iJRASET
International Journal For Research in Applied Science and Engineering Technology



INTERNATIONAL JOURNAL FOR RESEARCH

IN APPLIED SCIENCE & ENGINEERING TECHNOLOGY

Volume: 13 **Issue:** III **Month of publication:** March 2025

DOI: https://doi.org/10.22214/ijraset.2025.67658

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International Journal for Research in Applied Science & Engineering Technology (IJRASET)
ISSN: 2321-9653; IC Value: 45.98; SJ Impact Factor: 7.538
Volume 13 Issue III Mar 2025- Available at www.ijraset.com

Review of the Constitutional and Legal Challenges Facing Religious Minorities in India

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Abstract: ***This paper reviews the constitutional as well as legal challenges facing religious minorities in India. The Indian constitution provides certain rights to all citizens, including religious minorities, but these rights are often not upheld in practice. This has resulted in ongoing discrimination and marginalization of religious minorities.The two objectives of the study of to examine the constitutional as well as legal provisions and their effectiveness in protecting the rights of religious minorities in India. To analyze the challenges as well as obstacles faced by religious minorities in accessing their rights & seeking justice through the legal system in India.The paper assesses the implementation of constitutional provisions and relevant laws aimed at protecting the rights of religious minorities, & the effectiveness of existing policies and programs aimed at addressing these challenges. The role of the judiciary and other state institutions in addressing the challenges faced by religious minorities is also analyzed. The paper concludes with recommendations for addressing the constitutional & legal challenges facing religious minorities in India, with the goal of promoting equality, freedom, and justice for all citizens, regardless of religion.***
Key words: Constitutional, legal challenges, religious minorities, religion.

I. INTRODUCTION

"India has a rich history and serves as an example of religious harmony, with people of many faiths coexisting peacefully." Religion is a matter of belief or faith. Because they recognizeReligion's significance in Indian society, Articles 25 to 28 of the Indian Constitution protect the right to freedom of religion. The Indian Constitution, which aspires to a secular society, guarantees every person the freedom and right to choose and practice his or her faith. In several cases—the most notable of which was the Kesavananda Bharati case—the Apex Court has held that secularism is the core tenet of the Constitution. The most prevalent faiths in India are Islam, Hinduism, Buddhism, Sikhism, Jainism, as well as Christianity. There are laws in India that are particular to different religions, but the Goa Civil Code is the only one that is consistent. Indians admire and respect the country's diverse religions because the Constitution promotes religious harmony.

1) Religion

"Religion is the recognition of all our duties as divine commands," according to German philosopher Immanuel Kant.
Religion is "a system of beliefs and practices by which a group of people struggles with the ultimate problems of human life," according to American sociologist Milton Yinger.
The terms "religion" and "matters of religion" are not defined in the constitution. Therefore, deciding the judicial interpretation of these phrases is up to the Supreme Court.
The Indian Constitution is a political and legal instrument for the nation. The time it has taken for the people of the country to accept the rules and safeguards that the law of land has given them has been a long time.
Both the federal government and the state governments are autonomous in their respective domains since our nation is federally structured. This encourages the country to have a complicated structure and method for its operation, which will inevitably lead to certain enduring problems in the nation.
As the country works to achieve the highest level of accomplishment in enacting the law of this land in its entirety, certain legal and political complexities need to be examined anew. Certain difficulties need the ability to implement comprehensive changes, allocate resources appropriately, and develop new legal frameworks for Indian residents.

2) Religious Minorities in India

The "Religious Minorities in India Report (2021)," a recently published report on minorities in India, raises worries since it claims that the number of members of the Muslim, Sikh, as well as Christian groups in Indian society is dropping.

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Prominent Muslim activist Afreen Fatima, journalist Aditya Menon, lawyer Vikasan Pillai, social worker Mohd Uzair, as well as research students Mehwish Asim, Mohd Kamran, Tazeen Junaid, Nidha Parveen JA, Nada Nasreen, & Sabah Maharaj have all written lengthy articles that are included in a 236-page document published by the Council on Minority Rights in India (CMRI).

According to the CMRI, "the majority of the research team members are first-generation college students, and every contributor to this report has firsthand experience with the themes that have been addressed.

3) Background

With a majority of Hindus, India is a multifaith democracy. 79.80% of Indians are Hindu, 14.23% are Muslim, 2.30% are Christian, 1.72% are Sikh, 0.70% are Buddhist, as well as 0.37% are Jain, according to 2011 census statistics.

India's constitution guarantees freedom of religion & belief describes the country as secular. However, there are worries that situations have become worse recently and that members of religious minorities along with other minority groups face discrimination and persecution.

The government, which has been under fire from human rights organisations for not doing more to safeguard minorities. "The government failed to properly enforce Supreme Court directives to prevent and investigate mob attackson religious minorities and other vulnerable communities," Human Rights Watch said in its 2019 report on India.

The prime minister of Indiahas defended the government's record on religious freedom. In a 2016 speech to the US Congress, he declared: The Constitution is the true sacred text of my administration. Furthermore, that sacred text enshrines as essential rights the freedom of religion, the right to free expression as well as the ability to vote, as well as the equality of all people, regardless of their origins.

4) The Indian Constitution and Legal Assimilation of Sikhism, Buddhism, & Jainism into Hinduism

"Subject to public order, morality, as well as health, all persons are equally entitled to freedom of conscience and the right to freely profess, practise, and propagate religion," according to Article 25, subclause 1 of the Indian Constitution. 38 Its subclause 2 (B) as well as related Explanation II, however, are regarded as very contentious. However, according to Explanation I, carrying and wearing kirpans would be considered a part of the Sikh religion's profession. "Hindus shall be construed as including a reference to persons professing the Sikh, Jain, or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly," “according to Explanation II in subclause 2(B). 39 This clause in the constitution is very discriminatory since it implies that, despite being a multifaith nation, India solely cares about the social welfare of Hinduism & its religious establishments. Sikhs, Buddhists, and Jains are all successfully included within Hinduism in the attached Explanation II. The Hindu Succession Act (1956), Hindu Marriage Act (1955), Hindu Adoptions and Maintenance Act (1956), as well as Hindu Minority and Guardianship Act (1956) are among the various discriminatory statutes against these faiths that have resulted from Explanation II. Instead of acknowledging these faiths as separate distinctive identities, these laws are mostly seen as forcing their legal integration into Hinduism. The National Commission to Review the Working of the Indian Constitution was established by the Indian government in February 2000, as well as Justice M.N. Venkatachaliah served as its head. In March 2002, the Commission delivered its two-volume report to the Indian government. Regarding Article 25 of the Indian Constitution, the Commission made the following recommendations: The commission believes that the aim of the submissions would be met if explanation II to Article 25 &subclause (b) of clause (2) of that 38 Article 25 of the Indian Constitution be removed, without delving into the more general problem on which the dispute is founded. doc/631708/, https://indiankanoon.org/. 39 Ibid. The article has been rewritten as follows: (b) offering social welfare as well as reform, or opening public religious institutions of the Hindu, Sikh, Jain, or Buddhist faiths to all socioeconomic classes and groups. 40 The Venkatachaliah Commission's advice has been ignored by the Indian government for almost 14 years.

5) Minority Rights, Secularism and Social Cohesion

The idea of secularism was still nebulous, at least until India gained its independence. The concept of secularism was often used in the nationalist struggle and minority issues. Prior to independence, secularism mostly only existed in the minds of the Congress party's elite leadership as well as intellectuals. The Congress party had put up the notion of secularism primarily in reaction to the bloody strife between Muslims and Hindus. Secularism, however, did not dominate public discourse that affected the likelihood of harmony. The British scholar George Jacob Holyoake, who first used the word secularism in 1851, had an impact on how the Congress party interpreted it.

"Development of free thinking, including its positive as well as negative sides" is what Holyoake defined as secularism. Free thought is seen by secularists as a dual protest: one against speculative error & one in support of certain moral truths.

The phrase has been interpreted and disputed a lot, starting with Nehru's conception of secularism and continuing through its constitutionalization and the current, brazen usage of the term by right-wing parties in elections to disparage the Congress party. The way that India has handled minority rights after gaining independence has changed the conceptual meaning of the word secularism. First of all, the word secularism was only formally used many times during the constitution's draughting in the Constituent Assembly in 1947. For instance, Nehru said in the Constituent Assembly, "Another word is thrown up a good deal, this secular State business," in response to his detractors' accusations of appeasement. Could you humbly ask those guys who often use this term to look it up in a dictionary before using it? It is introduced at every possible level and at every possible phase. I just don't understand. It is unquestionably very significant. But it is brought up in every circumstance, as if we have done something really selfless by announcing that we are a secular state, handed the rest of the world something we shouldn't have done, and so on. We have just done what every country does, with the exception of a few stupid and backward countries throughout the globe..

6) Problem statement

India's religious minorities suffer a number of legal and constitutional obstacles. The rights to cultural and linguistic expression, freedom of religion, protection from discrimination, as well as equality before the law are some of these difficulties. Along with challenges in obtaining justice and equitable treatment within the criminal justice system, there are also cases of communal violence directed at religious minorities. All Indian citizens, including members of religious minorities, are guaranteed certain rights under the constitution, although in reality, these rights are often violated. As a consequence, religious minorities continue to face discrimination and marginalisation, necessitating more legislative and policy changes to effectively safeguard their rights.

7) Scope of the study

An analysis of the pertinent sections of the Indian constitution and legislation pertaining to religious minorities would be part of the study's focus on the constitutional and legal issues that religious minorities face in India. This would include a critical evaluation of how these regulations are being applied and how they affect the lives of religious minorities. The research would also evaluate the success of current initiatives and policies meant to safeguard the rights of religious minorities. In order to address the difficulties religious minorities have in obtaining justice, the research would also look at how the court and other governmental institutions function. The research will also take into account how socioeconomic and cultural variables affect religious minority' experiences in India. The study's objectives are to provide a thorough grasp of the legal and constitutional issues that religious minorities in India face and to suggest possible remedies to these issues.

II. LITERATURE REVIEW

Introduction

The historical and contemporary background of minority rights will be examined in a literature study on the constitutional and legal issues that religious minorities in India confront. It would go over pertinent laws, rules, and significant court rulings. The review would draw attention to issues including violence, discrimination, and unfair treatment. Additionally, it would include a summary of the rights of religious minorities as they are now, including current discussions and debates on the subject.

1) Saika Sabir

India's postcolonial government has long been hailed as a success story, with its population enjoying freedom of expression as well as religious tolerance, making it "the world's largest democracy." Many communities and groups became "minorities, marginalised, plainly excluded/subaltern zed even though they formed a part of the Indian nation-state, these groups were excluded or at best subordinately included in the modern Indian society" as a clear consequence of all these political whims. In essence, minority rights are the state's acknowledgement of an individual's distinct cultural identity. The state is required by these laws to provide minorities the right to completely grow and to live in conformity with the norms of their community.

2) AASTHA CHAWLA et.al (2021)

The writers of this study paper want to highlight the importance of the rule of law and provide it as a framework that limits the basic misuse of power within the context of constitutional legality in decision-making. The research paper begins with an introduction, then discusses the difficulties the Indian Constitution has encountered and what the term "rule of law" means.

Additionally covered are subtopics such as the constitutional issues that religious minorities confront, secularism in India, the basic freedoms guaranteed by the Indian Constitution, and the clauses pertaining to citizenship. This essay also discusses internet shutdown as a significant constitutional issue in India. This research paper's goal is to evaluate the difficulties the Indian Constitution faces and determine the implications of the rule of law.

3) Ratna kapur (2020)

This article examines the ways in which India's higher court has tackled gender, gender equality, and secularism in instances involving religious issues. Three significant rulings on gender equality from the Indian Supreme Court are the main topic of debate. In these incidents, women in the Muslim-minority as well as Hindu-majority groups are the targets of discriminatory religious practices. In each instance, the adoption of gender equality in connection to religion results in a number of undesirable consequences for women rather than ones that are unquestionably progressive or transformational." Each case's judicial reasoning aligns with the secularism, gender equality, and gender views of the Hindu Right. Every idea is used to further the majoritarian and ideological goals of the Hindu Right, who want to make India a powerful "Hindu" country. "Ironically, efforts by progressive organisations, such as feminists as well as human rights activists, who opposed the Hindu Right's takeover of India, have not disrupted gender norms or reversed the trends of Hindu (male) majoritarianism, which are increasingly dictating the parameters of engagement on gender and faith in law issues.

4) Vikas K. Choudhary (2021)

The bulk of India's religious population is Hindu, but the minority include Muslims, Christians, Sikhs, Buddhists, as well as Jains. The 1950 adoption of India's Constitution deviated from the secularism standards that were then prevalent in Europe and other places, which advocated for a rigorous separation of church as well as state. Additionally, freedom of religion is protected as a Fundamental Right under the Indian Constitution. Given its distinct secularism model and special allowances for religious minorities, India's social cohesion structure need special attention.On the one hand, religious plurality has advanced as a result of the unique interpretation of secularism in the Indian setting. At the same time, it has drawn criticism for governments in power selectively interfering in the affairs of religious groups. The exclusivity of Indian secularism has been called into question by the selective intervention. This article evaluates the constitutional and theoretical foundations of the Indian Constitution's provisions on freedom of religion and religious minorities. It assesses the idea of religious minorities as defined by the constitution by going over the process that gave rise to the concept. The article talks about India's experience defending religious freedom and religious minority' rights. The essay examines a landmark decision pertaining to religious freedom along with the rights of religious minorities in order to determine whether or not the Indian Constitution successfully fosters social cohesiveness by balancing the rights of religious minorities with religious freedom.

5) Mohammad h. fadel (2020)

Nothing is done to establish political ideals that are latent in Islamic law and that are consistent with the values of public reason in order to draft legislation to bring Egypt into compliance with some of its duties under international human rights law. Court cases involving Islamic law are found in places with drastically differing constitutional regimes. involving Islamic law has, as expected, led to increased conflict and societal divide surrounding Islamic law. Courts may play a significant role in lowering political and social tension surrounding Muslims, Islam, and Islamic law by concentrating on the political principles contained in Islamic law and making an effort to reconcile them with the political values supported by public reason. Islamic law may sometimes be found in non-democratic Muslim-majority nations like Egypt, which has legally incorporated Islamic law into its legal framework while still claiming to be committed to democratic principles. At other times, like in India, it manifests as a conditional right to self-rule granted to a historically sizable Muslim minority. of western liberal democracies, which have seen a significant rise of Muslim residents and citizens in the years after World War II while not having sizable historical Muslim minority, it also manifests itself in a variety of ways.

6) John Curtis (2022)

India is a multifaith democracy with a majority of Hindus. 79.80% of Indians identify as Hindu, 14.23% as Muslim, 2.30% as Christian, 1.72% as Sikh, 0.70% as Buddhist, as well as 0.37% as Jain, according to figures from the 2011 census. For use by Home Office decision makers in charge of certain protection and human rights claim categories, this guidance offers country of origin information (COI) and analysis of COI.

It is not meant to be a comprehensive analysis of a certain topic or concept. There have been documented instances of public figures, especially politicians, inciting communal violence against religious minorities as a consequence of rallies against the CAA in 2019 and 2020. Violence against Muslims increased during the riots, and there were also more cases of Muslims being arrested and imprisoned as a consequence of the chaos. The evidence that was available also showed levels of police cooperation in violence against Muslims during these incidents. Christians, Muslims, and other religious minorities in India are living in a state of profound trauma, fear, and anxiety as a result of the rise in extreme Hindu religious nationalism. It is concerning to discover that religious minorities in India are subjected to systematic persecution and are, according to the report, facing an existential threat because of the rising number of beatings and killings committed by extremist mobs.

7) Shaheer Ahmed et.al (2018)

Muslims are the biggest minority in India, the second-largest nation with a diverse population. Every human being on the planet is required to practise their faiths in a manner that does not harm any living thing. On every issue, India need to be more accommodating and provide a long-term solution to the current alienation. Muslims have fought for their rights and made many sacrifices. However, the first proactive steps to overcome the impasse would need to be taken by India. As citizens of India, Muslims have the same rights as the rest of the population, hence they should be granted permanent rights and all the essentials of life. Muslims need to have access to social institutions where they may exercise their legal rights. Muslims need to be conscious of their rights as well. Only if they are aware of it will they be able to get their rights. They should educate themselves on this. They must strengthen their bonds with one another. It should be mandatory for the state to modify its stance towards Muslims. For every occurrence, they always point the finger against Muslims. Muslims need to be granted their rightful privileges. Since respect is the best way to treat someone, they should likewise be required to respect Muslim opinions. Scholars have also noted that the Indian media consistently attacks minorities and does not defend them. Every area of society should benefit from the media. It is the only way for the state to prosper.

8) Abdul Majid et.al (2015)

The functioning of secularism in India is examined in this article. A state that does not formally identify with any religion is referred to as a secular state. Regardless of faith, it respects every citizen equally. In a secular system of governance, the state does not support any religion or any organisation and does not meddle in matters of faith. A secular state does not confine itself to a single religion's social welfare. The idea that Indians, particularly Hindus, have two sides will never be contested. Gandhi, its leader, is shown in one, while Chanakya is represented in another. In many instances, Hindu culture is referred to as Indian culture. Other than India, no contemporary secular democracy has had many state-sponsored pogroms, including those against Muslims in 1992 and 2002 and Sikhs in 1984. Nearly all minorities in India, particularly Muslims, remember with hopelessness and sorrow how their constitutional rights have been stretched to the limit.

9) DR. Iqtidar Karamat Cheema (2017)

With a population of more than 1.2 billion, India is surpassed only by China. In addition to having a sizable population, India is also religiously diverse, with around 80 percent of its people being Hindu and 172.2 million Muslims, making it the third-largest Muslim nation in the world after Pakistan and Indonesia. There are also an estimated 20.8 million Sikhs, 4.5 million Jains, as well as 27.8 million Christians. As mentioned in the beginning, India's constitution has clauses that forbid discrimination based on religion as well as stress the full legal equality of all of its residents, regardless of their faith or sect. Additionally, it offers religious minority populations certain protections, although restricted ones. Nonetheless, the report shows that certain state and national laws as well as constitutional provisions in India do not adhere to international norms of freedom of faith or believe, as shown by UN Declaration of Human Rights Article 18 and the International Covenant on Civil and Political Rights Article 18.

10) Shubhangi Maheshwari et.al (2019)

The freedom of religion of individuals and groups is recognised under Articles 25 and 26 of the Indian Constitution, respectively. The Indian Constitution recognises the freedom of religion of individuals and institutions under Articles 25 and 26, respectively. Since the Indian Constitution's inception, the body of law on the right to freedom of religion guaranteed by Articles 25 as well as 26 of the Indian Constitution has grown inexplicably. On the one hand, the court has declared that religious activities are respectful, even at the expense of other basic rights. However, it has invalidated religious activities that were judged not "essential" because they did not align with the judges' reforming ideas.

The necessary religious activities test has led to the development of a contradictory jurisprudence". The criticism of this exam, which aims to support judges' roles as religious experts, has received enough attention in the literature. This essay made the case that the Court has not addressed the question of how basic rights interact with Articles 25 and 26 since religious claims have been rejected on the definitional threshold. This matter has only been skilfully addressed in Justice Chandrachud's decision in the Sabarimala case. This case is now before the Supreme Court's nine-judge panel.

11) Yüksel Sezgin (2014)

A Muslim woman named Resham Bibi requested that her marriage be dissolved on the basis of apostasy after declaring that she had rejected Islam. The district attorney brought a platter of pork into the courtroom and requested Resham to sample it in order to confirm her allegation. The judicialization of all religious matters has increased in India as a result of the institutional and ideological legacies of British rule as well as the Congress-led administrations' reluctance to address religious issues in the legislative and executive branches. In this case, the Indian court became more active and seldom hesitated to make decisions pertaining to religious identity or belief. But as we've seen, the judiciary's interference in religious matters has exacerbated identity politics, highlighted group distinctions rather than similarities among individuals, and jeopardised the goal of legal unity. In democratising multicultural nations from South Africa to Burma, bureaucrats, judges, and elected politicians have run across religious issues that are strikingly similar to those confronted by Indian and Indonesian authorities. The way they react to them and deal with the problem of religious diversity has a significant effect on their chances of democratisation and nation-building.

III. GAP OF THE STUDY

The areas or facets of the subject that have not been adequately covered or investigated in earlier research are referred to as the "gap of the study" in the assessment of the constitutional and legal difficulties confronting religious minorities in India. These might be places that need further information, where the issue has changed or developed over time and requires updating, or where the findings or interpretations of previous research are contradictory. Finding the study's gaps is crucial for both demonstrating the need for more research and giving the present study emphasis and direction so that it can add to the body of information already in existence.

IV. METHODOLOGY

A review study on the legal and constitutional issues that religious minorities in India face might follow a number of processes, including:



Fig.3. Methodology-Research Process

1) Literature search: To find relevant literature on the subject, a thorough search of scholarly journals, books, and internet databases would be the first step.
2) Source selection: The next stage would be to assess the sources thoroughly and choose the most reliable and relevant ones to be included in the review.
3) Data extraction: Information on India's constitutional and legal provisions pertaining to religious minorities, the difficulties these groups encounter, and the steps made to overcome those difficulties may be among the data gleaned from the sources.

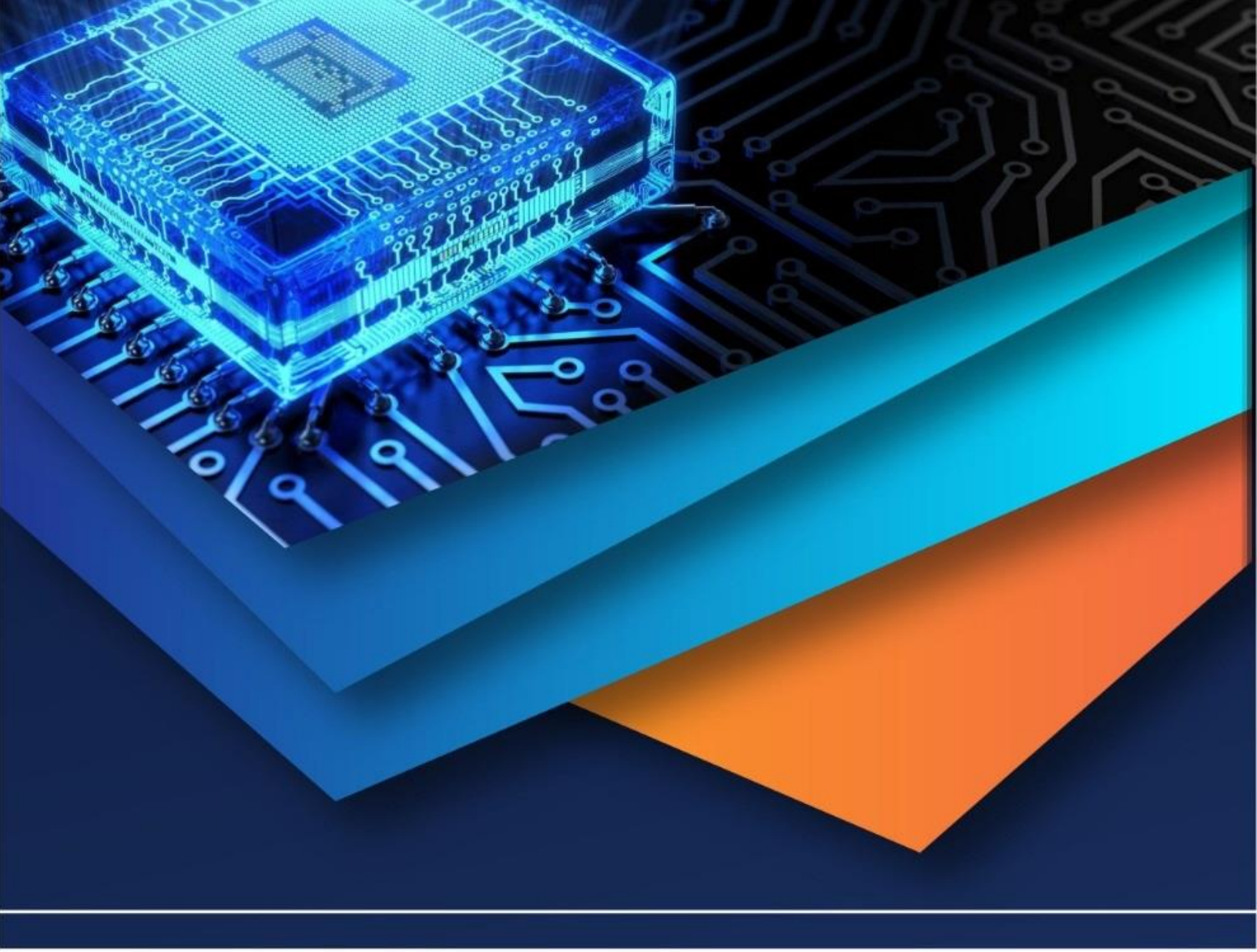
4) Data analysis: To find patterns, trends, and recurring themes, the gathered data would then be examined.

Findings will then be combined and arranged into a clear and simple review document that provides a constitutional and legal overview of the situation of religious minorities in India.

Lastly, a discussion of the results' implications and recommendations for more study would round up the review report.

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