INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW
An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 5 | Issue 5 | 2026 Art. 32

When Equality Sees Communities: Reconsidering Mathew John's *India's Communal Constitution*

Devika Singhal
Law Student,
5th Year, BBA.LL.B.,
O.P. Jindal Global University, Sonipat, Haryana

Recommended Citation
Devika Singhal, *When Equality Sees Communities: Reconsidering Mathew John's India's Communal Constitution,* 5 IJHRLR 377-385 (2026).
Available at www.ijhrlr.in/current-issues/.

This Article is brought to you for free and open access by the International Journal of Human Rights Law Review by an authorized Lex Assisto & Co. administrator.
For more information,
please contact submission.ijhrlr@gmail.com

When Equality Sees Communities: Reconsidering Mathew John's *India's Communal Constitution*

India's Communal Constitution: Law, Religion, and the Making of a People; Mathew John; Cambridge University Press, Cambridge; 2024; 158 pages; ISBN 9781009317757.

I. INTRODUCTION

Mathew John's *India's Communal Constitution* enters a familiar constitutional debate from an unfamiliar direction. Indian constitutional scholarship frequently treats communalism as a political force acting upon, and sometimes against, a secular constitutional order. John reverses the angle of vision. His concern is not only with political mobilisation around religion, but with the categories through which constitutional law itself has imagined the Indian people. The book names as the 'Communal Constitution' a recurring tendency to cast the people as a collection of religiously marked communities rather than as a liberal community of free and equal citizens.[1] That diagnosis is developed through four connected fields: religious freedom, personal law, minority rights and caste.[2]

The intervention is important because, as it does so, it focuses on the shift of attention from the episodic and community-centered nature of conflict to the relatively less vocal, classificatory nature of law. Courts and legislatures do not only react to existing communities outside the context of law; classification through law can also help define boundaries and permissible activities within the framework of communities. Therefore, the intervention by John is both genealogical and doctrinal in nature. John looks at the connections between colonial mechanisms of regulation of religious and social groups and post-constitutional mechanisms that maintain the importance of community identity within the law.[3]

This review agrees with the underlying diagnosis proposed by John, although refining its locus of dispute. It is made clear that John himself recognizes that recognition of groups and group rights, on their own, does not necessarily represent the constitutional problem he refers to, and that such recognition can well be reconciled with a liberal state of free and equal citizens. Nevertheless, the recurrent problem might be stated as follows: the book offers an excellent account of the history of

[1] Mathew John, *India's Communal Constitution: Law, Religion, and the Making of a People* 1-3 (Cambridge University Press, Cambridge, 2024).

[2] *Id.* at 17-45, 46-70, 71-97, 98-122.

[3] *Id.* at 4-7.

communal constitutional identity but lacks concrete instructions about how to distinguish those instances in which group-conscious structures go from being structures of protection or remedy to structures of definition of "the people" in terms of community. For this reason, the focus of this review is not about whether constitutional law should recognize communities but rather whether the idea of the Communal Constitution sets sufficiently clear standards for that recognition.[4]

II. THE BOOK'S THESIS, METHOD AND INTELLECTUAL ARCHITECTURE

John expressly presents the Communal Constitution as a constitutional 'failure': a tendency that pulls Indian constitutional practice away from the liberal-secular ambition of equal liberty.[5] Unlike a conventional political history of community politics, this book is presented through themes. The chapter on religious liberty concerns how the State and the judiciary have constructed religion into a legal category; the chapter on personal law considers the community picture of the population created by religion-based family law; the chapter on minority rights reflects the development of the concept of religious identity as a category of governance into the use of religious identity as an instrument for representation and self-governance; and the chapter on caste studies the constitutional categorization of Scheduled Castes and Backward Classes as part of the overall Hindu representation of the people.[6] Thus, all these four areas form a basis for a single conceptual idea rather than distinct doctrinal subjects.

This architectural decision is the book's greatest strength in terms of its contributions. This decision allows John to recognize continuities that would not have been possible without the genealogical approach. The genealogical approach rejects any easy solution of a "1950 break" and shows that the adoption of constitutions did not clean up the classificatory practices of colonialism. However, the genealogical approach has a significant demand, which is that continuity in form does not always mean continuity in terms of constitutional function. A category of colonial law can gain a new rationale when adopted by a democratic Constitution. The book recognizes the fact that constitutionalism changed the old categories, but the most interesting claims are made at the point where history and modern meaning meet.

III. WHERE THE DIAGNOSIS IS MOST CONVINCING

The section on religious freedom is especially insightful when considering how John operates. The adjudication of Indian constitutional law has had to frequently make decisions on what constitutes a religion,

[4] Mathew John, *supra* note 1, at 2-3.

[5] *Id.* at 1-3.

[6] *Id.* at 17-45, 46-70, 71-97, 98-122.

a religious denomination, or an essential practice of religion. The landmark case in this regard is *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, which provided judges with an important set of language tools for deciding what constituted religion under Articles 25 and 26 of the Constitution.[7] Other cases like *Indian Young Lawyers Association v. State of Kerala* illustrate how the debates over equality, denominations, and religious practices force courts to consider definitions of religion and religious practices.[8] What is important here is not only that courts occasionally make poor decisions regarding religion. The issue is that constitutional adjudication itself may be part of this process.

This perspective also undermines established narratives on Indian secularism. The well-known framework for understanding Indian secularism by Rajeev Bhargava known as 'principled distance' sees Indian secularism as providing for State intervention in relation to religion to tackle both inter-religious and intra-religious domination.[9] However, John provides an additional lesson to be learned from this approach: there is no such thing as purely external intervention of State when the definition of community, its practices and institutions should be given by law first. State intervention in domination reform could lead to consolidation of this communal form of religion governance at the same time. The power of John's argument lies in its ability to demonstrate this dual process.

In the analysis of the personal laws, the same analytical advantage is demonstrated. John demonstrates how the systems that emerged in colonial India have been transported into modern legal order in a way that categorizes citizens on the basis of their religious affiliation.[10] In this case, religious identity is not some abstract category but one that can affect marriage, divorce and succession. The constitutional conflict raised in *Shayara Bano v. Union of India* in relation to instant triple talaq demonstrates this problem vividly.[11] John's argument is very compelling in terms of refuting the assumption that the personal-law identities are merely pre-legal facts.

IV. THE NORMATIVE PROBLEM: FROM COMMUNAL CLASSIFICATION TO GROUP-CONSCIOUS EQUALITY

This is not the problem, however, since John does not view all group-

[7] *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282.

[8] *Indian Young Lawyers Association v. State of Kerala*, (2019) 11 SCC 1.

[9] Rajeev Bhargava, "Political Responses to Religious Diversity in Ancient and Modern India", 1 Studies in Indian Politics 21 (2013).

[10] Mathew John, *supra* note 1, at 46-70.

[11] *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

conscious rules as communal. The difficult issue emerges when the book's cross-domain history is applied to the constitution as a source of evaluation. There are many uses for the same group category. One use is to fix people within the confines of a group identity and then have the law define their legal status according to communal authority. The other use is to identify certain group classifications as a result of which the law seeks to defend groups from domination or to correct an existing injustice. While both the above group categorizations are group conscious, they are not normatively equal. John's model recognizes the difference, but whether he provides sufficient legal guidelines for the application of this model to minority rights, religion autonomy, personal laws and caste-conscious redressal remains to be seen.

The issue of minority rights is the easiest to understand in this respect. Article 29 and Article 30 of the Constitution are deliberately group-conscious. The Constitution ensures protection for the cultural and educational interest of minorities so that even the exact same situation may prove threatening to the minority's interests in terms of assimilation or majoritarian domination.[12] *T.M.A. Pai Foundation v. State of Karnataka* case study proves the constitutional importance of minority educational autonomy despite the difficulties faced in defining the term 'minority' and the regulation of that right.[13] The problem with constitutional law is that it can continue to reify the majority-minority dichotomy and adopt older forms of representation. However, the existence of this threat does not negate the necessity for group recognition.

A caste example poses even greater problems for a blanket skepticism about group recognition. For an order that associates historical disadvantage with caste status, formal equality cannot be enough. Articles 15(4), 15(5), 16(4), and others therefore allow or mandate the State to engage in group recognition as part of its effort at redistribution and subordination-reversal.[14] Such an approach is familiar from Marc Galanter's discussion of the Indian approach to compensatory discrimination: it recognises groups under the law because to treat citizens of unequal historical circumstances equally will only serve to perpetuate the inequality, not eliminate it.[15]

The recent Supreme Court decision in *State of Punjab v. Davinder Singh*, 2024, makes the point even more vividly. The Court there determined that sub-classification within the Scheduled Castes is a constitutionally valid practice if there is both a rational basis and material support for it.[16]

[12] The Constitution of India, arts. 29-30.

[13] *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481.

[14] The Constitution of India, arts. 15(4), 15(5), 16(4).

[15] Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (University of California Press, Berkeley, 1984).

[16] *State of Punjab v. Davinder Singh*, 2024 INSC 562.

This decision does not get rid of the concept of group categorisation; rather, it subjects them to closer scrutiny because disadvantage within such constitutionally recognized groups is itself differential. While this development reinforces John's point regarding how constitutional categories construct political subjects, it simultaneously underscores the reason why improved group categorization might serve to advance rather than hinder equality.

The distinction becomes apparent in the difference between identity-fixing, protection and remedial recognition. In identity-fixing recognition, communal membership determines completely legal personality. In protective recognition, room is made for the freedom of culture, religion, or association from domination. In remedial recognition, groups suffering historical disadvantage are identified in order to eliminate structural discrimination. John rightly points out that the problem is not collective rights as such. The problem is that the process whereby a constitutionally recognized group moves from the latter two types of recognition to the first has not yet been well-articulated.

V. PERSONAL LAW AFTER UTTARAKHAND: A CONTEMPORARY TEST

The post-publication implementation of the Uniform Civil Code in Uttarakhand provides a remarkably direct and recent example of the testing of John's argument. The Uniform Civil Code for Uttarakhand, 2024 was implemented on 27 January 2025 along with regulations and further amendments.[17] This demonstrates the move towards uniform civil code implementation in areas previously regulated by community-based personal laws. At the same time, however, it does not solve, by itself, the constitutional problem pointed out by John. Indeed, the uniformity may reduce the importance of religion as a legal criterion, but it does not guarantee the increase of freedom and equality. The content of the rule, the interests that it affects, and its consequences for vulnerable people should determine the answer.

In this context, the analysis provided by John is particularly useful for readers who may disagree with his liberal standard completely. His argument shows that it is wrong to treat personal law as a simple manifestation of community and that the move towards the uniform civil code does not necessarily mean emancipation. If personal law is partially created by the state categorization, then reform discussions should not be conducted only from the perspective of opposition of state law and traditional religious law without changes. At the same time, it would be

[17] The Uniform Civil Code, Uttarakhand, 2024 (Act 3 of 2024); Government of Uttarakhand, Notification No. 101/XX-5/25-03(10)2024-T.C-II/2025, Jan. 27, 2025, available at: https://ucc.uk.gov.in/ (last visited on Sep. 18, 2026).

possible to strengthen the book by clarifying the approach that a constitutional system should use to assess the reforms, which minimize communal categorization, but place new restrictions on individuals' freedom.

VI. STRENGTHS, LIMITATIONS AND SCHOLARLY CONTRIBUTION

The foremost merit of the book is its conceptual parsimony. In just 158 pages, John manages to unify fields usually approached separately and provide them with a common language. The concept of the Communal Constitution forces constitutional theorists to pay attention not only to whether certain rights are protected, but also to how the legal system determines who the addressee of such rights is. Historically grounded approach remedies a typical doctrinal bias of treating contemporary constitutional categories as if they arose out of thin air, as something that is solely determined by the text of 1950. Showing its colonial preconditions, John makes us understand how contingent such classifications, which contemporary law often sees as inevitable, are.

Another strong point of the book is its intellectual modesty. At the end of his investigation, John admits that the purpose of the book was precisely not to offer a normatively "correct" solution in order to be able to delineate the concept of the Communal Constitution.[18] That is one of the reasons why the book is more convincing as a diagnostic one than as a project. Therefore, it would be unjust to criticize it for lack of a comprehensive theory of constitutional rebuilding. However, this modesty does not solve the normative problem, since the very concept of the Communal Constitution is explicitly pathologic and measured against equal liberty.

John's methodology for his argument is one of legal history and qualitative evidence. His argument is built on careful analysis of legal decisions, statutory frameworks, colonial practices, and the existing body of literature on the topic, rather than any new quantitative data or field research. This methodological decision works well in conjunction with the genealogical research John does, because it helps him trace the migration of legal categories over time. Similarly, the limitation to his methodology in this context is more focused: it is capable of showing that there was indeed a communal logic in law, but it is incapable of determining the frequency and the causal role of communal pressure in present-day institutions. The author also responds to alternative theories in a manner that cannot be achieved by a polemicist. Specifically, the introduction differentiates John's explanation from those that claim that communal pressure stems from something other than constitutional frameworks and acknowledges the alternative theory that communal

[18] Mathew John, *supra* note 1, at 123-133.

rights can fit within a liberal idea of citizenship. The only remaining problem with this work is the lack of criteria for incorporation of these theories into doctrinal analysis.[19]

Consequently, it is not that the underlying idea of the book consists in equating all forms of group recognition to communalism, something which John himself explicitly resists in his thesis. What poses a problem in terms of the limitations of the book, is the insufficiently specified criteria by which one should distinguish between identity-fixer communalisation and legitimate group recognition. In areas of personal law, minority protections and caste-based rights, it is equally possible that constitutional order may pose danger of freezing the identity but, on the other hand, has to recognise it in order to guarantee autonomy or to overcome exclusion. A more specific test would ask about who identifies the group, how the belongingness to the group is established and whether the individual has the chance to express his/her opinion and to leave the group, whether the identification is the result of disadvantage and how the distribution of power is affected, and finally whether the group classification is revisable. If these aspects are answered, John's conceptual criterion becomes an instrument for adjudicating.

From the perspective of constitutional scholars, students, and judges, such a modification does not detract from the value of John's contribution but rather strengthens it. *India's Communal Constitution* contributes to the discussion in the direction of showing that the structure of peoplehood is a constitutional problem per se. Moreover, it creates a connection between public law and scholarship on colonial governance, secularism, minority protection and social hierarchy. Further research could elaborate on John's work by constructing constitutional theory of group recognition capable of condemning identity-fixing communalisation but supporting collective rights and anti-subordination efforts.

VII. CONCLUSION

India's Communal Constitution gains its power through its reconfiguration of the subject of study. Communalism is not considered only as a threat to the law but John reveals how doctrinal practices, institutional dynamics, and categories of understanding can be involved in the construction of India as a nation divided according to communities. Through his analysis of religious freedom, personal laws, rights of minorities and castes John makes his central thesis sensible in areas which are normally analyzed separately.

The main weakness of the book comes from the breadth of its conceptual ambition. John accepts the possibility of having collective rights along

[19] *Id.* at 2-5, 17-45, 46-70, 71-97, 98-122, 123-133.

liberal equal citizenship, but there is still the problem of their concrete application. Some kind of recognition keeps the citizen entrenched in inherited identity and reproduces hierarchical structures, while some other kind of recognition protects minorities or compensates structural discrimination. Therefore there is the need of constitutional criteria for distinguishing between recognition which limits equal citizenship and recognition which promotes equal citizenship. While John recognizes the difference between the two concepts, he does not provide concrete tools for applying it. This is exactly the problem which makes the book useful for research and teaching on constitutionalism, secularism, minority rights and social justice.