled rather than majoritarian or arbitrary.

Pancasila offers a different postcolonial response. It does not seek to secularise the State in the Western liberal sense. Its first principle, Ketuhanan Yang MahaEsa, affirms belief in the One and Only God. Yet Pancasila also emerged as a compromise

against the establishment of a formal Islamic State. The deletion of the Jakarta Charter's seven words in 1945 reflected the desire to maintain national unity across Muslims, Christians, Hindus, Buddhists and other communities. The constitutional order that followed is not secular in the American or French sense. It is also not theocratic. Asshiddiqie describes Indonesia as neither a religious State nor a secular State, but a religious nation-State that recognises God while maintaining plural constitutional commitments (Asshiddiqie, 2005). Latif similarly treats Pancasila as an inclusive monotheistic framework intended to hold together faith, nationhood and social justice (Latif, 2011).

The contrast between principled distance and Pancasila is therefore not a contrast between secularism and religion. It is a contrast between two forms of postcolonial constitutional pluralism. India begins with secularism but permits engagement. Indonesia begins with theism but resists formal theocracy. India uses constitutional secularism to regulate religious diversity. Indonesia uses Pancasila to recognise and manage religious plurality. Each model tries to avoid two extremes. India seeks to avoid both religious establishment and State indifference to social injustice within religious communities. Indonesia seeks to avoid both Islamic constitutional establishment and an aggressively secular State that would be alien to its national compromise.

At the same time, both models face serious internal risks. Principled distance depends upon the State's ability to act for constitutional reasons rather than political convenience. If the State intervenes selectively against minority practices while accommodating majority sentiment, principled distance becomes majoritarian management. Pancasila depends upon the State's ability to protect pluralism without converting recognition into hierarchy. If harmony becomes a tool for suppressing heterodox or minority voices, Pancasila becomes controlled pluralism. The normative strength of each model therefore depends not on its formal vocabulary, but on how courts, legislatures and administrators apply it.

This article uses the language of constitutional pluralism to evaluate both models. Constitutional pluralism, in this context, does not merely mean the sociological fact of religious diversity. It means a constitutional arrangement in which different religious, cultural and normative communities are recognised, while equal citizenship remains protected. Recognition alone is insufficient. It must be accompanied by equality, freedom of conscience and institutional restraint. A plural constitution cannot allow the majority to define the terms of belonging for all citizens. Nor can it allow community autonomy to shield domination within communities. The constitutional task is to hold together recognition and reform, autonomy and equality, harmony and liberty.

3. INDIAN SECULARISM AS PRINCIPLED DISTANCE

Indian secularism arose from historical conditions very different from those that produced European or American secularism. It was shaped by colonial legal pluralism, communal representation, caste hierarchy, anti-colonial nationalism, partition and the need to create a constitutional republic that could secure equal citizenship amid deep religious diversity. The framers were not dealing with an established church. They were dealing with a society in which religious identity had become a basis of law, representation and political mobilisation. The constitutional response could not be strict withdrawal. It had to combine religious freedom, minority protection, social reform and national integration.

The constitutional text reflects this complexity. 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. Article 25 also permits the State to regulate secular activities associated with religious practice and to enact laws for social welfare and reform. Article 26 protects the fundamental rights of even the different denominations of the religions, to manage their affairs in matters of religion. Article 27 prohibits the use of State taxation for the promotion of any particular religion. Article 28 regulates religious instruction in educational institutions while Articles 29 and 30 protect cultural and educational rights of minorities. The constitutional design does not remove religion from public law. It places religion within a disciplined constitutional field.

Principled distance explains this design better than strict separation. The State is not required to ignore religion. It is required to engage with religion according to constitutional reasons. When caste exclusion, gender discrimination or denial of access to religious institutions violates equality, State intervention may be justified. When minority institutions require protection from assimilation or domination, State restraint may be justified. The model is contextual, but it is not meant to be arbitrary. Its legitimacy depends upon fidelity to constitutional values rather than political pressure.

Indian case law reflects both the promise and the difficulty of this arrangement. In The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, the Supreme Court held that religion includes practices regarded by a religious community as integral to its faith. The decision was initially protective because it prevented the State from reducing religion to mere belief. Yet later jurisprudence transformed this into the essential religious practices doctrine, under which courts determine whether a practice is essential to religion. This doctrine has given courts significant power over religious meaning. It is difficult to reconcile such judicial theological inquiry with a simple separationist model.

The essential practices doctrine reveals the paradox of Indian secularism. The Court claims to protect religion from excessive State interference, but it does so by determining the internal content of religion. Sen criticises this movement because it allows judges to decide matters that may properly belong to religious communities themselves (Sen, 2010). Dhavan and Nariman situate the problem in the broader tension between group life, religious freedom and judicial power (Dhavan & Nariman, 2000). Bhatia argues that the doctrine often places individual rights, community autonomy and State authority in a strained relation (Bhatia,

2016). The doctrine can be reformist, but it can also become intrusive. It may protect equality, but it may also privilege elite, textual or judicially acceptable understandings of religion.

The basic structure doctrine gives Indian secularism a higher constitutional status. In Kesavananda Bharati v. State of Kerala, the Supreme Court held that Parliament cannot amend the Constitution in a manner that destroys its basic structure. In S. R. Bommai v. Union of India, secularism was expressly treated as part of that basic structure. The Court held that the State cannot identify itself with any particular religion and that secularism is integral to constitutional governance. Bommai is important because it connects secularism with federalism, democracy, equality and constitutional identity. It also suggests that political use of religion by State governments may attract constitutional consequences.

Yet the presence of secularism in the basic structure does not by itself resolve hard cases. Indian secularism remains contested in areas such as personal law, temple administration, conversion, religious speech, citizenship and education. Personal law is a key example. India has retained separate family law regimes for different religious communities. This arrangement is often defended as an accommodation of diversity and minority identity. At the same time, personal law pluralism may preserve internal inequality, especially in relation to gender. In Mohd. Ahmed Khan v. Shah Bano Begum, the Court's interpretation of maintenance rights generated intense political controversy. In Shayara Bano v. Union of India, the Court invalidated instant triple talaq, though the judges adopted different routes. These cases show that the constitutional governance of religion cannot be separated from questions of gender justice, minority autonomy and political legitimacy.

Conversion is another field where principled distance faces strain. Article 25 protects the right to propagate religion. 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 became the doctrinal foundation for anti-conversion laws. Such laws are often defended as protections against force, fraud or inducement. Yet in practice, they may burden minority religious activity, inter-faith relationships and individual autonomy. Recent anti-conversion legislation in several States shows how public order, protection and community anxiety can be used to regulate religious mobility. The question is whether such laws protect freedom of conscience or restrict it in the name of social stability.

Religious speech also exposes the tension between public order and freedom. In Ramji Lal Modi v. State of Uttar Pradesh, the Supreme Court upheld Section 295A of the Indian Penal Code, which penalised deliberate and malicious acts intended to outrage religious feelings. The Court accepted that such restrictions could be justified in the interest of public order. This reasoning reflects an Indian model in which the State seeks to protect social peace in a religiously sensitive society. Yet it also risks allowing offended religious sentiment to narrow free expression. Public order may become a legal device through which the threat of disorder determines the limits of speech.

The Ayodhya judgment in M. Siddiq v. Mahant Suresh Das further illustrates the symbolic stakes of secular adjudication. The Supreme Court awarded the disputed site for construction of a Hindu temple while directing alternate land for a mosque. The Court acknowledged the illegality of the demolition of the Babri Masjid, yet the final relief has been criticised by some scholars as effectively validating the consequences of majoritarian mobilisation. Others defend the judgment as an attempt to resolve a historically charged property dispute through legal reasoning. Either way, Ayodhya shows that secular courts adjudicating religious disputes do not operate in a neutral social vacuum. Their decisions may shape the constitutional memory of the nation.

The Citizenship Amendment Act, 2019 raises a more direct question concerning religion and political membership. The Act provides a preferential pathway to citizenship for Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Pakistan and Bangladesh, while excluding Muslims from the same benefit. Its defenders present it as a protective measure for persecuted minorities from neighbouring Islamic States. Its critics argue that it introduces religion into the structure of citizenship in a manner inconsistent with secular equality. Jayal's account of Indian citizenship is relevant here because it shows that India's constitutional imagination after Partition was substantially civic rather than religious (Jayal, 2013). The CAA controversy therefore tests whether secularism as basic structure can restrain religious classification at the level of citizenship.

The hijab litigation reveals another dimension of principled distance. In Resham v. State of Karnataka, the Karnataka High Court upheld restrictions on wearing the hijab in State pre-university colleges and held that the hijab was not an essential religious practice. 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 liberty. The split shows how religious freedom, gender, education, and State discipline intersect. It also shows the continuing instability of the essential practices test. Indian secularism therefore operates as a practice of constitutional engagement. Its strength lies in its capacity to combine religious freedom with social reform. It permits intervention against exclusion and protects minority institutions from assimilation. It recognises that equality may sometimes require State action within religious fields. Yet its weakness lies in selective application. If courts define religion too aggressively, autonomy suffers. If legislatures regulate minority practices more readily than majority practices, equality suffers. If public order is interpreted through majoritarian sensitivity, liberty suffers. Principled distance is therefore normatively attractive, but institutionally demanding.

4. PANCASILA AND RELIGIOUS HARMONY IN INDONESIAN CONSTITUTIONALISM

Indonesia's constitutional model differs sharply from India's, although it faces comparable questions of pluralism and religious governance. Indonesia is not secular in the Western sense because its constitutional order affirms belief in the One and Only God. Yet it is not a theocracy because it does not establish Islam as the State religion and because Pancasila is designed to hold together several religious communities within a unitary national framework. The Indonesian model is therefore best described as Pancasila-based religious harmony or regulated religious pluralism.

Pancasila emerged from a founding compromise. During the 1945 constitutional debates, Islamic political actors sought stronger recognition for Islamic law. The Jakarta Charter contained the seven words that would have obligated Muslims to follow Islamic law. The deletion of those words reflected a decision to preserve national unity and avoid alienating non-Muslim communities, especially in eastern Indonesia. The final formulation of Pancasila placed belief in God at the foundation of the State, but did not make Indonesia an Islamic State. This compromise remains central to Indonesian constitutional identity. Article 29 of the 1945 Constitution gives this framework legal form. It declares that the State is based upon belief in the One and Only God and guarantees freedom of worship according to religion or belief. The language is significant. Religious freedom is protected, but it is located within a theistic order. The State is not indifferent to religion. It treats religion as a source of moral order and civic identity. Asshiddiqie's description of Indonesia as neither secular nor theocratic captures this distinctive settlement (Asshiddiqie, 2005). Latif's account of Pancasila as inclusive monotheism similarly emphasises that the State promotes belief in God without formally imposing a single religious legal order (Latif, 2011).

The institutional architecture of Indonesian religion-State relations reflects this model. The Ministry of Religious Affairs plays an extensive role in religious education, hajj administration, religious courts, interreligious harmony and the governance of religious institutions. The State historically recognised a limited number of religions, including Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism. This recognition shaped identity documents, marriage registration, education and access to public services. Menchik's concept of godly nationalism is useful because it captures the Indonesian expectation that citizens should be religious, though not necessarily Muslim (Menchik, 2014). In this model, atheism and unrecognised beliefs occupy a vulnerable place.

The Indonesian Ulema Council adds another layer. Formally, MUI is not a State organ. In practice, it exercises substantial influence through fatwas, religious opinions, halal certification and assessments of deviant belief. Lindsey shows how MUI has become deeply involved in State regulation of the Islamic economy (Lindsey, 2012). Crouch's work shows how its religious authority can influence legal and administrative responses to groups treated as heterodox (Crouch, 2012, 2014). The result is a hybrid field in which State law and religious authority are not identical, but they often reinforce one another.

Blasphemy law demonstrates the restrictive side of Pancasila-based harmony. Law No. 1/PNPS/1965 on the Prevention of Abuse and/or Defamation of Religion, together with Article 156a of the old Criminal Code, created a legal basis for punishing expressions considered hostile to or deviant from recognised religion. In Decision No. 140/PUU-VII/2009, the Constitutional Court upheld the blasphemy law. The petitioners argued that the law violated freedom of religion, equality and expression. The Court rejected the challenge and reasoned that the State had a duty to protect religion and preserve public order and harmony.

Crouch's analysis of the decision is especially important. She argues that the Court interpreted Pancasila and Article 29 as requiring active State protection of religion rather than merely protecting individual conscience (Crouch, 2012). The decision reflects a communitarian conception of rights. Freedom exists, but it is mediated by collective harmony and the protection of recognised religions. This differs from liberal secularism, where the State is ordinarily expected to avoid judging religious truth. In Indonesia, the State may intervene to preserve religion as a public good.

The consequences for minorities have been serious. Human Rights Watch documented violence and discrimination against Ahmadiyah followers, Shia communities, Christians and other religious minorities (Human Rights Watch, 2013). Telle describes blasphemy as a form of lawfare that may be used against unpopular or heterodox groups (Telle, 2018). Marshall similarly identifies ambiguities in Indonesian religious freedom, where constitutional guarantees coexist with restrictive State practices (Marshall, 2018). Religious harmony, although framed as peace-preserving, may therefore operate as a majoritarian instrument if minority difference is treated as the source of disorder.

Yet Indonesian constitutionalism also contains inclusive possibilities. Decision No. 97/PUU-XIV/2016 on indigenous beliefs marked an important development. The Constitutional Court held that adherents of Penghayat Kepercayaan should be allowed to record their beliefs in identity documents. This addressed the long-standing exclusion of indigenous belief communities, many of whom had been forced either to identify with one of the recognised religions or to leave the religion column blank. The decision expanded recognition and showed that Pancasila could be interpreted more broadly.

The decision remains limited, however. It widened the circle of recognised belief but did not establish a fully open freedom of conscience. The State still organises citizenship through belief. Non-belief and atheism remain vulnerable. The decision therefore shows both the promise and the boundary of Indonesian pluralism. Pancasila can be inclusive, but inclusion still depends upon State recognition.

Aceh represents the most difficult case for Pancasila-based pluralism. Under special autonomy arrangements, Aceh has enacted Islamic criminal law through qanun jinayat. This regime criminalises conduct such as alcohol consumption, gambling, seclusion, extramarital sexual relations and same-sex relations, and provides for caning. Aceh's model is defended by some as an expression of regional autonomy and religious identity after conflict. Yet from a constitutional perspective, it raises difficult questions concerning equality, bodily integrity, privacy, criminal justice and the limits of local religious legislation. Butt's work on regional autonomy and legal disorder is relevant because it shows how decentralisation can produce local laws that strain national legal coherence (Butt, 2010).

Aceh shows how legal pluralism can become punitive when religious norms enter criminal law. India accommodates religious personal law, but it does not create a religious criminal law regime for a particular State. Indonesia, through Aceh, permits a deeper level of sub-national religious legislation. This is not simply pluralism as accommodation. It is pluralism backed by penal coercion. The question is whether Pancasila can restrain such coercion when it conflicts with equality and bodily integrity.

Indonesia therefore illustrates the ambiguity of religious harmony as a constitutional model. On one hand, Pancasila has prevented the formal establishment of an Islamic State and has provided a common framework for a multi-religious nation. On the other hand, religious harmony may empower recognised majorities, marginalise heterodox communities and condition rights upon conformity. The model is not simply illiberal. It contains genuine pluralist elements. Yet its pluralism is structured through recognition and public order, which makes it vulnerable to hierarchy.

5. CONSTITUTIONAL PLURALISM, RECOGNITION AND STATE REGULATION

India and Indonesia both demonstrate that the governance of religion in postcolonial constitutional systems cannot be understood without legal pluralism. Legal pluralism refers not only to the coexistence of different formal laws, but to the presence of multiple normative orders that claim authority over persons, families, communities and institutions. Griffiths distinguishes weak legal pluralism, where the State recognises non-State norms under its own authority, from strong legal pluralism, where multiple normative orders coexist without being reducible to State law (Griffiths, 1986). Merry similarly describes how people navigate State law, customary law and religious norms in ordinary social life (Merry, 1988). Tamanaha shows that legal pluralism is not confined to traditional societies but is a feature of modern legal orders as well (Tamanaha, 2008).

In India, legal pluralism is most visible in personal law. Family relations are governed through religiously differentiated regimes. This accommodation is often justified as a means of protecting minority identity and recognising social diversity. Yet personal law pluralism also raises hard constitutional questions. If community autonomy protects religious identity, it may also preserve internal inequality. Women may experience personal law not as cultural freedom, but as legal subordination. The challenge is to ensure that pluralism does not become a shield against equality.

The Indian Constitution tries to manage this through a combination of rights and reform. Article 25 protects religious freedom but permits social welfare and reform. Articles 29 and 30 protect cultural and educational rights of minorities. The Directive Principles include Article 44, which envisages a Uniform Civil Code. This creates a tension between pluralism and uniformity. A uniform code may be defended as promoting equality, but it may also be feared as majoritarian assimilation if enacted without trust, deliberation and sensitivity to minority rights. The constitutional task is therefore not simply to choose pluralism or uniformity. It is to examine the conditions under which either model can secure equal citizenship.

In Indonesia, legal pluralism operates through national law, adat, Islamic legal norms, religious courts, regional regulations and administrative recognition. The State incorporates religious norms within positive law, especially in family law and religious courts. Aceh adds a more intense form of pluralism through Islamic criminal law. The Ministry of Religious Affairs, MUI and local harmony forums create additional layers of normative authority. This produces a system in which religion is not merely protected by law. It is co-produced by law, administration and religious authority.

Recognition is central to both systems. In India, recognition usually occurs through constitutional rights and statutory categories rather than a closed list of recognised religions. The State recognises religious denominations, minority educational institutions and personal law communities. This recognition can protect diversity, but it can also produce contestation over who qualifies as a minority, what counts as denomination, and which practices deserve protection. The essential practices doctrine is a judicial method of recognition because it decides which practices are legally visible as religion.

In Indonesia, recognition is more direct and bureaucratic. The State historically distinguished recognised religions from unrecognised beliefs. This distinction affected identity documents, marriage registration, and educational access. Decision No. 97/PUU-XIV/2016 widened recognition for indigenous beliefs, but the underlying structure of bureaucratic legibility remains. The State still decides the terms on which belief enters public administration. This model protects some communities while leaving others vulnerable. Regulation is equally central. In India, regulation appears through temple administration, religious endowments, anti-conversion laws, personal law reform, and judicial review. In Indonesia, regulation appears through blasphemy law, religious education, places of worship regulations, population administration, and regional religious laws. Regulation may be justified by equality, reform, order or harmony. Yet its legitimacy depends upon whether it is even-handed and rights-respecting. Regulation

becomes constitutionally suspect when it burdens minorities disproportionately or when it converts majority sentiment into public law.

The role of public order in India and harmony in Indonesia is especially important. Both concepts claim to prevent conflict. Both can also reward the threat of conflict. If a minority practice is restricted because it provokes majority hostility, the law shifts the burden from the aggressor to the rights-holder. This is a central danger in plural societies. Constitutional law must distinguish between genuine threats to public peace and socially manufactured disorder. Otherwise, public order and harmony become instruments of domination.

Courts are central in this process. Indian courts define essential practices, apply equality, review State intervention and articulate secularism as basic structure. Indonesian courts interpret Pancasila, uphold or limit religious regulation and decide questions of recognition. Courts may protect minorities, but they may also defer to majoritarian sentiment or bureaucratic authority. Cover's idea of nomos and narrative is helpful because courts do not merely apply rules. They decide which normative world receives legal recognition and which is suppressed (Cover, 1983).

This brings the discussion back to constitutional pluralism. A plural constitution must do more than acknowledge diversity. It must decide how diversity interacts with equal citizenship. Recognition without equality produces hierarchy. Regulation without restraint produces domination. Autonomy without reform may entrench internal injustice. Reform without sensitivity may become assimilation. India and Indonesia both live within these tensions.

6. COMPARATIVE ASSESSMENT

Promise and Limits of Principled Distance and Pancasila

Principled distance and Pancasila are both postcolonial constitutional attempts to govern religious diversity without adopting strict separation. Each model responds to a different historical problem. India had to create a secular republic after Partition while preserving minority rights and allowing social reform. Indonesia had to create a religiously grounded national philosophy that would prevent an Islamic State while maintaining the public legitimacy of religion. Both models are therefore compromises. Their value lies in their ability to hold together pluralism, order and constitutional authority.

The promise of principled distance lies in its flexibility. It recognises that equal treatment does not always mean identical treatment. A State may need to support minority institutions, regulate religious endowments, reform exclusionary practices or protect cultural autonomy. This flexibility is more suitable for India than strict separation because religion is deeply entangled with personal law, social hierarchy and community identity. A State that simply withdrew from religion might leave oppressive practices untouched and vulnerable minorities unprotected.

Yet flexibility is also the danger of principled distance. If the State can intervene or withdraw depending on context, the criteria for intervention must be rigorous. Otherwise, the model can become selective. Majority practices may be treated as culture, while minority practices are treated as religion requiring regulation. Public order may be invoked against minority assertion. Courts may enter theological questions in ways that narrow religious freedom. The essential practices doctrine shows how a reformist secular model can become judicially intrusive.The promise of Pancasila lies in its capacity to hold together Indonesia's religious diversity without establishing a formal Islamic State. It provides a common national philosophy that acknowledges the centrality of religion while resisting the complete subordination of the State to one religious law. It has allowed Indonesia to recognise several religious communities and maintain a constitutional structure of rights, democracy and plural identity. Decision No. 97/PUU-XIV/2016 shows that Pancasila can be read inclusively to recognise indigenous beliefs.

Yet Pancasila's danger lies in the fact that it makes theistic recognition central to constitutional belonging. The State's commitment to religious harmony may protect peace, but it may also suppress dissent. Blasphemy law, restrictions on places of worship and the vulnerability of heterodox groups show how harmony can become majoritarian discipline. If a person or community must be recognised as properly religious before receiving full protection, freedom of conscience is incomplete. If religious difference is treated as a threat to harmony, pluralism becomes conditional.

The comparison also reveals different forms of majoritarianism. In India, majoritarianism often operates by reinterpreting secularism itself. Majority religion may be presented as national culture, while minority claims are treated as special pleading. The danger is not always formal establishment. It is the informal constitutional normalisation of majority identity. In Indonesia, majoritarianism often operates through recognised religious orthodoxy, religious councils, blasphemy prosecutions and local regulations. The danger is not always the formal establishment of Islam. It is the conversion of dominant religious sensibility into the standard of public order.

Both models also raise questions about judicial role. In India, courts are central to secularism, equality and religious freedom. Yet the same courts have developed doctrines that require them to determine religious essentiality. In Indonesia, the Constitutional Court has sometimes expanded recognition, but it has also upheld blasphemy law on harmony grounds. Judicial review therefore has an ambivalent role in both jurisdictions. It can deepen constitutional pluralism, but it can also legitimate restriction.

From a comparative perspective, principled distance appears more explicitly rights-based, while Pancasila appears more explicitly harmony-based. This distinction should not be overstated. Indian secularism also uses public order and social peace. Indonesian

constitutionalism also uses rights language and equality. The difference lies in constitutional emphasis. India formally centres secularism and rights, and then negotiates religion through reform and adjudication. Indonesia formally centres theistic national philosophy, and then negotiates pluralism through recognition and harmony. Both systems oscillate between inclusion and control. The normative question is therefore not which model is closer to Western secularism. The more important question is which model better protects equal citizenship in practice. A constitution may be formally secular and still permit majoritarian outcomes. A constitution may be formally theistic and still protect some forms of pluralism. The legal form matters, but institutional practice matters more. Principled distance and Pancasila must therefore be judged by their effects on minorities, dissenters, women, heterodox communities and persons whose conscience does not fit dominant categories.

A mature postcolonial theory of secularism and religious harmony must insist on three conditions. First, recognition must not produce hierarchy. Secondly, regulation must be justified by constitutional principle and not by majoritarian pressure. Thirdly, restraint must apply both to religious power and to State power. These conditions are demanding, but they are necessary. Without them, principled distance becomes selective secularism and Pancasila becomes controlled pluralism.

7. CONCLUSION

Principled distance and Pancasila are among the most important postcolonial models for understanding the constitutional governance of religion. They show that the relation between law, State and religion cannot be reduced to the Western binary of separation and establishment. India and Indonesia both reject strict privatisation of religion, but they do so through different constitutional paths. India adopts secularism while allowing constitutionally guided engagement with religion. Indonesia adopts a theistic national philosophy while rejecting a formal theocratic State.These models should not be treated as inferior versions of Western secularism. They are independent constitutional settlements shaped by colonial legal pluralism, anti-colonial struggle, religious diversity and the urgent need to preserve national unity. Their experience enriches comparative constitutional law because it forces theory to confront religion as institution, identity, law and public authority rather than merely as private belief. At the same time, neither model should be romanticised.

Principled distance is vulnerable to selective State intervention, judicial theological overreach and majoritarian reinterpretation of secularism. Pancasila is vulnerable to bureaucratic classification, blasphemy regulation and the use of harmony to discipline minority or heterodox belief. Both models show that pluralism can be protected by law, but it can also be managed into hierarchy. The central lesson is that constitutional pluralism requires more than recognition of diversity. It requires equal citizenship, principled regulation and institutional restraint. It must protect religious communities without abandoning individuals within those communities. It must allow public religion without allowing religious majorities to define the nation. It must allow State engagement without permitting the State to become a theological authority.

India and Indonesia, therefore, offer a shared yet difficult insight. The problem is not whether religion can be banished from constitutional life. It cannot. The question is whether constitutional law can engage religion without surrendering equality, conscience and democratic legitimacy. Principled distance and Pancasila remain important because they attempt to answer that question from within postcolonial history. Their success will depend on whether courts, legislatures and administrators use them to deepen plural citizenship or to stabilise hierarchy under the language of reform, order or harmony.

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