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UNIVERSAL HUMAN RIGHTS OR CULTURAL RELATIVISM? REASSESSING THE UNIVERSALITY OF HUMAN RIGHTS IN THE INDIAN CONTEXT

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INTRODUCTION:

Human rights are generally understood as rights inherent to every human being by virtue of being human. They are not conceived as privileges granted by the State or as entitlements dependent upon citizenship, social status, nationality, religion, or cultural identity. This conception received its most influential international articulation through the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly on December 10, 1948. The Declaration proclaimed a common standard of achievement for “all peoples and all nations” and affirmed the inherent dignity and equal and inalienable rights of all members of the human family.² Its significance lies not merely in enumerating particular civil, political, economic, social, and cultural rights, but in establishing the idea that certain fundamental standards of human dignity possess universal significance.

The claim of universality, however, exists within a world characterized by profound cultural diversity. Human beings live within different religious traditions, customary systems, social structures, moral frameworks, and historical experiences. Concepts concerning individual autonomy, family, community, gender, religion, property, authority, and social responsibility may therefore be understood differently across societies. This creates a fundamental theoretical question: can human rights be genuinely universal while their interpretation and implementation occur within culturally diverse societies? The tension forms the foundation of the debate between universalism and cultural relativism.

The universality of human rights is sometimes criticized as reflecting predominantly Western philosophical and political assumptions. Such criticism, however, risks presenting the history of the UDHR as a simple confrontation between a homogeneous “West” and a homogeneous “non-West.” The drafting process was considerably more complex. The Commission on Human Rights and its drafting bodies included representatives from countries and traditions spanning different geographical, political, cultural, and intellectual backgrounds, including China, Lebanon, India, Chile, France, Australia, the Soviet Union, the United Kingdom, and

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² Universal Declaration of Human Rights pmb., G.A. Res. 217 (III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

the United States.³ The United Nations itself describes the Declaration as having been drafted by representatives with different legal and cultural backgrounds from different regions of the world.⁴

Non-Western participation also materially influenced the text. Peng-chun Chang of China contributed to the philosophical and conceptual development of the Declaration, while Indian delegate Hansa Mehta played an important role in ensuring that Article 1 referred to “all human beings” rather than language that could be interpreted as referring only to men.⁵ Representatives from Latin America, Asia, the Middle East, and other regions likewise contributed to debates concerning equality, social and economic rights, cultural rights, and human dignity.⁶

Consequently, the universality debate cannot be reduced to whether Western values should be imposed upon non-Western societies. A more nuanced inquiry is whether universal human-rights principles can coexist with legitimate cultural diversity while preventing culture from being invoked to justify violations of human dignity and equality. This question becomes particularly significant in the Indian context, where constitutional commitments to dignity, equality, liberty, religious freedom, and cultural rights operate alongside a pluralistic society containing diverse religious, linguistic, customary, and social traditions.

CONCEPTUAL FOUNDATIONS: UNIVERSALISM AND CULTURAL RELATIVISM:

A. Meaning of Human-Rights Universalism:

Human-rights universalism rests on the proposition that certain rights belong to every person by virtue of inherent human dignity, irrespective of nationality, race, sex, religion, culture, or social status. The Universal Declaration of Human Rights (“UDHR”) expresses this foundation by affirming that all human beings are born free and equal in dignity and rights.⁷ Universality therefore establishes the common entitlement of all persons to fundamental human rights, while equality and non-discrimination require that such rights be enjoyed without distinctions prohibited by international law.⁸

³United Nations, Drafters of the Declaration, United Nations. The original drafting committee was composed of representatives associated with Australia, China, Chile, France, Lebanon, the Soviet Union, the United Kingdom, and the United States, with John Humphrey of Canada providing the preliminary draft.

⁴ Office of the U.N. High Commissioner for Human Rights, Universal Declaration of Human Rights, OHCHR.

⁵ Universal Declaration of Human Rights, U.N. Dep't of Pub. Information, India, the U.N. High Commissioner for Human Rights, Statement on the 70th Anniversary of the Universal Declaration of Human Rights (2018) (discussing the contributions of Hansa Mehta and Peng-chun Chang).

⁶ Towards a Global History of the Universal Declaration of Human Rights, annex to Rep. of the U.N. High Comm'r for Hum. Rts., U.N. Doc. A/73/227 (2018) (describing contributions from different regions and characterizing the Declaration as an intercultural product of dialogue among persons with different cultural and religious backgrounds).

⁷ Universal Declaration of Human Rights art. 1, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948)

⁸ Id arts.2,7.

Universalism is also connected with the principles of indivisibility and interdependence. The Vienna Declaration and Programme of Action expressly reaffirmed that “all human rights are universal, indivisible and interdependent and interrelated.”⁹ Civil and political rights cannot therefore be treated as inherently superior to economic, social, cultural, or collective dimensions of human rights. The realization of one category of rights may depend upon the protection of others.

Importantly, however, universal entitlement does not require uniform cultural implementation. Universalism establishes the existence and basic content of rights; it does not necessarily prescribe one identical institutional, legal, or cultural mechanism through which every society must realize them. The Vienna Declaration itself recognizes the significance of national and regional particularities and different historical, cultural, and religious backgrounds while simultaneously affirming the duty of States to promote and protect human rights.¹⁰ Thus, the distinction between universal entitlement and culturally contextual implementation provides a basis for reconciling universal standards with legitimate diversity.

B. Philosophical Basis of Universalism:

The intellectual foundations of universalism can be traced to ideas of natural rights, human dignity, equality, autonomy, and the inherent worth of the individual. Natural-rights theories conceive certain rights as preceding or existing independently of governmental recognition. The modern human-rights framework transforms this philosophical idea into an international legal commitment: individuals possess rights because they are human rather than because a State chooses to confer them.

Human dignity provides a particularly important contemporary foundation. The UDHR begins by recognizing the “inherent dignity” and “equal and inalienable rights” of all members of the human family.¹¹ Equality prevents the attribution of lesser human worth to individuals on the basis of status or identity, while autonomy recognizes the individual as a rights-bearing subject capable of making fundamental choices concerning life, belief, identity, and participation in society. These principles collectively support the proposition that culture cannot determine whether a person possesses basic human rights in the first place.

C. Cultural Relativism:

Cultural relativism challenges the assumption that human-rights norms can be understood independently of cultural context. In its broader anthropological development, cultural relativism emerged partly as a response to ethnocentric judgments that evaluated other societies according to the standards of one's own culture. Franz Boas emphasized the importance of understanding cultures within their particular historical contexts, while Ruth Benedict and

⁹ World Conference on Human Rights, Vienna Declaration and Programme of Action 5, U.N. Doc. A/CONF.157/23 (June 25, 1993). The Vienna Declaration expressly recognizes universality, indivisibility, interdependence, and interrelatedness while also requiring consideration of national and regional particularities.

¹⁰ Ibid.

¹¹ Universal Declaration of Human Rights, *supra* note 1, pmbl.

Melville Herskovits further developed approaches emphasizing cultural diversity and the contextual character of social values.¹²

Applied to human rights, cultural relativism suggests that concepts of morality, family, community, authority, religion, gender, and individual responsibility may be shaped by particular historical and cultural circumstances. Supporters consequently argue that cultural diversity is legitimate; that international human-rights standards may sometimes reflect dominant Western assumptions; that externally imposed norms can weaken local legitimacy; that communities possess legitimate interests in preserving cultural identity; and that rights should be interpreted with sensitivity to social context.¹³

This argument does not necessarily require rejecting all universal standards. A moderate form of relativism can instead insist that context matters in interpreting and implementing universal rights. Indeed, international human-rights practice itself recognizes the relevance of historical, cultural, and religious circumstances while maintaining universal human-rights obligations.¹⁴

D. Critiques of Cultural Relativism:

The principal difficulty with strong cultural relativism is determining whether the existence of a cultural or traditional practice is sufficient to justify its continuation. If cultural acceptance alone were decisive, practices involving discrimination, coercion, violence, restrictions on autonomy, or unequal treatment of vulnerable persons could potentially escape human-rights scrutiny merely because they are longstanding or socially accepted.

This concern is particularly significant for women, children, and minorities within cultural communities. International human-rights bodies have repeatedly emphasized that cultural, traditional, or religious attitudes cannot automatically justify discrimination or violations of women's equality.¹⁵ Similar concerns arise where children are subjected to harmful practices or where minority individuals are denied autonomy in the name of community identity.

¹² Franz Boas, *The Mind of Primitive Man* (1911); Ruth Benedict, *Patterns of Culture* (1934); Melville J. Herskovits, *Man and His Works: The Science of Cultural Anthropology* (1948). See also Philip Alston & Ryan Goodman, *International Human Rights* 459–60 (Oxford Univ. Press 2013) (discussing the historical development and competing formulations of cultural relativism). The OHCHR-hosted material similarly describes Boas and his students as central to the development of cultural relativism in twentieth-century anthropology.

¹³ Alston & Goodman, *supra* note 6, at 459–60 (describing relativist arguments concerning cultural diversity, local autonomy, and the rejection of claims that particular cultural values should automatically be imposed across societies).

¹⁴ Vienna Declaration and Programme of Action, *supra* note 3, ¶ 5. The Declaration expressly requires attention to national, regional, historical, cultural, and religious particularities while maintaining universal human-rights obligations.

¹⁵ Comm. on the Elimination of Discrimination Against Women, General Recommendation No. 21: Equality in Marriage and Family Relations, 5–7, U.N. Doc. A/49/38 (1994); Office of the U.N. High Comm'r for Hum. Rts., *Women's Rights Are Human Rights* 28–29 (2014). The OHCHR materials specifically discuss the use of culture and tradition to justify discriminatory practices affecting women and emphasize that cultural norms cannot simply override women's human rights.

The critical distinction is therefore between culture as context and culture as justification. Culture may explain why a practice exists, how it is understood by a community, and how a right should appropriately be implemented. It does not, by itself, determine whether the practice is compatible with human-rights obligations. UNESCO's Universal Declaration on Cultural Diversity expressly recognizes cultural diversity while providing that cultural diversity may not be invoked to infringe human rights or limit their scope.¹⁶

Accordingly, the more defensible theoretical position lies between rigid universalism and unrestricted relativism: universal human rights establish a normative floor of dignity, equality, and freedom, while cultural context remains relevant to their interpretation and implementation. The central question is therefore not whether culture should matter, but how far cultural considerations may legitimately influence rights without becoming a justification for violating the rights of individuals within the culture itself.

INTERNATIONAL HUMAN-RIGHTS FRAMEWORK:

A. Universal Declaration of Human Rights, 1948:

The Universal Declaration of Human Rights ("UDHR") provides the foundational international framework for contemporary human-rights protection. Adopted by the United Nations General Assembly on December 10, 1948, it was drafted by representatives from different legal and cultural backgrounds and established fundamental rights intended for universal protection.¹⁷ Article 1 declares that all human beings are born free and equal in dignity and rights, thereby placing human dignity and equality at the centre of the international human-rights system.¹⁸ Article 2 reinforces this principle through a broad prohibition of discrimination, requiring rights to be enjoyed without distinctions such as race, sex, religion, or national or social origin.¹⁹

The UDHR also protects dimensions of individual and cultural autonomy. Article 18 guarantees freedom of thought, conscience, and religion, including the freedom to change one's religion or belief and to manifest it individually or collectively.²⁰ Article 27 recognizes the right of everyone to participate freely in the cultural life of the community, enjoy the arts, and share in scientific advancement and its benefits.²¹ Thus, the UDHR does not conceive universality as requiring the abandonment of cultural identity; rather, it protects both universal individual rights and participation in cultural life.

B. ICCPR and ICESCR:

¹⁶ UNESCO, Universal Declaration on Cultural Diversity art. 4, Nov. 2, 2001, 41 I.L.M. 57 (2002). Article 4 recognizes the protection of cultural diversity as inseparable from human dignity but expressly provides that cultural diversity cannot be invoked to infringe human rights or limit their scope.

¹⁷ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); Office of the U.N. High Comm'r for Hum. Rts., *Universal Declaration of Human Rights*.

¹⁸ Universal Declaration of Human Rights, *supra* note 1, art. 1.

¹⁹ *Id.* art. 2.

²⁰ *Id.* art. 18.

²¹ *Id.* art. 27.

The International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), adopted in 1966, transformed many UDHR principles into treaty obligations. Together with the UDHR, they constitute the core of the International Bill of Human Rights.²²

The ICCPR protects equality and non-discrimination, life, liberty and security of person, freedom of thought, conscience and religion, freedom of expression, peaceful assembly, and participation in public affairs.²³ Importantly for cultural diversity, Article 27 provides that persons belonging to ethnic, religious, or linguistic minorities shall not be denied the right to enjoy their own culture, profess and practise their religion, or use their language.²⁴

The ICESCR complements these civil and political guarantees through economic, social, and cultural rights. It recognizes rights relating to work, social security, education, and participation in cultural life.²⁵ Article 15 specifically recognizes everyone's right to take part in cultural life and requires States to take steps toward the conservation, development, and diffusion of science and culture.²⁶

C. Vienna Declaration, 1993:

The Vienna Declaration and Programme of Action provides an important bridge between universalism and cultural diversity. Paragraph 5 unequivocally reaffirms that all human rights are universal, indivisible, interdependent, and interrelated. At the same time, it requires the significance of national and regional particularities and historical, cultural, and religious backgrounds to be borne in mind.²⁷ Crucially, this recognition of diversity is accompanied by an affirmation that States, regardless of their political, economic, or cultural systems, have a duty to promote and protect human rights.²⁸

The Vienna formulation therefore rejects both extremes: it does not require cultural uniformity, but neither does it permit cultural particularity to displace universal human-rights obligations. Universality establishes the common normative framework, while cultural context may influence its interpretation and implementation.

D. Cultural Rights and Human Rights:

International human-rights law does not treat culture as inherently opposed to human rights. Cultural participation is itself protected as a human right under Article 27 of the UDHR and Article 15 of the ICESCR.²⁹ The Human Rights Council has expressly recognized that cultural

²² Office of the U.N. High Comm'r for Hum. Rts.

²³ International Covenant on Civil and Political Rights arts. 2, 6–9, 18–19, 21–22, 25–26, Dec. 16, 1966, 999 U.N.T.S. 171.

²⁴ Id. art. 27; see also Office of the U.N. High Comm'r for Hum. Rts., *Human Rights Translated*, at 63–64.

²⁵ International Covenant on Economic, Social and Cultural Rights arts. 6–15, Dec. 16, 1966, 993 U.N.T.S. 3.

²⁶ Id. art. 15(1)(a)–(c); Office of the U.N. High Comm'r for Hum. Rts., *International Covenant on Economic, Social and Cultural Rights*.

²⁷ World Conference on Human Rights, *Vienna Declaration and Programme of Action* ¶ 5, U.N. Doc. A/CONF.157/23 (June 25, 1993).

²⁸ *Ibid.*

²⁹ Universal Declaration of Human Rights, *supra* note 1, art. 27; International Covenant on Economic, Social and Cultural Rights, *supra* note 9, art. 15.

rights are an integral part of universal, indivisible, interrelated, and interdependent human rights and that respect for cultural diversity and universal human-rights protection should reinforce one another.³⁰

The international framework therefore establishes an important principle for the Indian context: protecting culture and protecting universal human rights are not necessarily competing objectives. Cultural identity deserves protection where it advances human dignity and participation, but cultural diversity cannot automatically be invoked to restrict rights guaranteed by international law.³¹ This provides the conceptual foundation for examining how India balances its constitutional commitment to pluralism with universal principles of equality, dignity, liberty, and non-discrimination.

THE INDIAN CONSTITUTIONAL FRAMEWORK:

A. Constitutional Commitment to Universal Rights:

The Indian Constitution provides a distinctive constitutional framework for reconciling universal human-rights values with India's social, religious, and cultural pluralism. Its Fundamental Rights establish equality, liberty, dignity, and non-discrimination as constitutional commitments applicable across communities. Article 14 guarantees equality before the law and equal protection of the laws, thereby establishing a general constitutional commitment to equality.³² Article 15 prohibits discrimination on specified grounds including religion, race, caste, sex, and place of birth, while permitting constitutionally authorized measures addressing historical and social disadvantage.³³ Article 17 goes further by abolishing "untouchability" and prohibiting its practice in any form.³⁴ Together, these provisions demonstrate that cultural or customary practices cannot automatically receive constitutional protection where they conflict with the Constitution's commitment to equal citizenship.

Article 19 protects several freedoms essential to individual autonomy, including speech and expression, peaceful assembly, association, movement, residence, and occupation, subject to constitutionally prescribed restrictions.³⁵ Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law.³⁶ Through constitutional interpretation, the Supreme Court has developed Article 21 into a broader protection of dignity, autonomy, privacy, and conditions necessary for meaningful human existence.³⁷ The constitutional framework therefore protects the individual not merely as a member of a cultural or religious community but as an autonomous rights-bearing person.

³⁰ Human Rights Council Res. 28/9, *Mandate of the Special Rapporteur in the Field of Cultural Rights*, ¶¶ 1–8, U.N. Doc. A/HRC/RES/28/9 (Apr. 10, 2015).

³¹ Comm. on Econ., Soc. & Cultural Rts., General Comment No. 21, *Right of Everyone to Take Part in Cultural Life* (Art. 15, Para. 1(a), of the International Covenant on Economic, Social and Cultural Rights), ¶ 18, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009).

³² Article 14 of the constitution of India.

³³ Id. art. 15(1).

³⁴ Id. art. 17.

³⁵ Id. art. 19(1), (2)–(6).

³⁶ Id. art. 21.

³⁷ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.R. 621, 661–64 (India); *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 S.C.C. 1, 263–66 (India) (recognizing privacy as constitutionally protected and emphasizing dignity and autonomy as constitutional values).

B. Protection of Cultural and Religious Diversity:

The Constitution simultaneously recognizes the importance of religious freedom and cultural diversity. Article 25 guarantees to all persons freedom of conscience and the right freely to profess, practise, and propagate religion.³⁸ Article 26 protects the rights of religious denominations to establish and maintain religious and charitable institutions, manage their own affairs in matters of religion, own and acquire property, and administer such property in accordance with law.³⁹

However, these protections are not absolute. Article 25 expressly makes religious freedom subject to public order, morality, health, and the other provisions of Part III.⁴⁰ This qualification is constitutionally significant: religious freedom is protected, but it does not operate as a complete exemption from other Fundamental Rights. Similarly, Article 26 expressly subjects denominational rights to public order, morality, and health.⁴¹ The constitutional structure consequently requires courts to reconcile religious freedom with competing constitutional guarantees rather than treating religious or customary authority as automatically determinative. Articles 29 and 30 further protect cultural and educational interests. Article 29(1) protects the right of any section of citizens having a distinct language, script, or culture to conserve the same, while Article 30 protects the right of religious and linguistic minorities to establish and administer educational institutions of their choice.⁴² These provisions demonstrate that Indian constitutionalism does not pursue assimilation as the price of equality. Cultural identity itself receives constitutional protection. The resulting framework is therefore neither culturally indifferent nor culturally absolute. Culture and religion are constitutionally protected, but their protection exists within a broader constitutional order founded upon equality, liberty, dignity, and other Fundamental Rights.

C. Article 51(c) and International Human Rights:

Article 51(c) directs the State to “foster respect for international law and treaty obligations in the dealings of organized peoples with one another.”⁴³ Although Article 51 forms part of the Directive Principles and is therefore not enforceable by itself as a Fundamental Right, it provides an important constitutional indication of India's orientation toward international law. Indian courts have consequently considered international human-rights instruments when interpreting constitutional guarantees, particularly where domestic law is silent and international norms are consistent with constitutional principles.⁴⁴ In *Vishaka v. State of Rajasthan*, for example, the Supreme Court relied upon international conventions and norms concerning women's rights while developing constitutional guidelines in the absence of

³⁸ Article 25(1) of Indian constitution.

³⁹ Id. art. 26

⁴⁰ Id. art. 25(1).

⁴¹ Id. art. 26

⁴² Id. arts. 29(1), 30(1).

⁴³ Id. art. 51(c).

⁴⁴ *Jolly Varghese v. Bank of Cochin*, (1980) 2 S.C.C. 360, 366–67 (India) (recognizing the relevance of international obligations in interpreting domestic law); *Vishaka v. State of Rajasthan*, (1997) 6 S.C.C. 241, 249–53 (India).

domestic legislation occupying the field.⁴⁵ The relationship is therefore not one in which international law automatically overrides the Constitution; rather, international human-rights norms can inform constitutional interpretation where compatible with the constitutional text and structure.

D. Constitutional Morality:

The concept of constitutional morality provides a particularly important bridge between universal human-rights principles and culturally contested practices. Constitutional morality requires fidelity to the Constitution's foundational commitments rather than allowing prevailing social or majoritarian morality alone to determine the scope of rights.⁴⁶ In *Navej Singh Johar v. Union of India*, the Supreme Court emphasized that constitutional adjudication must be guided by constitutional morality rather than societal morality and connected the concept with the protection of a pluralistic and inclusive society.⁴⁷

Constitutional morality is consequently relevant where a cultural, religious, or customary practice conflicts with individual dignity or equality. It directs constitutional analysis toward the values embedded in the constitutional order—including liberty, equality, dignity, fraternity, pluralism, and non-discrimination—while recognizing that constitutional rights belong to individuals as well as communities.⁴⁸

This does not mean that courts must disregard culture whenever a cultural practice is contested. Rather, culture forms part of the factual and interpretive context within which constitutional rights operate. The decisive question is whether the challenged practice can coexist with the Constitution's guarantees. Constitutional morality therefore provides a normative framework through which cultural diversity may be protected without permitting cultural or majoritarian preferences to extinguish the equal constitutional status of individuals.

INDIAN JUDICIAL APPROACH: CULTURE, RELIGION AND INDIVIDUAL RIGHTS:

The Indian Supreme Court's jurisprudence demonstrates that the relationship between culture, religion, and human rights cannot be reduced to a simple choice between universalism and cultural relativism. The Court has, in different contexts, protected religious minorities against majoritarian expectations while also refusing to treat religious or customary practices as

⁴⁵ *Vishaka*, 6 S.C.C. at 249–53. The Supreme Court relied upon the Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) and related international norms in formulating safeguards against sexual harassment in the workplace. The Court's judgment is available through the Supreme Court of India's official materials

⁴⁶ *Government of NCT of Delhi v. Union of India*, (2018) 8 S.C.C. 501, 558–60 (India). The Supreme Court described constitutional morality as adherence to constitutional principles and connected it with maintaining the constitutional democratic order

⁴⁷ *Navej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1, 149–51 (India). The Supreme Court expressly distinguished constitutional morality from societal morality and associated constitutional morality with a pluralistic and inclusive constitutional order

⁴⁸ *Navej Singh Johar*, 10 S.C.C. at 149–51; *Justice K.S. Puttaswamy*, 10 S.C.C. at 263–66. The Supreme Court has treated dignity as a foundational constitutional value with significance for the interpretation and protection of fundamental freedoms.

immune from constitutional scrutiny. The central constitutional question is therefore whether cultural or religious autonomy can coexist with the dignity, equality, liberty, and autonomy of individuals.

A. *Bijoe Emmanuel v. State of Kerala*: Protecting Minority Conscience:

Bijoe Emmanuel v. State of Kerala provides a strong example of constitutional protection for individual conscience within a culturally diverse society. Three schoolchildren belonging to the Jehovah's Witnesses faith refused to sing the Indian National Anthem because of their sincerely held religious beliefs. They nevertheless stood respectfully when the Anthem was sung. The school authorities expelled them, relying upon the requirement that students participate in the singing of the National Anthem.⁴⁹

The Supreme Court considered the action primarily under Articles 19(1)(a) and 25(1). It found that the students' refusal to sing was not accompanied by disrespect or disruption and that their religious objection was genuinely and conscientiously held.⁵⁰ The Court emphasized that the constitutional inquiry was not whether the judges considered the belief rational or persuasive, but whether it was genuinely held as part of the individual's religious conscience.⁵¹ The Court consequently ordered the students' reinstatement.⁵²

The significance of *Bijoe Emmanuel* extends beyond the particular religious practice involved. It demonstrates that **universality of constitutional rights can require protection of difference rather than conformity**. A constitutional commitment to equality does not necessarily mean requiring minorities to behave identically to the majority. Instead, equal citizenship may require permitting a minority individual to maintain a distinctive religious conscience, provided that the exercise of that conscience does not violate legitimate constitutional limitations.

The judgment is particularly important for the universalism-relativism debate because the Court did not treat the majority's understanding of patriotism as automatically superior to the minority's religious conscience. Article 25 was interpreted as protecting even an "insignificant minority" in maintaining its identity within the constitutional order.⁵³ The case therefore illustrates **culture and religion as contexts deserving constitutional protection**, rather than as obstacles to universal rights.

⁴⁹ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 S.C.C. 615, 518–19, 530–34 (India). The Supreme Court record confirms that the students belonged to the Jehovah's Witnesses faith, refused to sing the National Anthem because of their religious convictions, but stood respectfully during its rendition.

⁵⁰ *Bijoe Emmanuel*, 3 S.C.C. at 530–34. The Court considered both Article 19(1)(a) and Article 25(1).

⁵¹ *Id.* at 533–34. The Court stated that the relevant question was whether the belief was genuinely and conscientiously held as part of the petitioners' religious faith, rather than whether the belief appealed to judicial reason or sentiment.

⁵² *Id.* at 534.

⁵³ *Id.* at 532–33 (describing Article 25 as reflecting the principle that even an insignificant minority must be able to find its identity under the Constitution).

At the same time, *Bijoe Emmanuel* should not be understood as establishing an unlimited right to religious exemption. Article 25 itself is subject to public order, morality, health, and the other provisions of Part III. The judgment instead establishes that the State must demonstrate a constitutionally sufficient reason before compelling conduct that interferes with genuine religious conscience.⁵⁴

B. *Shayara Bano v. Union of India*: Equality Against a Personal-Law Practice:

If *Bijoe Emmanuel* demonstrates the Constitution protecting religious conscience from majoritarian expectations, *Shayara Bano v. Union of India* demonstrates the opposite side of the constitutional relationship: **religious or personal-law traditions may be subjected to constitutional scrutiny when they affect individual rights.**

The case concerned *talaq-e-biddat*, commonly known as instant triple talaq, under which a Muslim husband could terminate the marital relationship instantaneously and irrevocably by pronouncing talaq three times. Shayara Bano challenged the practice after her husband divorced her through triple talaq, arguing that it violated fundamental rights including equality, non-discrimination, liberty, and dignity.⁵⁵ The five-judge Constitution Bench ultimately set aside the practice by a **3–2 majority**.⁵⁶

The judgments reveal significantly different constitutional routes to the same result. Chief Justice Khehar and Justice Nazeer considered the practice through the framework of Muslim personal law and Article 25, while Justice Kurian Joseph concluded that *talaq-e-biddat* was contrary to the Quran and therefore could not be regarded as an essential part of Islamic practice.⁵⁷ Justices Nariman and Lalit adopted a constitutional approach centred on Article 14 and the doctrine of **manifest arbitrariness**.⁵⁸ They reasoned that the practice permitted the marital relationship to be terminated capriciously and without an opportunity for reconciliation, and therefore failed constitutional standards of equality and non-arbitrariness.⁵⁹

The case presents the central tension of this research paper with unusual clarity. On one side lies the argument for **cultural and religious autonomy**: personal laws may embody religious traditions and community identity, and judicial invalidation of such practices can be viewed as an intrusion into the autonomy of a religious community. On the other lies the claim of **individual constitutional citizenship**: membership in a religious community cannot mean surrendering the basic guarantees of equality and dignity.

⁵⁴ INDIA CONST. art. 25(1); *Bijoe Emmanuel*, 3 S.C.C. at 532–34.

⁵⁵ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1, 9–10 (India). The Supreme Court record identifies the case as the constitutional challenge concerning *talaq-e-biddat* (triple talaq).

⁵⁶ *Shayara Bano*, 9 S.C.C. at 797; see also Supreme Court of India, *Shayara Bano v. Union of India*, W.P. (C) No. 118 of 2016 (Aug. 22, 2017). The Supreme Court's official records identify the matter as decided on August 22, 2017, and report the citation as 2017 9 SCR 797 / (2017) 9 SCC 1.

⁵⁷ *Shayara Bano*, 9 S.C.C. at 195–213 (Khehar, C.J., & Nazeer, J.); id. at 287–91 (Joseph, J.).

⁵⁸ Id. at 102–10 (Nariman, J., concurring); id. at 219–21 (Lalit, J., concurring).

⁵⁹ Id. at 103–05. Justice Nariman concluded that *talaq-e-biddat* was manifestly arbitrary because the marital tie could be broken capriciously and without an attempt at reconciliation.

The Court's reasoning therefore raises a difficult question: when a court invalidates a practice associated with a religious tradition, is it protecting universal equality or overriding cultural autonomy? The answer depends partly on the level at which the right is conceptualized. If the relevant subject is the **community**, judicial intervention may appear culturally intrusive. If the relevant subject is the **individual woman subjected to the practice**, constitutional intervention may instead be understood as protecting her equal status and autonomy.

Shayara Bano consequently illustrates the distinction between **culture as context and culture as justification**. The religious and historical context of personal law remains relevant to constitutional adjudication, but cultural or religious tradition does not automatically determine constitutional validity. The judgment does not establish that every religiously associated practice is unconstitutional; rather, it demonstrates that religious character alone does not place a practice beyond constitutional scrutiny.⁶⁰

C. Indian Young Lawyers Association v. State of Kerala: Religious Practice and Gender Equality:

The Sabarimala litigation provides an even more direct confrontation between religious practice and individual equality. In *Indian Young Lawyers Association v. State of Kerala*, the Supreme Court considered the exclusion of women between the ages of ten and fifty from the Sabarimala temple. The exclusion was defended principally through religious custom, the celibate character attributed to Lord Ayyappa, and the asserted autonomy of the religious denomination.⁶¹

The majority treated the dispute as involving intersecting constitutional guarantees, particularly Articles 14, 15, 17, 21, and 25. It emphasized that Article 25 itself subjects religious freedom to the other provisions of Part III.⁶² Justice Chandrachud's reasoning was particularly significant in connecting religious freedom with individual dignity and equality. The exclusion of women on the basis of menstruation or assumptions concerning female purity was examined not merely as a question of religious doctrine but as a question concerning equal citizenship and individual dignity.⁶³

The case therefore illustrates a constitutional shift from asking only “**Is this practice religious?**” to also asking “**What does constitutional protection of that practice mean for the rights of the individuals affected by it?**” The Court's reasoning treated constitutional morality as a principle capable of mediating between religious freedom and equality.⁶⁴

⁶⁰ *Shayara Bano*, 9 S.C.C. at 102–10, 287–91.

⁶¹ *Indian Young Lawyers Ass'n v. State of Kerala*, (2019) 11 S.C.C. 1, 19–27 (India) (judgment dated Sept. 28, 2018). The litigation concerned the exclusion of women between the ages of ten and fifty from the Sabarimala temple.

⁶² *Id.* at 106–09. The majority specifically emphasized that Article 25 is subject to the other provisions of Part III.

⁶³ *Id.* at 144–51 (Chandrachud, J.). The judgment examined exclusion based on menstrual status through the constitutional guarantees of dignity, equality, and autonomy.

⁶⁴ *Id.* at 106–12. The majority connected “public morality” under Article 25 with constitutional morality in assessing the exclusionary practice.

Yet *Sabarimala* also exposes the limits and controversies of judicial intervention. Justice Indu Malhotra's dissent emphasized that matters of deep religious faith should ordinarily be approached with judicial restraint and that courts should be cautious about determining the validity of religious practices through external constitutional standards.⁶⁵ Her reasoning represents the strongest competing position within the judgment: religious communities require meaningful autonomy, and excessive judicial intervention may itself threaten pluralism.

The significance of *Sabarimala*, therefore, lies not simply in its outcome but in the competing constitutional theories it exposes. One approach prioritizes **individual equality and dignity**; the other gives greater weight to **religious autonomy and institutional restraint**. The case demonstrates that universal human-rights principles do not eliminate the difficulty of deciding how competing rights should be reconciled.

D. *Navtej Singh Johar v. Union of India*: Individual Autonomy Against Social Morality:

Although *Navtej Singh Johar v. Union of India* did not concern a traditional religious practice in the same direct manner, it is highly relevant to the relationship between cultural morality and individual rights. The Supreme Court considered the constitutionality of Section 377 of the Indian Penal Code insofar as it criminalized consensual sexual relations between adults of the same sex.⁶⁶ The Constitution Bench unanimously held that the provision was unconstitutional to that extent, protecting equality, dignity, privacy, autonomy, and sexual orientation.⁶⁷

The Court distinguished **constitutional morality from prevailing social morality**. Social disapproval of a minority could not, by itself, justify restricting fundamental rights. Constitutional morality instead required the State to respect the equal dignity and autonomy of individuals within a pluralistic society.⁶⁸

The principle is directly relevant to cultural relativism. A practice or moral attitude may be historically established or widely accepted without becoming constitutionally decisive. The judgment consequently strengthens the proposition that **majoritarian morality is not synonymous with constitutional legitimacy**.

E. *Joseph Shine v. Union of India*: Individual Dignity and Transformation of Social Morality:

In *Joseph Shine v. Union of India*, the Supreme Court struck down the adultery offence contained in Section 497 of the Indian Penal Code as unconstitutional.⁶⁹ The Court's reasoning challenged a legal framework rooted in patriarchal assumptions concerning marriage, sexuality, and women's status. Section 497 effectively treated the wife as the object of the

⁶⁵ Id. at 371–424 (Malhotra, J., dissenting).

⁶⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1, 90–94 (India).

⁶⁷ Id. at 193–96, 221–23. The Constitution Bench unanimously invalidated Section 377 insofar as it criminalized consensual sexual conduct between adults of the same sex. The Supreme Court's materials identify the decision as *Navtej Singh Johar*, (2018) 10 SCC 1.

⁶⁸ Id. at 170–73. The Court distinguished constitutional morality from social morality and linked constitutional morality to dignity, fraternity, equality, and the protection of individual choice.

⁶⁹ *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39, 41–43 (India). The Constitution Bench considered the validity of Section 497 of the Indian Penal Code and related provisions.

husband's and another man's relationship rather than as an autonomous rights-bearing individual.⁷⁰

The judgment is significant because it illustrates how constitutional adjudication can question social practices that have acquired legitimacy through historical acceptance. The Court connected equality, dignity, privacy, and autonomy, emphasizing that constitutional rights protect individuals from laws based upon patriarchal conceptions of gender and relationships.⁷¹ Together, *Navtej Singh Johar* and *Joseph Shine* demonstrate a broader principle: **the constitutional validity of a social practice cannot be determined solely by its antiquity, social acceptance, or moral conventionality**. The Constitution supplies an independent normative framework against which such practices must be assessed.

F. Synthesis: Culture as Context, Not Automatic Justification:

Taken together, these cases reveal a nuanced Indian judicial approach. *Bijoe Emmanuel* protects minority religious conscience against majoritarian conformity; *Shayara Bano* subjects a personal-law practice to constitutional scrutiny where individual equality is implicated; *Sabarimala* confronts religious autonomy with gender equality and dignity; and *Navtej Singh Johar* and *Joseph Shine* demonstrate that constitutional rights may protect individual autonomy against prevailing social morality.

The jurisprudence therefore does not support either absolute universalism or unrestricted cultural relativism. The Constitution recognizes religion and culture as important components of pluralism, but it simultaneously establishes **equality, dignity, liberty, and individual autonomy as constitutional limits on social and communal power**. Culture may explain the meaning and historical significance of a practice; it may influence the manner in which rights are implemented; and it may itself deserve constitutional protection. But **cultural recognition does not automatically constitute constitutional justification**.

This approach closely corresponds with the international human-rights framework developed earlier in this paper. Universal rights need not demand cultural uniformity. Rather, the constitutional challenge is to preserve legitimate cultural diversity while ensuring that individuals—particularly members of vulnerable or marginalized groups within cultural communities—remain holders of equal and enforceable rights.

Sabarimala / Indian Young Lawyers Association: Religion, Tradition, Gender and Equality:

The Sabarimala litigation represents one of the clearest constitutional confrontations between **religious autonomy and individual equality**. In *Indian Young Lawyers Association v. State of Kerala*, the Supreme Court considered the exclusion of women of menstruating age from entry into the Sabarimala temple. The respondents defended the practice principally through religious tradition, the asserted denominational character of the temple, and the autonomy

⁷⁰ Id. at 112–17.

⁷¹ Id. at 105–17, 128–31. The judgment treated equality, dignity, privacy, and individual autonomy as central constitutional considerations in evaluating the adultery offence.

protected by Articles 25 and 26 of the Constitution.⁷² The case therefore required the Court to determine how far constitutional protection of religious practice extends when its operation produces exclusion based on sex.

The argument for **religious autonomy** begins with Article 25, which guarantees freedom of conscience and the right freely to profess, practise, and propagate religion, and Article 26, which protects the autonomy of religious denominations in matters of religion.⁷³ The respondents argued that the Sabarimala practice formed part of the religious identity and observances of the denomination and that courts should be cautious about determining questions of religious doctrine. The broader **essential religious practices** doctrine also raises the question whether a practice considered integral to a religion receives heightened constitutional protection.⁷⁴ From this perspective, judicial interference with a sincerely maintained religious tradition may itself threaten India's constitutionally protected pluralism. The opposing argument places greater emphasis on **individual rights**. Article 14 guarantees equality, while Articles 15 and 21 provide constitutional protection against discrimination and protect the dignity and autonomy of individuals.⁷⁵ The majority held that Article 25(1) itself is expressly subject to the other provisions of Part III, making religious freedom part of a larger constitutional rights structure rather than an isolated entitlement.⁷⁶ Justice Chandrachud's reasoning particularly connected the exclusion of women with dignity, equality, and the constitutional rejection of practices that subordinate individuals on the basis of sex.⁷⁷

Constitutional morality consequently became central to the majority's reasoning. Rather than allowing prevailing social or religious morality alone to determine constitutional validity, constitutional morality requires practices to be assessed against the foundational commitments of the Constitution.⁷⁸ The dissent of Justice Indu Malhotra, however, emphasized judicial restraint and the difficulty of adjudicating matters of deep religious faith from an external perspective.⁷⁹

The central question is therefore not simply whether a practice is religious, but **whether religious character is sufficient to secure constitutional protection when the practice results in exclusion based on a constitutionally protected characteristic**. *Sabarimala* demonstrates that Indian constitutionalism must simultaneously protect religious pluralism and

⁷² *Indian Young Lawyers Ass'n v. State of Kerala*, (2019) 11 S.C.C. 1, 19–27 (India) (judgment dated Sept. 28, 2018). The Supreme Court's official judgment identifies the case as concerning the ambit of Articles 25 and 26 in relation to the Sabarimala temple.

⁷³ INDIA CONST. arts. 25–26.

⁷⁴ *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, 1954 S.C.R. 1005, 1028–29 (India) (developing the distinction between matters of religion and secular activities associated with religion).

⁷⁵ INDIA CONST. arts. 14, 15, 21.

⁷⁶ *Indian Young Lawyers Ass'n*, 11 S.C.C. at 106–09.

⁷⁷ *Id.* at 144–51 (Chandrachud, J., concurring).

⁷⁸ *Id.* at 106–12; see also *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1, 149–51 (India) (discussing constitutional morality in relation to dignity, equality, and pluralism).

⁷⁹ *Indian Young Lawyers Ass'n*, 11 S.C.C. at 371–424 (Malhotra, J., dissenting).

preserve the equal constitutional status of individuals. It thus reinforces the paper's central distinction: **culture and religion may provide context for constitutional interpretation, but their existence does not automatically determine constitutional justification.**

NAVTEJ SINGH JOHAR AND JOSEPH SHINE: FROM SOCIAL MORALITY TO INDIVIDUAL AUTONOMY:

The constitutional significance of *Navtej Singh Johar* and *Joseph Shine* extends the culture-and-rights debate beyond formal religious practices into the broader domain of **social morality, gender norms, sexuality, autonomy, and individual dignity**. Both decisions demonstrate that historical acceptance or prevailing social attitudes cannot, by themselves, determine the constitutional limits of individual freedom.

A. *Navtej Singh Johar v. Union of India*:

In *Navtej Singh Johar v. Union of India*, the Supreme Court considered Section 377 of the Indian Penal Code, 1860, insofar as it criminalized consensual sexual relations between adults of the same sex. The Constitution Bench unanimously held that the provision was unconstitutional to that extent, grounding its reasoning in **equality, dignity, autonomy, privacy, and sexual orientation**.⁸⁰

A central feature of the judgment was its distinction between **constitutional morality and social morality**. The Court recognized that social attitudes may reflect prevailing majoritarian perceptions, but constitutional rights cannot depend exclusively upon the acceptance of the majority.⁸¹ Individual dignity and autonomy require constitutional protection precisely where individuals or minorities are vulnerable to social prejudice. The Court consequently treated sexual orientation as an intrinsic component of individual identity and rejected stereotypes that reduced persons to assumptions concerning sexuality.⁸²

The principle has significance beyond sexual orientation. If social morality were permitted to determine the scope of fundamental rights, unpopular minorities could lose constitutional protection whenever their identities or choices conflicted with dominant social attitudes. *Navtej* therefore supports the proposition that **constitutional rights operate as limits upon majoritarian social morality rather than merely reflecting it.**

B. *Joseph Shine v. Union of India*:

Joseph Shine v. Union of India similarly challenged the constitutional validity of a historically entrenched legal rule. The Supreme Court struck down Section 497 of the Indian Penal Code,

⁸⁰ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1, 90–94, 193–96 (India).

⁸¹ *Id.* at 149–51; see also *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39, 105–17 (India).

⁸² *Navtej Singh Johar*, 10 S.C.C. at 170–73, 221–23. The Supreme Court's subsequent constitutional jurisprudence has continued to recognize *Navtej* as significant for protection against discrimination and for rejecting stereotypes associated with constitutionally prohibited grounds. See *Deepika Singh v. Central Administrative Tribunal*, (2022) 7 S.C.C. 634, 645–48 (India).

which criminalized adultery in a manner that treated the husband as possessing a legally protected interest in the sexual fidelity of his wife.⁸³

The Court identified the provision's **paternalistic and patriarchal assumptions**, observing that the law effectively deprived married women of independent agency and treated them as subordinate to their husbands.⁸⁴ The constitutional analysis connected equality with dignity, privacy, and decisional autonomy. Marriage could not constitutionally transform a woman into an object of her husband's control.⁸⁵

The significance of *Joseph Shine* lies in its treatment of tradition. The historical existence of a legal rule does not itself establish its constitutional legitimacy. Similarly, a social norm may be widespread without being compatible with individual dignity and equality.

Together, *Navtej Singh Johar* and *Joseph Shine* demonstrate that **tradition and social morality are not automatically constitutional standards**. The Constitution provides an independent normative framework through which established social practices must be evaluated. Their combined significance for the universalism-relativism debate is that cultural context remains relevant, but **individual autonomy, equality, and dignity establish limits beyond which social acceptance cannot provide sufficient justification**.

THE INDIAN MODEL: TOWARDS CONTEXT-SENSITIVE UNIVERSALISM:

The Indian constitutional experience suggests that the universalism-relativism debate need not be resolved by choosing one theory at the expense of the other. A more suitable approach is **context-sensitive universalism**: universal human-rights principles provide the normative baseline, while cultural, religious, historical, and social context informs their interpretation and implementation. This approach recognizes diversity without allowing cultural identity to become an automatic justification for limiting individual rights.

1. Universal Normative Baseline:

Certain principles should operate as a minimum constitutional baseline irrespective of cultural context. These include **human dignity, equality, liberty, non-discrimination, bodily autonomy, and freedom of conscience**. The Indian Constitution protects these values through Articles 14, 15, 19, 21, and 25, while international instruments reinforce them through the UDHR, ICCPR, and ICESCR.⁸⁶ The baseline does not require every society to organize itself identically; rather, it establishes limits below which individual human dignity and equal citizenship cannot fall.

⁸³ *Joseph Shine*, 3 S.C.C. at 41–43.

⁸⁴ Id. at 105–17. The Court criticized the paternalistic conception of women embedded in the former adultery offence and its treatment of married women as lacking independent sexual and decisional agency.

⁸⁵ Id. at 112–31. The judgment connected the invalidity of the offence with constitutional guarantees of equality, dignity, privacy, and individual autonomy.

⁸⁶ INDIA CONST. arts. 14, 15, 19, 21, 25; Universal Declaration of Human Rights arts. 1–2, 18, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); International Covenant on Civil and Political Rights arts. 2, 18, 26, Dec. 16, 1966, 999 U.N.T.S. 171.

2. Cultural Contextualisation:

Universal rights nevertheless operate within particular societies. Their interpretation may therefore legitimately consider **history, religion, community practices, linguistic diversity, customary traditions, and social realities**. Articles 25–30 of the Constitution demonstrate that Indian constitutionalism itself protects religious and cultural identity.⁸⁷ The Vienna Declaration similarly recognizes national, regional, historical, cultural, and religious particularities while reaffirming the universality of human rights.⁸⁸ Cultural context should therefore inform constitutional reasoning without becoming determinative of the outcome.

3. Constitutional Compatibility Test:

This paper proposes a **Constitutional Compatibility Test** for evaluating culturally or religiously contested practices:

Step 1 — Genuine Identity Connection: Is the practice genuinely connected to the cultural or religious identity asserted in its defence?

Step 2 — Rights Identification: What individual or group constitutional right is affected by the practice?

Step 3 — Discrimination and Coercion: Does the practice impose unequal treatment, coercion, exclusion, or a serious interference with individual autonomy?

Step 4 — Constitutional Protection: Does the Constitution expressly protect the practice or the interest underlying it, such as religious freedom, cultural conservation, or denominational autonomy?

Step 5 — Rights Reconciliation: Can the competing interests be accommodated without eliminating either constitutional value?

Step 6 — Constitutional Limitation: If reconciliation is impossible, does the Constitution itself provide a sufficient basis for restricting the practice?

The framework is intended to prevent two opposite errors. **Rigid universalism** may disregard legitimate cultural difference, while **unrestricted cultural relativism** may permit community practices to override the rights of individuals within those communities. The proposed test instead treats culture as **context rather than conclusive justification**.

Its principal contribution is therefore methodological. It does not ask whether universalism or cultural relativism is inherently superior. It asks whether a particular cultural practice can coexist with the constitutional rights of the persons affected by it. In this model, **universal principles establish the constitutional floor, cultural context informs the analysis, and constitutional compatibility determines the permissible boundary**.⁸⁹

⁸⁷ INDIA CONST. arts. 25–30.

⁸⁸ World Conference on Human Rights, *Vienna Declaration and Programme of Action* ¶ 5, U.N. Doc. A/CONF.157/23 (June 25, 1993). The Declaration simultaneously recognizes national and regional particularities and historical, cultural, and religious backgrounds while reaffirming that all human rights are universal, indivisible, interdependent, and interrelated.

⁸⁹ **Analytical basis for the proposed test:** The six-step framework is **the proposed contribution of this paper**, rather than a claim that the Supreme Court has formally articulated a test using these exact steps. Its components draw comparatively from the constitutional treatment of religious freedom and competing rights in *Bijoe*

CRITICAL EVALUATION:

Neither universalism nor cultural relativism is free from difficulty. An excessively universalist approach may reproduce the very power asymmetries that human-rights law seeks to overcome. Universal standards can be perceived as **cultural imperialism** when norms developed within particular historical and philosophical traditions are presented as culturally neutral or imposed without adequate engagement with local communities.⁹⁰ Such an approach may insufficiently appreciate community identity, religious traditions, and historically specific social structures. Judicial enforcement may also become paternalistic if courts assume that they possess the authority to determine what is beneficial for communities without adequately considering the voices of those affected.

Conversely, **excessive cultural relativism** creates an equally serious problem. If cultural acceptance becomes sufficient justification for a practice, discriminatory or coercive practices may become insulated from scrutiny. International human-rights materials recognize that cultural diversity cannot be invoked to infringe universally protected rights.⁹¹ Cultural relativism may also suppress dissenters within communities by treating the community as a homogeneous entity and allowing community authorities to speak on behalf of every member.⁹² This is particularly significant where women, children, religious minorities, or other marginalized persons experience a cultural practice differently from those who defend it.

The deeper analytical problem is therefore the assumption that **“culture” speaks with one voice**. The relevant question is not simply *What does the culture require?* but **Whose understanding of the culture is being presented as authoritative?** The United Nations Special Rapporteur in the field of cultural rights has specifically emphasized the existence of multiple voices within communities and the importance of examining who is recognized as the “authentic voice” of the people.⁹³ Similarly, international human-rights analysis recognizes that

Emmanuel v. State of Kerala, Shayara Bano v. Union of India, Indian Young Lawyers Association v. State of Kerala, Navtej Singh Johar v. Union of India, and Joseph Shine v. Union of India. See *Bijoe Emmanuel v. State of Kerala*, (1986) 3 S.C.C. 615, 530–34 (India); *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1, 102–10, 287–91 (India); *Indian Young Lawyers Ass’n v. State of Kerala*, (2019) 11 S.C.C. 1, 106–12, 144–51 (India); *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1, 149–73 (India); *Joseph Shine v. Union of India*, (2019) 3 S.C.C. 39, 105–31 (India).

⁹⁰ Philip Alston & Ryan Goodman, *International Human Rights* 459–61 (Oxford Univ. Press 2013) (discussing cultural-relativist objections to universal human-rights standards and concerns regarding Western cultural assumptions); see also U.N. Office of the High Comm’r for Hum. Rts., *International Human Rights*, ch. 7, at 461–62 (discussing cultural relativism, universalism, and claims of cultural imperialism).

⁹¹ Comm. on Econ., Soc. & Cultural Rts., General Comment No. 21, 18–19, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009). The Committee recognizes the relevance of national, regional, historical, cultural, and religious backgrounds while emphasizing that cultural diversity cannot be invoked to infringe human rights.

⁹² Farida Shaheed, Special Rapporteur in the Field of Cultural Rights, *Cultures, Traditions and Violence Against Women*, Office of the U.N. High Comm’r for Hum. Rts. (2011) (emphasizing that communities contain multiple voices and questioning which voice is treated as the legitimate or “authentic” voice of the community).

⁹³ Id. The Special Rapporteur specifically identifies the question of “who speaks for the community” as important when cultural practices are invoked in human-rights debates.

women may be excluded from defining and developing their own cultural life when community authorities invoke culture to justify unequal treatment.⁹⁴

This internal diversity changes the universalism-relativism debate. An individual's rejection of a practice may itself constitute an expression of cultural, religious, or personal identity. Consequently, protecting a community's autonomy at the expense of its dissenting members may paradoxically undermine the very cultural diversity that relativism seeks to preserve.

The more defensible approach is therefore **context-sensitive universalism**: universal rights establish a minimum standard of dignity and equality, while cultural context informs their interpretation. Culture deserves constitutional and human-rights protection, but **no community should be treated as having a single, uncontested voice, and no individual should be required to surrender fundamental rights merely because a practice is characterized as culturally authentic.**

CONCLUSION:

The debate between universalism and cultural relativism cannot be adequately resolved by treating either as an absolute principle. Human rights possess a universal normative foundation because dignity, equality, liberty, non-discrimination, and individual autonomy cannot depend entirely upon cultural membership. The UDHR, ICCPR, and ICESCR establish this universal orientation, while the Vienna Declaration expressly reaffirms that human rights are universal, indivisible, interdependent, and interrelated. At the same time, international human-rights law does not require cultural uniformity. The Vienna Declaration acknowledges national and regional particularities and historical, cultural, and religious backgrounds while maintaining the obligation of States to promote and protect human rights.

The Indian constitutional framework reflects a similar reconciliation. Articles 14, 15, 19, and 21 establish powerful guarantees of equality, liberty, and dignity, while Articles 25–30 protect religious, cultural, and minority identities. The jurisprudence examined in this paper demonstrates that neither dimension can simply be discarded. *Bijoe Emmanuel* illustrates the importance of protecting minority religious conscience against majoritarian conformity, whereas *Shayara Bano*, *Indian Young Lawyers Association*, *Navtej Singh Johar*, and *Joseph Shine* demonstrate that religious tradition, social morality, and historical acceptance cannot automatically determine the constitutional validity of practices affecting individual rights.

The analysis therefore supports four propositions. **First**, human rights possess a universal normative foundation. **Second**, cultural diversity is itself deserving of protection and contributes to the pluralistic character of constitutional democracy. **Third**, cultural, religious, historical, and social context can legitimately influence the interpretation and implementation

⁹⁴ Comm. on Econ., Soc. & Cultural Rts., General Comment No. 21, ¶¶ 15–16, U.N. Doc. E/C.12/GC/21 (Dec. 21, 2009); see also U.N. Office of the High Comm'r for Hum. Rts., *The Right to Take Part in Cultural Life*, U.N. Doc. E/C.12/GC/21 (discussing women's equal participation in defining and developing cultural life).

of rights. **Fourth**, cultural identity cannot automatically justify violations of fundamental constitutional guarantees.

The appropriate Indian model is consequently **context-sensitive constitutional universalism**. Under this approach, universal rights establish a constitutional minimum of dignity and equality; cultural context informs the understanding and practical implementation of those rights; and competing claims are assessed through constitutional compatibility rather than cultural assertion alone. Culture is therefore neither an obstacle to human rights nor an unlimited source of constitutional authority.

Ultimately, the question is not whether India must choose between universal human rights and cultural diversity. Its constitutional experience suggests a more nuanced proposition: **cultural diversity should be protected precisely within a constitutional order that guarantees the equal dignity and freedom of the individuals who constitute those cultures**. This approach permits genuine pluralism without allowing cultural relativism to render universal human-rights protection meaningless.

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