

A Note on Some Constitutional Questions in the Context of the Sanatan Seva Nidhi Act to be Submitted to Constitutional Experts.

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Does Parliament have legislative competence to create a statutory institutional framework for the advancement, coordination and transparent funding of Sanatan religious, educational and charitable purposes, while preserving the autonomy guaranteed to religious denominations under Articles 25 and 26?

On that formulation, there is substantial constitutional ground in favour of the proposal (Sanatan Sewa Nidhi Act). But I would not say that every provision of our present draft is necessarily constitutional until eminent constitutional experts have stress-tested the actual text. The distinction matters.

1 start art with legislative competence: Entry 28, Concurrent List

This is the first provision I would put before them.

Entry 28 of List III, Seventh Schedule covers:

“Charities and charitable institutions, charitable and religious endowments and religious institutions.”

Under [Article 246\(2\)](#), both Parliament and State Legislatures can legislate on Concurrent List subjects.

This is extremely important for our case. A law dealing with religious/charitable institutions and endowments is not alien to the legislative field created by the Constitution itself.

[The Supreme Court expressly discussed Entry 28 in the Haryana Sikh Gurdwara case.](#)

So I would ask:

“If Parliament can legislate regarding [waqfs](#) and legislatures can establish statutory structures for [Sikh and Hindu religious endowments](#), where exactly is the want of legislative competence for a Sanatan Seva Nidhi?”

That forces the objection to become specific rather than merely saying “religion and State must be separate.”

2. Article 25 actually contemplates legislation touching religious institutions

Article 25(1) protects freedom of conscience and the right to profess, practise and propagate

religion.

But Article 25(2)(a) expressly permits the State to regulate:

economic, financial, political or other secular activity associated with religious practice.

Article 25(2)(b) also permits laws providing for social welfare and reform and opening Hindu religious institutions of a public character to all classes and sections of Hindus.

This distinction is fundamental.

A Sanatan Seva Nidhi legislation need not tell anybody:

what deity to worship,
what theology to believe,
what mantra to recite,
which sampradaya is correct,
how a temple must conduct puja.

Those would raise serious Article 25/26 questions.

But collection of voluntary contributions, accounts, audit, expenditure, grants, educational programmes, publication of scriptures, training, administration and transparency are predominantly institutional, financial and secular-administrative matters.

That gives us much firmer constitutional territory.

3. Article 26 is probably the most important provision

Article 26 gives every religious denomination or section thereof the right:

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property “in accordance with law.”

The words “in accordance with law” in Article 26(d) are particularly significant.

The classic **Shirur Mutt principle** is that there is a constitutional distinction between **matters of religion and administration of property**. *The State cannot take away a denomination’s right to manage its religious affairs, but secular administration of religious property can be regulated by legislation.*

Ratilal Panachand Gandhi sharpened the point further: regulation is permissible, but the law cannot simply remove the denomination’s administration altogether and transfer it wholesale to an outside secular authority.

This suggests an important drafting safeguard.

The Proposed Sanatan Sewa Nidhi Act: A Constitutional Analysis

The Sanatan Seva Nidhi should support and facilitate religious activity, not acquire doctrinal control over temples, maths, sampradayas or religious institutions.

That distinction may eventually prove more important than the title of the Act.

4. The Sikh Gurdwara precedent is particularly useful

This is indeed one of your strongest examples.

The Sikh Gurdwaras Act, 1925 established a statutory framework for management of Sikh gurdwaras. More recently, the Haryana Sikh Gurdwara (Management) Act, 2014 was challenged in the Supreme Court precisely on constitutional grounds.

In Harbhajan Singh v. State of Haryana (2022), the Supreme Court upheld the constitutional validity of the Haryana Act. The Act created a statutory juristic entity for management of specified Sikh gurdwaras.

Even more usefully for our purposes, the Supreme Court discussed legislative competence under the Seventh Schedule and recognised the legislative fields concerning religious institutions.

That gives you a very good question to put across the table:

If legislation may constitutionally establish a statutory body for the administration and financial management of Sikh religious institutions, what constitutional principle prohibits Parliament from establishing an autonomous statutory body concerned with Sanatan religious, educational and charitable purposes?

The answer cannot simply be “secularism”. The Sikh legislation exists within the same secular Constitution.

5. Waqf legislation makes the comparative argument even stronger

India has had statutory Waqf legislation for decades, culminating in the Waqf Act, 1995 and now the 2025 amendments.

Interestingly, the recent constitutional litigation is highly relevant because the petitioners themselves challenged particular provisions under Articles 14, 15, 19, 21, 25, 26, 29, 30 and 300A.

The Supreme Court’s September 2025 interim judgment did not stay the Waqf legislation as a whole. It intervened against particular provisions while reiterating the presumption of constitutionality attaching to legislation.

This is legally much more useful than merely saying, “There is a Waqf Act, therefore there can be a Sanatan Act.”

The proper proposition is:

The Constitution does not prohibit religion-specific statutory frameworks per se. Their validity depends upon legislative competence, classification, purpose, structure and whether particular provisions violate fundamental rights.

6. **Article 14** is where I expect a sophisticated objection

Article 14 guarantees equality before law and equal protection of laws.

Someone may argue:

“Why should the State create a special statutory institution for Sanatan Dharma?”

But Article 14 does not prohibit classification. The question becomes whether there is a constitutionally permissible basis for the classification and whether the statutory mechanism bears a rational relationship to its legitimate object.

And here there is an interesting reverse argument:

If legislation specifically addressing Muslim waqfs and Sikh gurdwaras is constitutionally possible, mere Hindu/Sanatan specificity cannot by itself make another statute unconstitutional.

The constitutional experts should nevertheless examine *whether each benefit, power, privilege or exemption conferred by our proposed Act has an adequate constitutional justification.*

7. **Article 15** needs separate examination

Article 15 prohibits State discrimination against citizens on grounds only of religion, race, caste, sex, place of birth or combinations thereof.

The important word is “only.”

A statute dealing with a particular class of religious institutions is not automatically unconstitutional merely because the classification is religious. **Otherwise, a Waqf statute or Sikh gurdwara statute would face an existential problem** merely by identifying the religious institutions to which it applies.

8. **Article 27** deserves very careful attention

This may actually be one of the provisions I would specifically ask the Senior Advocate about.

Article 27 protects a person against being compelled to pay taxes whose proceeds are specifically appropriated for promoting or maintaining a particular religion or religious denomination.

This is precisely why one feature of our proposal is constitutionally important:

The Nidhi is based on voluntary contributions and not compulsory taxation.

The Proposed Sanatan Sewa Nidhi Act: A Constitutional Analysis

If, as envisaged, there is no compulsory levy on the general taxpayer and no government funding, the Article 27 objection becomes substantially weaker.

Indeed, Shirur Mutt itself considered Article 27 in distinguishing permissible regulatory financing from taxation for promotion of religion.

I would nevertheless ask the Senior Advocate to examine every provision concerning:

Government grants, tax treatment, compulsory contributions, administrative expenditure and the Consolidated Fund.

One poorly worded funding provision could unnecessarily create an Article 27 issue.

9. Article 28 is probably much less dangerous

Article 28 deals primarily with religious instruction in educational institutions maintained or recognised/aided by the State.

It would become important if the Nidhi itself established or funded educational institutions in a manner involving compulsory religious instruction.

But distribution of literature, research, voluntary study of scriptures, training of religious functionaries etc. does not automatically become an Article 28 violation. The precise institutional arrangements matter.

10. Articles 29 and 30

These are minority cultural and educational rights.

They are relevant mainly because an opponent might argue that the Constitution deliberately gives certain special institutional protections to minorities.

But Articles 29 and 30 do not say that Parliament is prohibited from legislating concerning religious and charitable institutions of the majority community.

That would be difficult to reconcile with Entry 28 itself and the long history of Hindu religious endowment legislation.

11. Secularism and the Basic Structure

This is likely to be the broadest constitutional attack:

“A secular State cannot create a Sanatan Seva Nidhi.”

Indian constitutional secularism is not a constitutional command that the State can never legislate concerning religion. [Articles 25\(2\), 26\(d\), Entry 28, Waqf legislation, Hindu religious](#)

endowment legislation and Sikh gurdwara legislation themselves demonstrate otherwise.

The constitutional question is much subtler:

Is the State establishing or imposing religious doctrine, or is it creating/regulating an institutional, charitable, financial or administrative framework connected with religion while respecting religious freedom?

Those are very different things.

I suggest putting these six questions to the constitutional experts.

1.Legislative competence: Does Parliament have competence principally under [Article 246](#) read with [Entry 28 of List III](#), and are any additional Entries relevant?

2.Article 14/15: Does creation of a Sanatan-specific statutory institution constitute constitutionally permissible classification, particularly considering Waqf and Sikh Gurdwara legislation?

3.Articles 25/26: Does any provision of our draft cross the line from regulation/support of secular administration into control of religious doctrine or denominational affairs?

4.Article 27: Is our voluntary-contribution, no-compulsory-tax model sufficient to eliminate the principal Article 27 objection? Are any provisions still vulnerable?

5.Secularism/basic structure: Can the Act be attacked simply because its statutory objects relate to Sanatan Dharma, notwithstanding the existing statutory frameworks for Waqfs, Sikh gurdwaras and Hindu religious endowments?

6. precedents:

[Harbhajan Singh v. State of Haryana \(2022\)](#) is particularly valuable. The Supreme Court upheld the Haryana Sikh Gurdwara (Management) Act, 2014, and expressly dealt with legislative competence concerning religious institutions.

And alongside it:

[Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar](#) (Shirur Mutt), 1954, for the boundary between protected religious affairs and regulable secular/property administration.

[Ratilal Panachand Gandhi v. State of Bombay, 1954](#), for the proposition that regulation of administration is permissible, but complete displacement of denominational administration can violate Article 26.