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Constitutional Accommodation and the Distribution of Power in South Asia

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Abstract
Constitutional recognition of minorities can coexist with substantial constraints on their ability to influence public decisions or obtain relief. This article examines that relationship through religious classification and representation in Pakistan, secularism and property restitution in Bangladesh, proportional inclusion in Nepal, provincial devolution in Sri Lanka, and educational autonomy in India. It develops a comparative framework that distinguishes the content of a guarantee, the institution controlling its implementation, the availability of review, and the form of relief. The analysis identifies several mechanisms through which accommodation becomes conditional, including nonjusticiable policy commitments, party control over representation, qualified provincial powers, and judicial tests of eligibility. It also identifies counterexamples to the claim that recognition is uniformly unenforceable. Constitutional accommodation emerges as a distribution of decision-making authority whose protective value depends on the relationship between participation, review, and implementation. Reform should address those relationships while preserving the distinct interests protected by each arrangement.

Keywords- Minority Rights, Comparative Constitutional Law, South Asia, Political Representation, Devolution, Educational Autonomy

I. Introduction

The constitutional position of a minority cannot be understood from the provision that names or protects it alone. A guarantee of religious freedom operates alongside official definitions of religious membership. Reserved legislative seats operate through rules about nomination and allocation. Provincial authority depends on the division of legislative, executive, and financial powers. Educational autonomy depends partly on the legal test by which an institution qualifies for protection. Accommodation therefore distributes authority as well as recognising interests.

South Asian constitutions provide a substantial field for examining that distribution. Their approaches include general equality, cultural and religious guarantees, affirmative action, territorial arrangements, and institutional autonomy. Sankaran's account of the region identifies this diversity of constitutional

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responses and the political choices underlying their adoption and implementation.[4] An important implication follows. Similar language about inclusion can sit within arrangements that give affected communities markedly different opportunities to make decisions, challenge interference, or obtain correction.

This article asks how constitutional arrangements allocate authority over minority claims, and how that allocation shapes access to protection. Its argument is that accommodation becomes conditional when the enjoyment of a guarantee depends on decisions that its beneficiaries cannot effectively influence or challenge. The form of that dependence varies. Some constitutional commitments expressly restrict judicial enforcement. Others create enforceable rights whose scope remains contested. Still others allocate powers to representative bodies while retaining substantial control over the resources and procedures necessary to exercise them.

The comparison must recognise the existence of remedies. India guarantees access to the Supreme Court for enforcement of fundamental rights and confers wider writ jurisdiction on its High Courts. Bangladesh provides constitutional enforcement through the High Court Division. Nepal guarantees constitutional remedies and empowers the Supreme Court and High Courts to provide them. Pakistan retains High Court jurisdiction under Article 199, alongside the Federal Constitutional Court's jurisdiction introduced in 2025. Sri Lanka provides fundamental-rights and language-rights review of executive and administrative action under Article 126.[5] These arrangements make a general claim of recognition without enforceable entitlement untenable. They direct attention toward the coverage and operation of particular remedies.

The article proceeds through a doctrinal comparison of five selected arrangements. Pakistan illustrates the interaction between official religious classification, party-mediated representation, and constitutional protection. Bangladesh illustrates the difference between a constitutional principle and the legal processes needed to secure property restoration. Nepal illustrates the relationship between proportional inclusion, federal boundaries, and participation. Sri Lanka illustrates qualified devolution and differentiated access to judicial review. India's educational-rights framework illustrates an enforceable guarantee whose boundaries are developed through adjudication.

These examples compare constitutional techniques rather than rank national performance. The selected texts and judgments establish the legal arrangements examined at the dates identified in the footnotes. They do not supply a common dataset of minority wellbeing or implementation. A finding that a decision depends on executive action identifies a potential point of vulnerability. Establishing systematic discrimination or deliberate noncompliance requires evidence about how that power was exercised. This distinction allows constitutional design to be evaluated without treating the experience of every religious, linguistic, ethnic, or Indigenous community as identical.

Part II develops the comparative framework. Part III examines religious identity, representation, and restitution in Pakistan and Bangladesh. Part IV addresses inclusion and territorial authority in Nepal and Sri Lanka. Part V examines educational autonomy in India. Part VI draws together the findings and proposes reforms. Part VII concludes.

[4] Kamala Sankaran, Minorities: A View from South Asia, in RESEARCH HANDBOOK ON THE POLITICS OF CONSTITUTIONAL LAW 514 (Mark Tushnet & Dimitry Kochenov eds., 2023).

[5] INDIA CONST. arts. 32, 226; BANGL. CONST. arts. 44(1), 102; NEPAL CONST. arts. 46, 133, 144 (2015); PAK. CONST. arts. 175E, 199 (as amended 2025); SRI LANKA CONST. art. 126 (1978).

II. A Framework for Comparing Constitutional Accommodation

A. Recognition and the Allocation of Authority

Constitutional accommodation can protect different interests. An equality guarantee constrains discrimination. A cultural guarantee protects practices or institutions important to a community. A representational measure changes access to political office. A territorial settlement redistributes public authority. These devices can reinforce one another, but their functions and beneficiaries require separate identification.

The relationship between legal form and political practice is especially important. Adeney and Swenden's analysis of India distinguishes formal and informal dimensions of power-sharing across religion, caste, territory, and language.[6] Their approach cautions against assuming that one constitutional label captures the operation of an entire system. A federal structure does not by itself establish meaningful self-government for every minority. Equally, an institutional guarantee can protect substantial autonomy without creating a distinct territorial unit.

Four questions organise the comparison developed here. What interest does the provision protect, and for whom? Which institution makes the decision that determines its exercise? Who can seek review, under what standard, and at what stage? What action would give effect to a successful claim? The resulting inquiry connects the text to the decision that matters, while keeping the applicable legal standard visible.

B. Distinguishing Forms of Legal Dependence

Express nonjusticiability presents one form of dependence. Pakistan's Principles of Policy and Bangladesh's fundamental principles of state policy contain limits on direct judicial enforcement. Nepal's directive principles, policies, and obligations are subject to a constitutional restriction on litigation about their implementation. India's Directive Principles are nonjusticiable, although constitutionally fundamental to governance. Sri Lanka makes a similar distinction concerning its Directive Principles and fundamental duties.[7] These provisions must be distinguished from enforceable rights elsewhere in the same constitutions.

Institutional dependence presents another form. A provincial body may possess authority over a subject while another institution controls the personnel, approval, or finance needed to act. A restitution scheme may create an entitlement while requiring documents held by the administration that made the original decision. A representational measure may reserve seats while giving political parties control over the selection of candidates. Each arrangement creates a different question about accountability.

Adjudication can also shape the conditions of protection. Courts decide who qualifies for a particular constitutional guarantee and which regulations are compatible with it. That function can expand access, narrow it, or resolve competing rights. The significance of judicial intervention therefore depends on the rule applied and the relief available. The presence of litigation establishes an avenue of contestation, while the result and its implementation determine the protection obtained.

C. Substantive Limits on Procedural Reform

The proposed framework does not assume that better procedure cures every constitutional problem. Where a substantive rule expressly restricts a protected practice, an efficient hearing may simply apply

[6] Katharine Adeney & Wilfried Swenden, *Power-Sharing in the World's Largest Democracy: Informal Consociationalism in India (and Its Decline?)*, 25 SWISS POL. SCI. REV. 450, 450–53 (2019).

[7] PAK. CONST. arts. 29–30; BANGL. CONST. art. 8(2); NEPAL CONST. art. 55 (2015); INDIA CONST. art. 37; SRI LANKA CONST. art. 29 (1978).

that restriction more efficiently. The challenge then concerns the rule's validity or the constitutional interpretation supporting it. Conversely, where a right is clear but an authority refuses to act, enforcement of an existing duty may provide the appropriate remedy.

The comparison consequently distinguishes changes to substantive protection, access to adjudication, political participation, and implementation. It treats remedial arrangements as one explanation of accommodation's effectiveness. Judicial independence, political mobilisation, conflict, resources, and social hierarchy can also affect outcomes. Their influence remains open to further empirical investigation.

III. Religious Identity, Representation, and Restitution

A. Pakistan and the Interaction Between Classification and Representation

Pakistan's Constitution combines Islamic state identity with guarantees relevant to religious and cultural minorities. Article 20 concerns religious profession, practice, propagation, and institutional management. Articles 25 and 28 address equality and the preservation of language, script, and culture. Article 36 directs the state to safeguard minorities' legitimate rights and interests, including representation in public services.[8] The legal placement of these provisions matters. Article 36 belongs to the Principles of Policy, while the other guarantees sit within the chapter on fundamental rights.

Article 30 limits challenges based solely on inconsistency with the Principles of Policy. That restriction does not extinguish a claim founded on an applicable fundamental right. A claimant alleging interference with worship or unequal treatment must identify the relevant enforceable provision and the conduct challenged.[9] The first constitutional distinction is therefore within the protection framework itself, between a policy commitment to minority interests and rights that can ground judicial relief.

Official classification introduces a further issue. Article 260(3) defines Muslim and non-Muslim status and includes Ahmadis within the latter category. Sections 298-B and 298-C of the Penal Code restrict specified religious expressions and representations by members of the community.[10] The legal consequences of the classification must be assessed separately from the fact of recognition. Classification as a minority can coexist with restrictions on the public expression of a community's own religious understanding.

Reserved representation operates through another mechanism. Article 51 reserves ten National Assembly seats for non-Muslims and provides for allocation through political parties' lists according to the constitutional formula. Article 106 contains provincial representational arrangements.[11] The reservation is a legal allocation of seats. The concern about party influence arises from the rules controlling access to those seats and the relationship between representatives, party leadership, and the communities whose inclusion the arrangement seeks to secure.

These questions require distinct remedies. A failure to follow the constitutional allocation formula calls for enforcement of the existing electoral rules. A concern that nomination gives party leadership excessive control calls for analysis of candidate selection and political accountability. A restriction on

[8] PAK. CONST. arts. 2, 20, 25, 28, 36. For the constitutional text incorporating the Twenty-Seventh Amendment, *see* GOV'T OF PAK., THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN (2025), https://senate.gov.pk/uploads/documents/1764658026_642.pdf.

[9] PAK. CONST. arts. 8, 20, 25, 30(2), 199.

[10] PAK. CONST. art. 260(3); Pakistan Penal Code, No. XLV of 1860, §§ 298-B to -C (Pak.).

[11] PAK. CONST. arts. 51(4), 51(6)(e), 106.

religious manifestation raises a substantive rights question. Describing all three as symbolic recognition would obscure both the rights available and the reforms required.

Judicial practice supplies an important qualification. In *Suo Motu Case No. 1 of 2014*, the Supreme Court issued directions concerning minority protection, including institutional monitoring, protection of places of worship, and enforcement of public-service quota policies. It also provided for follow-up.[12] The judgment demonstrates the capacity of constitutional adjudication to require positive measures. It does not establish that every direction was implemented, but it precludes treating the judicial role as uniformly unavailable.

The institutional position must also be stated in its proper period. The constitutional text amended in 2025 establishes a Federal Constitutional Court and allocates jurisdiction to it under Article 175E, without prejudice to Article 199. Article 175F addresses specified appeals, including appeals from Article 199 orders with leave.[13] Historical Supreme Court decisions remain relevant to the development of minority protection, while contemporary access must be considered through the revised jurisdictional provisions. The example shows why constitutional design requires attention to both the substance of a guarantee and the institution empowered to enforce it.

B. Bangladesh and the Distance Between Constitutional Principle and Individual Relief

Bangladesh combines provisions on secularism with an express state-religion clause. Articles 8 and 12 address secularism within the fundamental principles of state policy. Article 2A declares Islam the state religion while requiring equal status and equal rights in the practice of Hindu, Buddhist, Christian, and other religions. Articles 27, 28, and 41 supply enforceable equality and religious-freedom guarantees.[14] The relationship between these provisions requires interpretation of their different functions and legal status.

Article 8(2) makes the fundamental principles relevant to governance and constitutional interpretation while withholding direct judicial enforceability. Articles 44(1) and 102 provide a route for the enforcement of fundamental rights.[15] A claim about unequal treatment therefore cannot be disposed of merely by observing that secularism is located among nonjusticiable principles. It may also engage rights enforceable through the High Court Division. Equally, the symbolic importance of a constitutional principle does not establish the relief available in an individual case.

Bangladesh's amendment litigation demonstrates that constitutional change can itself be contested. The Fifth Amendment litigation culminated in the Appellate Division's judgment in *Khondker Delwar Hossain v. Bangladesh Italian Marble Works Ltd.* The state-religion challenge reported in *Swairachar O Sampradaiyikata Protirodh Committee v. Bangladesh* produced differing judicial accounts of the merits and standing. The later Fifteenth Amendment proceedings also concerned the legality of constitutional changes.[16] These proceedings illustrate the need to distinguish the validity of a constitutional

[12] *Suo Motu Case No. 1 of 2014*, PLD 2014 SC 699, ¶¶ 37–38 (Pak.), https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2015/04/smc_1_2014.pdf.

[13] PAK. CONST. arts. 175E–175F, 199; Constitution (Twenty-Seventh Amendment) Act, No. XXXII of 2025 (Pak.).

[14] BANGL. CONST. arts. 2A, 8, 12, 27–28, 41. For the official text of Article 2A, *see* Legislative & Parliamentary Affairs Div., *The Constitution of the People's Republic of Bangladesh*, https://bdlaws.minlaw.gov.bd/act-print-367/section-print-24549.html (last visited Nov. 4, 2026).

[15] BANGL. CONST. arts. 8(2), 44(1), 102(1).

[16] *Khondker Delwar Hossain v. Bangladesh Italian Marble Works Ltd.*, 62 DLR (AD) 298 (2010) (Bangl.); *Swairachar O Sampradaiyikata Protirodh Comm. v. Bangladesh*, 19 SCOB [2024] HCD 41 (Bangl.); *Badiul Alam Majumdar v. Government of Bangladesh*, Writ Petition Nos. 9935 & 12431 of 2024, at 136–38 (Sup. Ct. Bangl., High Ct. Div. Dec. 17, 2024), https://www.supremecourt.gov.bd/resources/documents/2990353_WPNo9935and12431of2024.pdf.

amendment, the applicant's ability to obtain a hearing, and the remedy for a particular discriminatory act.

Property restitution makes that distinction concrete. The Vested Property Return Act 2001, as amended, provides arrangements for identifying returnable property, making claims, adjudicating applications, and appealing decisions. Sections 9 and 10 concern publication of property lists and applications, while section 19 addresses appellate tribunals.[17] The existence of this machinery changes the question. Analysis must examine how a claimant enters the process, what must be proved, which body decides, and how a favourable outcome takes effect.

The scheme also differentiates forms of relief. Section 28 restricts specified compensation claims associated with earlier listing and the benefits derived from vested property. That provision must be read with the Act's other provisions, including those addressing compensation already deposited following acquisition.[18] Restitution of property and compensation for historical loss are legally distinct. A mechanism may provide one while restricting another. Its adequacy cannot be assessed by referring to the existence of a tribunal alone.

The institutional vulnerability is therefore specific. If a person must establish title through records controlled by public authorities, access to those records affects the claim. If a favourable decision requires changes to a register or delivery of possession, implementation affects the value of the order. These are questions for investigation through case files and execution records. The statutory text identifies where to look, but it cannot establish the frequency of obstruction or the experience of every claimant.

The Chittagong Hill Tracts adds a distinct territorial dimension. The 1997 Accord and subsequent institutions, including the Land Dispute Resolution Commission, connect land questions with a negotiated political settlement.[19] Those arrangements should be examined on their own legal terms. A dispute over implementation of a negotiated settlement may require institutional coordination as well as adjudication of individual title. Bangladesh thus illustrates several constitutional routes to protection whose jurisdiction, object, and remedial reach differ.

IV. Inclusion and Territorial Authority

A. Nepal and Proportional Inclusion Within a Contested Settlement

Nepal's Constitution recognises a diverse political community and provides for inclusion through several legal devices. Article 32 concerns language and culture. Article 42 addresses social justice and participation in state bodies. Articles 84 and 176 govern the composition of the federal House of Representatives and provincial assemblies, including proportional electoral arrangements.[20] These provisions distribute opportunities for participation at different institutional levels.

The amended text of Article 42(1) expressly contains proportional inclusion. Its amendment history therefore prevents a contemporary account from treating the omission of proportionality in the original

[17] Vested Property Return Act, No. XVI of 2001, §§ 9–10, 19 (Bangl.) (as amended), https://bdlaws.minlaw.gov.bd/act-print-856.html.

[18] *Id*. §§ 6(f), 9(4), 10(2), 28.

[19] Chittagong Hill Tracts Accord, Gov't of Bangl.–Parbatya Chattagram Jana Samhati Samiti, Dec. 2, 1997; Chittagong Hill Tracts Land Dispute Resolution Commission Act, No. LIII of 2001 (Bangl.) (as amended), https://bdlaws.minlaw.gov.bd/act-print-877.html. *See also* Rangamati District Judiciary, *History of District Judiciary*, https://rangamati.judiciary.gov.bd/en/menu/page/history-of-district-judiciary (last visited Nov. 4, 2026).

[20] NEPAL CONST. arts. 3, 32, 42, 84, 176 (2015).

settlement as a permanent constitutional position. The provision identifies numerous eligible groups, subject to its terms, including Indigenous nationalities, Madhesi, Tharu, Muslims, minorities, marginalised communities, and indigent Khas Arya.[21] The relevant analytical question concerns how the right is specified and implemented for differently situated beneficiaries.

A comparison should distinguish categories without assuming they share one political objective. Indigenous peoples may seek authority over land and institutions, while other groups may contest access to public employment, electoral representation, or territorial boundaries. The overlap between these demands makes aggregate language about minority consent insufficient. A legal analysis must identify which body made the decision, which community claims an interest, and what form of participation the relevant provision requires.

The Constitution also distinguishes fundamental rights from policy commitments. Article 46 guarantees constitutional remedies, and Articles 133 and 144 confer judicial powers. By contrast, Article 55 restricts litigation concerning implementation of the directive principles, policies, and obligations in Part IV. Articles 53 and 54 provide reporting and parliamentary monitoring concerning that Part.[22] The system therefore contains several channels of accountability. Whether a claim can be judicially enforced depends partly on its constitutional basis.

Territorial arrangements require separate treatment. Article 56 and Schedule 4 organise the federal structure, while Article 274 prescribes amendment procedures, including provisions relevant to changes affecting provincial boundaries or powers.[23] A constitutional court can adjudicate a legal question without possessing a general authority to design a new territorial settlement. A demand to enforce a participation right and a demand to redraw a province may consequently require different forms of action.

International commitments add standards but do not collapse those distinctions. Nepal ratified ILO Convention No. 169 in 2007. Article 6 requires appropriate consultation through representative institutions concerning legislative or administrative measures that may directly affect the peoples concerned. Consultation must proceed in good faith with the objective of agreement or consent.[24] This requirement should be applied to the measure under examination. It does not make every disagreement a conclusive finding that the entire constitutional order is invalid.

Nepal's experience consequently supports a narrower and more testable proposition than a settlement without consent. Inclusion can be entrenched, amended, and judicially protected while disputes continue over its beneficiaries, institutional meaning, and territorial expression. Research into its effectiveness should follow the particular electoral rule, appointment decision, or legislative measure. That approach accommodates both constitutional advances and continuing disputes.

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[21] *Id.* art. 42(1), as amended by Constitution of Nepal (First Amendment), 2016. *See* GOV'T OF NEPAL, THE CONSTITUTION OF NEPAL 23–24 (rev. & re-edited English version as amended, 2020), https://oag.gov.np/uploads/files/f54-Constitution-of-Nepal-Revised-and-re-edited-English-version-as-amended.pdf (identifying Article 42(1) as amended by the First Amendment).

[22] NEPAL CONST. arts. 46, 53–55, 133, 144 (2015).

[23] *Id.* arts. 56, 274 & sched. 4.

[24] Indigenous and Tribal Peoples Convention, 1989 (No. 169) arts. 6–7, June 27, 1989, 1650 U.N.T.S. 383; Int'l Lab. Org., Comm. of Experts on the Application of Conventions & Recommendations, *Observation on the Indigenous and Tribal Peoples Convention, 1989 (No. 169)—Nepal* (adopted 2024, published 2025), https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:4401626,en (identifying Nepal's ratification in 2007 and addressing consultation).

B. Sri Lanka and the Qualifications Attached to Provincial Power

Sri Lanka's Thirteenth Amendment introduced provincial councils and a distribution of legislative subjects while the Constitution retained its unitary character. Chapter XVIIA and the Ninth Schedule establish the relevant framework. Article 18 recognises Tamil as an official language alongside Sinhala, with English as the link language.[25] Provincial powers and language rights are related aspects of accommodation, but they operate through different institutions and procedures.

The Ninth Schedule requires careful reading. Police and public order appear in the Provincial Council List to the extent specified in Appendix I. Land appears in that List to the extent specified in Appendix II. The land provisions preserve the Republic's title to state land and allocate functions subject to specified conditions, including roles for central authorities and provincial councils.[26] The legal issue therefore concerns the qualifications and dependencies within the allocation, together with their implementation.

The structure of executive authority adds another dimension. Articles 154B, 154C, and 154F concern the Governor and the exercise of provincial executive power. Article 154G governs provincial statutes and their relationship with parliamentary legislation. These arrangements create several points at which the centre and province must interact.[27] To establish that a particular decision defeats devolution, an analysis must identify the competent institution, the procedure required, and the action or omission alleged to exceed constitutional authority.

Finance provides a particularly explicit example. Article 154R establishes a Finance Commission and addresses allocation of funds for provincial needs. Article 154R(8) excludes judicial inquiry into specified questions concerning the adequacy of those funds and related recommendations or decisions.[28] Here the claim of a remedial limitation has a textual foundation. It concerns a particular class of financial questions. Its implications should be distinguished from the availability of review for other alleged violations.

Judicial review is similarly differentiated. Articles 120 and 121 provide constitutional scrutiny of Bills within the prescribed process, while Article 80(3) restricts challenges to the validity of Acts after certification. Article 126 provides review of infringement or imminent infringement of fundamental or language rights through executive or administrative action. Article 140 addresses the Court of Appeal's writ jurisdiction.[29] The legal form and timing of a measure can thus affect the route available to challenge it.

Article 126 also contains a one-month filing rule and a requirement of leave to proceed. The provision authorises just and equitable relief.[30] These features create questions about notice, access to representation, and the timing of harm. Their practical effects require study of judicial application, including any applicable jurisprudence on time limits. They cannot justify treating all executive or administrative decisions as beyond adjudication.

[25] SRI LANKA CONST. arts. 2, 18, 154A–154T & sched. 9 (1978); Thirteenth Amendment to the Constitution (1987) (Sri Lanka).
[26] SRI LANKA CONST. sched. 9, List I, items 1, 18 & apps. I–II (1978), https://www.parliament.lk/files/pdf/constitution.pdf.
[27] *Id*. arts. 154B–154C, 154F–154G.
[28] *Id*. art. 154R(3)–(8).
[29] *Id*. arts. 80(3), 120–121, 126, 140.
[30] *Id*. art. 126(2), (4).

Sri Lanka's constitutional design therefore supports an account of qualified territorial authority and differentiated review. Provincial institutions can possess powers while remaining dependent on decisions elsewhere in the system. Some questions are expressly insulated from judicial examination, while others can enter constitutional or writ proceedings. Effective accommodation requires attention to this distribution, including the interests of smaller communities within the province itself.

V. India and Educational Autonomy as an Enforceable Guarantee

India's cultural and educational provisions supply an important counterexample to a general thesis of unenforceable recognition. Article 29(1) protects the conservation of distinct language, script, or culture by any section of citizens meeting its terms. Article 30(1) protects the right of religious and linguistic minorities to establish and administer educational institutions of their choice. Article 30(2) prohibits discrimination in state aid on the specified ground of minority management.[31]

These provisions must be distinguished from one another. The beneficiaries of Article 29(1) are not limited to groups qualifying as minorities under Article 30. Equally, a statutory designation for a particular administrative purpose does not answer every constitutional question about an institution's entitlement. The applicable constitutional provision and its judicial interpretation determine the claim.

The educational-rights cases also demonstrate that regulation and autonomy require a legal boundary. *T.M.A. Pai Foundation* addressed minority status and the establishment and administration of educational institutions within a wider treatment of educational rights. Its reasoning recognises constitutional autonomy alongside regulatory concerns.[32] An interference claim must consequently identify the protected aspect of administration and explain how the particular measure affects it. Neither the institution's minority character nor the government's regulatory purpose ends the inquiry by itself.

The 2024 decision in *Aligarh Muslim University v. Naresh Agarwal* illustrates the significance of eligibility rules. The majority rejected the proposition that statutory incorporation necessarily prevents an institution from having been established by a minority. It articulated principles for identifying minority establishment and left AMU's particular status to determination under those principles.[33] The decision changed the legal test at a threshold that determines access to Article 30 protection.

The comparative relevance extends beyond the outcome sought by the litigants. An institution may possess a substantive constitutional right only if it can establish facts about its origin, purpose, and foundation. The authority deciding those matters therefore exercises considerable power over the reach of protection. Judicial scrutiny can itself correct an excessively restrictive threshold. This is a form of constitutional accommodation operating through adjudication, with consequences that depend on the test adopted and its subsequent application.

Enforcement routes are expressly available. Articles 32 and 226 confer constitutional and writ jurisdiction. The National Commission for Minority Educational Institutions Act provides an additional statutory framework, including adjudicatory functions concerning minority educational status.[34] The relationship between administrative determination, specialised adjudication, and constitutional review

[31] INDIA CONST. arts. 29–30.

[32] *T.M.A. Pai Found. v. State of Karnataka*, (2002) 8 SCC 481, ¶¶ 50, 54, 161 (India). *See also Aligarh Muslim Univ. v. Naresh Agarwal*, 2024 INSC 856, ¶¶ 40–43, 160 (India) (discussing the relationship between cultural and educational rights).

[33] *Aligarh Muslim Univ.*, 2024 INSC 856, ¶¶ 160–161 (opinion of Chandrachud, C.J.), https://api.sci.gov.in/supremecourt/2006/9287/9287_2006_1_1501_57054_Judgement_08-Nov-2024.pdf.

[34] INDIA CONST. arts. 32, 226; National Commission for Minority Educational Institutions Act, 2004, No. 2 of 2005, §§ 11–12B, INDIA CODE (2005).

therefore deserves closer attention than an assertion that the decisive choice rests wholly with the executive.

The interests protected within an institution also require consideration. A claim to institutional autonomy can intersect with the rights of children, teachers, employees, and applicants. In *Anjuman Ishaat-e-Taleem Trust v. State of Maharashtra*, the Supreme Court in 2025 questioned aspects of *Pramati Educational and Cultural Trust* concerning the application of the Right to Education Act to minority institutions and urged consideration of a larger-bench reference.[35] That judicial step must be described as a request for reconsideration rather than treated as a final replacement of the larger bench's ruling.

The example establishes why successful institutional access to courts does not exhaust the constitutional problem. The content of the protected autonomy remains subject to interpretation alongside other guarantees. The quality of that interpretation, the clarity of the regulatory rule, and the effect on the people concerned all matter. Accommodation is most defensible when it permits minority institutions to pursue their protected purposes while giving fair consideration to the rights of individuals affected by institutional decisions.

Citizenship and documentation raise additional questions in India, but the educational framework supplies a more direct test of the argument examined here. It demonstrates a substantial constitutional entitlement, several routes of contestation, and a continuing judicial role in defining protection. Any regional theory must explain that example alongside arrangements where particular claims is expressly excluded from adjudication.

VI. Comparative Findings and Institutional Reform

A. Different Mechanisms Require Different Explanations

The five settings reveal several mechanisms. In Pakistan, religious classification and party control over nomination operate alongside enforceable religious and equality guarantees. Bangladesh distinguishes constitutional principles from fundamental rights and channels restitution through statutory procedures. Nepal places proportional inclusion within a broader settlement involving judicial, electoral, and amendment processes. Sri Lanka qualifies provincial authority and differentiates access to review by subject and legal form. India develops educational protection through constitutional interpretation and adjudication.

These differences qualify any claim that the region shares one remedial defect. A principle excluded from direct enforcement differs from an enforceable right interpreted narrowly. Party nomination differs from judicial recognition of educational status. A restriction on compensation differs from refusal to execute a restitution order. Treating all these mechanisms as withdrawal may describe a common concern about vulnerability, but it cannot identify the action needed to address it.

The more precise finding is that accommodation's protective value depends on the relationship between authority and accountability. A beneficiary may be able to challenge the application of a rule while being unable to challenge the rule itself through the same procedure. A representative institution may influence ordinary administration while lacking control over resources necessary to implement its

[35] Anjuman Ishaat-e-Taleem Tr. v. State of Maharashtra, 2025 INSC 1063, ¶¶ 208–210 (India), https://api.sci.gov.in/supremecourt/2018/36466/36466_2018_9_1501_63764_Judgement_01-Sep-2025.pdf (urging consideration of a larger-bench reference); Pramati Educ. & Cultural Tr. v. Union of India, (2014) 8 SCC 1 (India). The account concerns the procedural step taken in the cited 2025 judgment.

decisions. The allocation of those powers determines what a claimant must contest and what a successful challenge can accomplish.

B. What the Comparison Cannot Establish

The analysis does not establish that remedial design predicts national outcomes independently of politics or resources. A formally accessible court may be costly, slow, or difficult to use. A nonjudicial institution may sometimes secure a negotiated solution more quickly. Determining those effects requires evidence about claims, decisions, implementation, and the experience of affected communities.

An empirical extension could compare defined categories of disputes within a specified period. It could record access to counsel, admissibility, time to interim and final relief, the legal standard applied, and execution. Electoral arrangements could be assessed through nomination procedures and representative accountability. Territorial arrangements would also require evidence about staffing, budgets, and the exercise of devolved functions. This would test whether the institutional dependencies identified in the article produce the effects alleged.

The comparison also resists assuming a single community interest. Religious and ethnic minorities contain differences of gender, class, language, and belief. A reserved representative, provincial government, or educational authority may act in ways contested by members of the community. Constitutional protection must therefore address both external interference and the ability of individuals to challenge decisions made within an accommodative institution.

C. Reform Directed at the Institution Controlling the Decision

Reform should begin by identifying the action required to give effect to the guarantee. Where the problem concerns eligibility or legal classification, legislation and administrative rules should specify criteria, evidence, reasons, and review. An affected person should be able to understand why protection was denied and which institution can correct the decision. Where the governing substantive rule itself restricts a protected interest, reform must engage that rule through the constitutionally available process.

Representational arrangements require accountability as well as a numerical allocation. Transparent nomination procedures, published selection criteria, and opportunities for community participation can make party-mediated representation more answerable to its intended beneficiaries. A proposal to change the method of election should also assess the risks of political segregation and exclusion. No single electoral technique can be assumed to secure meaningful representation in every setting.

Restitution requires a connection between adjudication and delivery. Access to official records, clear responsibilities for correcting registers, and procedures for implementing possession orders can make relief effective. Compensation restrictions must be evaluated on their own terms. A successful title determination does not automatically resolve loss accumulated during dispossession, and reform should state which forms of harm it addresses.

Territorial authority requires operational arrangements corresponding to the constitutional allocation. Responsibilities for staffing, finance, consultation, and dispute resolution should be clear. Published records can identify which authority withheld approval or failed to perform a duty. Where judicial scrutiny is restricted, accessible legislative oversight and reasoned public decisions become especially important. Such mechanisms can support accountability while the constitutional limits on litigation remain operative.

Courts should connect the form of relief to the violation established. Depending on the constitutional power available, relief may include reconsideration, invalidation of a measure, interim protection, a timetable for performance, or monitored implementation. An order should identify the responsible

institution and the act required. The 2014 Pakistan minority-rights judgment illustrates an effort to connect protective directions with follow-up, while India's educational-rights litigation illustrates correction of the threshold for obtaining constitutional protection.[36]

A regional reform agenda can draw lessons from these arrangements without replacing their specific legal foundations with a general demand for stronger guarantees. It should ask whether affected people can participate in the relevant decision, obtain review of an alleged breach, and secure implementation. Those questions make constitutional accommodation open to assessment and identify where additional legal protection, political negotiation, or institutional capacity is required.

VII. Conclusion

Constitutional accommodation in South Asia distributes authority over religious identity, representation, property, territorial government, and institutional autonomy. The selected arrangements provide substantial guarantees, but they attach different conditions to the decisions through which those guarantees take effect. Some commitments are expressly nonjusticiable. Others support enforceable claims whose beneficiaries and scope are determined through adjudication. Territorial and representational arrangements create further dependencies involving parties, central institutions, and public resources.

The resulting pattern is more differentiated than a uniform withdrawal from constitutional promise. The appropriate comparison follows the protected interest, the institution controlling the decision, the route of challenge, and the action required for correction. That method identifies both genuine restrictions on remedies and examples in which courts can alter the conditions of protection.

Reform should address the particular distribution of authority established by the evidence. Clarifying eligibility, improving representative accountability, linking restitution to execution, and making territorial responsibilities operational pursue different constitutional objectives. Their common purpose is to ensure that the people whose interests an arrangement protects have an effective role in its operation and a credible means of contesting its misuse.

[36] Suo Motu Case No. 1 of 2014, PLD 2014 SC 699, ¶¶ 37–38 (Pak.); Aligarh Muslim Univ., 2024 INSC 856, ¶¶ 160–161 (India).