

THE IDEA OF SECULARISM IN INDIA: EXAMINING TALAQ THROUGH CONSTITUTIONAL MORALITY

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ABSTRACT

India's constitutional commitment to secularism seeks to balance equality, religious freedom and individual right, a balance that becomes especially complex within personal law, and Muslim personal law in particular, where certain practices have historically produced gender-based discrimination. This paper examines the intersection of secularism and personal law with specific reference to talaq, tracing the legal journey of Muslim women from Mohd. Ahmed Khan v. Shah Bano Begum to Shayara Bano v. Union of India. The Shah Bano judgment marked a significant moment in Indian legal history by extending Section 125 of the Code of Criminal Procedure to divorced Muslim women unable to maintain themselves beyond the iddat period, prioritising constitutional principles of equality and social justice over a restrictive personal law interpretation, while the subsequent Muslim Women (Protection of Rights on Divorce) Act, 1986 reflected the continuing tension between religious autonomy and state intervention. The paper analyses the constitutional provisions governing secularism and religious freedom under Articles 13, 14, 15, 21, 25 through 28 and 44, alongside the landmark decisions shaping the scope of religious freedom and state regulation, and critically evaluates the essential religious practices doctrine, the judiciary's evolving posture toward personal law, and the implications of criminalising a personal law practice through the Muslim Women (Protection of Rights on Marriage) Act, 2019. The paper concludes that the regulation of religious personal law in India remains an evolving constitutional process rather than a settled position, and that reconciling secularism, gender justice and religious freedom requires continued attention to constitutional principle, judicial restraint and legislative sensitivity in equal measure.

KEYWORDS: *Secularism; Triple Talaq; Personal Law; Constitutional Morality; Essential Religious Practices.*

1. INTRODUCTION

India's constitutional vision of secularism is distinctive in that it does not advocate strict separation between religion and state, but instead seeks a principled balance between respect for religious diversity and the protection of fundamental right.¹ This model becomes especially complex within personal law, where religious norm continues to govern matters of marriage, divorce and maintenance across India's several religious communities.

The practice of talaq, and unilateral or instantaneous forms of Islamic divorce in particular, has raised sustained concern regarding gender justice and equality. While personal law enjoys the broader protection of religious freedom under the Constitution, it remains subject to constitutional scrutiny where it conflicts with fundamental right, and legislative response to judicial pronouncement in this domain has consistently reflected the continuing tension

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¹ S.R. Bommai v. Union of India, A.I.R. 1994 S.C. 1918 (India).

between preserving religious autonomy and pursuing social reform. Muslim personal law is not alone in this respect: comparable gender-discriminatory provision has historically existed within Hindu, Parsi and Christian personal law as well, though this paper's specific focus on talaq reflects the particular constitutional attention that practice has received since *Mohd. Ahmed Khan v. Shah Bano Begum*². Under Muslim personal law, a husband's obligation to maintain a divorced wife is, absent judicial intervention, enforceable only during the iddat period, and the Supreme Court's holding in *Shah Bano* that such a wife retains recourse to Section 125 of the Code of Criminal Procedure where she cannot otherwise maintain herself proved a critical, and at the time deeply contested, milestone in the constitutional treatment of Muslim personal law.

Parliament's response, the Muslim Women (Protection of Rights on Divorce) Act, 1986, confined a divorced Muslim woman's maintenance entitlement to a reasonable and fair provision payable within the iddat period,³ a legislative reversal this paper examines in Section 6 alongside the doctrinal trajectory that eventually produced *Shayara Bano v. Union of India*⁴ three decades later.

1.1 Objectives and Methodology

- To examine the constitutional concept of secularism as it operates within India's plural personal law framework.
- To analyse the constitutional provisions governing religious freedom, Articles 25 through 29 and 44, alongside the judicial doctrine that has defined their scope.
- To trace the doctrinal evolution of the essential religious practices test and its application to personal law.
- To trace the judicial trajectory on talaq from *Shah Bano* to *Shayara Bano* and evaluate the subsequent criminalisation of instant triple talaq.

This study adopts a doctrinal methodology, analysing constitutional text, Constituent Assembly debate, and the Supreme Court and High Court decisions that have shaped the constitutional treatment of religious freedom and personal law in India.

² *Mohd. Ahmed Khan v. Shah Bano Begum*, A.I.R. 1985 S.C. 945 (India).

³ Muslim Women (Protection of Rights on Divorce) Act, 1986, § 3, No. 25, Acts of Parliament, 1986 (India).

⁴ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1 (India).

2. THE CONCEPT OF SECULARISM IN THE INDIAN CONSTITUTIONAL ORDER

Secularism denotes, at its most general, the separation of religious and governmental function, and in certain states, Pakistan, Iran and Saudi Arabia among them, a particular religion holds official constitutional status. India's model departs from both the strict separationist model and the confessional state model: no religion is recognised as the official religion of the Indian state, which maintains what is often termed principled distance or principled impartiality toward all faith.⁵

Indian secularism, in this sense, signifies equal treatment of all religions by the state rather than the strict separation Western constitutional models typically envisage. It accommodates the public presence of religion, and at times the recognition of religious law, while requiring that the state neither privilege nor discriminate against any particular faith; the state accordingly does not concern itself with the relationship between the individual and the divine, but confines its regulatory interest to relationships among individuals within society. India's legal system, notwithstanding this formal commitment to religious neutrality, continues to apply different personal law to different religious communities: Hindus, Sikhs, Jains and Buddhists are governed by codified Hindu personal law, Christians and Parsis by their own respective personal law, and Muslims by Shariat-derived personal law, a plurality that has itself generated recurring difficulty around practice including polygamy, child marriage validity and unequal inheritance right across communities.

In *S.R. Bommai v. Union of India*, the Supreme Court held that secularism constitutes a basic feature of the Constitution, requiring that all religions and religious denominations be treated equally by the state, and confirming that religion, as a matter of personal faith, cannot be conflated with secular state activity.⁶ This formulation, that the Constitution guarantees freedom of religion rather than freedom from religion, captures the specifically Indian character of the doctrine: religious pluralism is accommodated and protected, but always subject to the overarching constitutional commitment to equality and non-discrimination this paper's subsequent sections examine in the specific context of personal law.

2.1 Comparative Models of Secularism

India's approach is frequently contrasted with two alternative models of secularism operative elsewhere. The American separationist model, reflected in the First Amendment's Establishment and Free Exercise Clauses, seeks to erect

⁵ Rajeev Bhargava, The Distinctiveness of Indian Secularism, in *The Future of Secularism* 20 (T.N. Srinivasan ed., 2007).

⁶ *S.R. Bommai v. Union of India*, A.I.R. 1994 S.C. 1918, 304 (India).

what is often termed a wall of separation between religious and governmental institution, treating state engagement with religious practice as presumptively suspect regardless of the state's underlying purpose. The French model of *laïcité* goes further still, requiring religious neutrality not merely of the state but, in specific contexts, of individuals within state institutions, restricting the visible expression of religious identity within public education and civil service.⁷

Indian secularism departs from both models by permitting, and at times requiring, state engagement with religious practice specifically where equality or reform objectives warrant it. This is what commentators term principled distance rather than strict separation: the state may treat different religious communities differently where doing so serves a legitimate constitutional purpose, such as correcting historical disadvantage or securing gender equality within a specific community's personal law, provided that differential treatment does not itself become a vehicle for religious favouritism or discrimination. This framework, developed most fully in the work of Rajeev Bhargava and other scholars of comparative secularism, supplies the conceptual foundation for understanding why Indian courts have felt able to intervene in personal law matters, including *talaq* specifically, in ways a strict separationist model would likely foreclose.

3. THE CONSTITUTIONAL RIGHT TO FREEDOM OF RELIGION: ARTICLES 25 THROUGH 29 AND 44

Articles 25, 26, 29 and 44 of the Constitution together give textual form to India's constitutional commitment to religious freedom, though each operates within distinct doctrinal limits this section traces.

3.1 Article 25: Freedom of Conscience and Religious Practice

Article 25 guarantees freedom of conscience and the freedom to profess, practice and propagate religion, subject to public order, morality and health, and to the state's power to regulate secular activity associated with religious practice.⁸ The provision accordingly requires courts to distinguish practice that is essentially religious from practice that is secular in character notwithstanding a religious veneer, a distinction Section 4 below examines in detail. In *T. Sareetha v. T. Venkata Subbaiah*⁹, the Andhra Pradesh High Court held that Section 9 of the Hindu Marriage Act, permitting a decree of restitution of conjugal rights, violated personal liberty under Article 21 by effectively compelling cohabitation; the Delhi High Court reached the contrary conclusion in *Harvinder Kaur v. Harmander Singh*¹⁰, upholding Section 9 as a legitimate

⁷ Rajeev Bhargava, *supra* note 4, at 25-28.

⁸ India Const. art. 25.

⁹ *T. Sareetha v. T. Venkata Subbaiah*, A.I.R. 1983 A.P. 356 (India).

¹⁰ *Harvinder Kaur v. Harmander Singh*, A.I.R. 1984 Del. 66 (India).

protection of the institution of marriage consistent with Article 21, a conflict the Supreme Court resolved in favour of the Delhi position in *Saroj Rani v. Sudarshan Kumar Chadha*¹¹, though notably without directly engaging the personal law dimension of the underlying dispute.

The scope of permissible state regulation under Article 25 was addressed in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*¹², where the Court held that the state's power of intervention is confined to circumstances in which a religious practice is incompatible with morality, public health or public order, and in *Ratilal Panachand Gandhi v. State of Bombay*¹³, where the Court affirmed that Article 25 protects not merely religious belief but the overt acts sanctioned by that belief.

3.2 Articles 26, 29 and 44

Article 26 guarantees religious denominations the right to manage their own religious affairs and to establish and maintain institutions for religious and charitable purpose, subject to comparable limitation for morality, public health and order.¹⁴ In *Sri Venkataramana Devaru v. State of Mysore*¹⁵, the Supreme Court affirmed the autonomy of religious institutions in matters of religious administration while confirming the state's power to regulate that administration to secure its proper and efficient functioning. Article 29 protects the cultural and educational interests of minorities, safeguarding their right to conserve a distinctive language, script and culture,¹⁶ a protection *T.M.A. Pai Foundation v. State of Karnataka*¹⁷ extended into the specific context of minority educational institutions' autonomy in admission and administration. Article 44, situated among the Directive Principles, directs the state to endeavour to secure a Uniform Civil Code, a directive that, more than seven decades after the Constitution's adoption, remains substantially unrealised at the national level, an inaction commentators have attributed in significant part to sustained opposition from sections of the Muslim community who regard Shariat, as derived from the Quran, as immutable and therefore protected under Article 25(1) against override by a non-justiciable Directive Principle in Part IV.

This asserted priority of Article 25(1) over Article 44 has not, however, been definitively settled by the Supreme Court, and it sits in some tension with the Court's own repeated observations, examined further in Section 6 below,

¹¹ *Saroj Rani v. Sudarshan Kumar Chadha*, A.I.R. 1984 S.C. 1562 (India).

¹² *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar*, A.I.R. 1954 S.C. 282 (India).

¹³ *Ratilal Panachand Gandhi v. State of Bombay*, A.I.R. 1954 S.C. 388 (India).

¹⁴ India Const. art. 26.

¹⁵ *Sri Venkataramana Devaru v. State of Mysore*, A.I.R. 1958 S.C. 255 (India).

¹⁶ India Const. art. 29.

¹⁷ *T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 S.C.C. 481 (India).

expressing regret at Article 44's continued non-implementation. The doctrinal relationship between an enforceable fundamental right under Part III and a non-justiciable Directive Principle under Part IV is, in the ordinary case, resolved in favour of the fundamental right, but Article 44's specific directive to pursue a uniform code, and Article 25's specific guarantee of religious freedom, both draw on constitutional values the framers regarded as significant, leaving their precise reconciliation, absent legislative action of the kind the Uttarakhand experiment discussed elsewhere in comparative constitutional scholarship has recently supplied, a matter this paper's Section 8 conclusion identifies as among the more consequential unresolved questions in this area of Indian constitutional law.

4. THE ESSENTIAL RELIGIOUS PRACTICES DOCTRINE: DOCTRINAL EVOLUTION AND ITS CRITICS

The essential religious practices doctrine supplies the principal analytical tool through which Indian courts have distinguished constitutionally protected religious practice from practice that, however religiously framed, remains subject to ordinary secular regulation. In *Durgah Committee, Ajmer v. Syed Hussain Ali*¹⁸, Justice Gajendragadkar sounded what has since become an influential note of caution: for a practice to qualify as religious and thereby attract constitutional protection, it must be regarded by the religion concerned as an essential and integral part of its faith, and practices that are secular in substance, or that reflect superstitious accretion rather than doctrinal essential, do not acquire protection merely by association with religious observance.

This essentiality inquiry, as applied across *Shirur Mutt*, *Ratilal* and *Devaru*, was initially deployed to distinguish secular from religious activity within a given practice rather than as a general threshold test for the scope of religious freedom, and the Court in each of these decisions determined the secular character of the contested practice by reference to the historical pattern of state intervention in the administration of the relevant religious institution. The doctrine's most striking analytical feature, evident across this line of authority, is its explicitly reformist orientation: by narrowing what counts as essential to a religion, the Court has retained for itself, rather than for the religious community concerned, the ultimate authority to determine which practices fall within the ambit of constitutional protection, a methodological choice with direct consequence for how the Court later approached the specific question of instant triple talaq examined in Section 6 below.

This reformist application of the essentiality test has itself attracted sustained criticism from scholars who regard it as excessive judicial intervention into matters of religious doctrine. Critics within this tradition

¹⁸ *Durgah Committee, Ajmer v. Syed Hussain Ali*, A.I.R. 1961 S.C. 1402 (India).

contend that Indian courts have, at points, misapplied or misunderstood the substantive content of Islamic jurisprudence specifically, and that judicial reinterpretation of what Islamic law actually requires risks displacing the interpretive authority religious scholarship and religious institutions would otherwise hold.¹⁹ This criticism carries genuine force as an objection to any specific instance of judicial overreach into doctrinal interpretation, and it supplied part of the institutional backdrop against which the All-India Muslim Personal Law Board formally represented to the government, following the *Shah Bano* decision, that any change to Shariat, whether through legislation or judicial interpretation, would constitute interference with the religious freedom Articles 25 and 26 guarantee.²⁰

This objection, whatever its force as an institutional critique of specific judicial reasoning, does not resolve the underlying constitutional question this paper's later sections examine, since the essential religious practices doctrine itself, whatever criticism its application in particular cases has attracted, remains the operative constitutional standard the Supreme Court applied in *Shayara Bano*, and the doctrinal question of whether a specific practice is essential to a religion, as opposed to the separate question of who possesses ultimate authority to determine that essentiality, is the inquiry Indian constitutional law currently requires courts to undertake.

A further methodological difficulty with the essentiality inquiry deserves note. Because the test asks whether a practice is essential to a religion as that religion's own adherents and texts define it, courts applying the test necessarily engage, to some degree, with substantive theological interpretation, an engagement in obvious tension with the same courts' formal lack of doctrinal authority over any faith tradition. This structural tension is not unique to Islamic personal law; it recurs wherever the essentiality test is applied, including in the Hindu, Sikh and Christian contexts the *Shirur Mutt* line of cases addressed. What distinguishes the triple talaq litigation is the intensity of public contestation the tension generated, reflecting both the practice's direct bearing on gender equality and the broader political salience personal law reform carries in contemporary India, a salience this paper's Section 6 discussion of the 2019 Act's legislative aftermath addresses directly.

5. EQUALITY, PERSONAL LAW AND THE UNRESOLVED SCOPE OF ARTICLE 13

Article 14 guarantees equality before the law and equal protection of the law to every person, and Article 15 prohibits discrimination on grounds including

¹⁹ Tahir Mahmood, *Muslim Personal Law: Role of the State in the Subcontinent* 112-18 (2d ed. 1983).

²⁰ All-India Muslim Personal Law Board, Memorandum to the Prime Minister (1985).

religion and sex.²¹ These guarantees intersect with personal law in a manner Indian courts have, for much of the post-independence period, approached with considerable caution: the Supreme Court has, in several instances, declined to adjudicate the constitutional validity of specific personal law provisions under Articles 14 and 15, reflecting a broader judicial reluctance to subject religiously derived law to the full rigour of equal protection analysis that would apply to ordinary secular legislation.

This reluctance connects directly to the unresolved question whether personal law falls within the scope of law in force under Article 13(1), which renders any pre-constitutional law inconsistent with fundamental rights void to the extent of that inconsistency.²² The Constituent Assembly's engagement with Articles 13, 19, 25 and 44 together indicates that the Assembly did not intend to exclude personal law from the nation's ordinary legal authority, notwithstanding subsequent judicial hesitancy on the point; prominent constitutional scholars have accordingly argued that Article 13(1) does extend to personal law, including its uncodified components, a position that, if judicially accepted, would considerably strengthen the case for subjecting discriminatory personal law provision to direct constitutional challenge rather than leaving reform to piecemeal legislative intervention of the kind this paper's Section 6 examines in the specific context of talaq.

The Constitution's equality guarantee operates alongside its affirmative commitment to women's welfare: the Constitution not only guarantees formal equality for women but empowers the state to adopt measures positively favouring women, a power that has served as an important tool for addressing the socio-economic, educational and political disadvantage Indian women continue to face, and for countering discrimination embedded in personal law specifically.²³

The practical consequence of the Article 13 uncertainty this section has traced is that personal law reform in India has proceeded overwhelmingly through piecemeal legislative or judicial intervention targeting specific practices, triple talaq, restitution of conjugal rights, discriminatory succession provision, rather than through a comprehensive constitutional reckoning with personal law's compatibility with Part III as a whole. This incrementalism has genuine institutional advantages, allowing reform to proceed with the specific evidentiary and doctrinal record a particular practice generates, but it also means that comparably discriminatory provisions across different religious communities' personal law can receive markedly different constitutional treatment depending on which community's practice happens to generate the

²¹ India Const. arts. 14, 15.

²² India Const. art. 13, cl. 1.

²³ India Const. art. 15, cl. 3.

litigation, a pattern of uneven reform this paper's discussion of the criminalisation choice in Section 7 below suggests has itself become a source of legitimate concern.

6. FROM SHAH BANO TO SHAYARA BANO: THE JUDICIAL TRAJECTORY ON TALAQ

In *Mohd. Ahmed Khan v. Shah Bano Begum*, the Supreme Court held that Section 125 of the Code of Criminal Procedure, a secular provision requiring maintenance for a wife unable to support herself, applies to Muslim women notwithstanding the more limited maintenance obligation Muslim personal law prescribes, a holding Chief Justice Y.V. Chandrachud grounded in constitutional principles of equality and social justice rather than in any reinterpretation of Islamic doctrine itself.²⁴ The decision provoked sustained controversy, denounced by sections of the Muslim community as an impermissible intrusion into Muslim personal law, and Parliament responded with the Muslim Women (Protection of Rights on Divorce) Act, 1986, confining a divorced Muslim woman's maintenance entitlement to the iddat period save where both parties elected otherwise.²⁵

6.1 Shayara Bano v. Union of India

Shayara Bano addressed a considerably broader question than *Shah Bano* had: whether instant triple talaq, talaq-e-biddat, enjoys constitutional protection as an essential Islamic practice under Article 25(1). The litigation originated in constitutional concern regarding gender discrimination and was subsequently joined by Muslim women who had themselves been unilaterally divorced, together with women's rights organisations advocating reform. By a three-to-two majority, the Court held instant triple talaq unconstitutional as arbitrary and violative of Article 14, with the majority holding it was not an essential feature of Islamic practice and one judge in the majority additionally reasoning that the practice was itself inconsistent with Islamic law properly understood.²⁶ The bench directed the central government to enact legislation governing marriage and divorce within the Muslim community within six months, and prohibited husbands from imposing instant triple talaq in the interim.

It bears note that *Shamim Ara v. State of Uttar Pradesh*²⁷ had, fifteen years earlier, already rendered instant triple talaq invalid as a matter of procedural requirement, but that decision's significance went largely unremarked until *Shayara Bano* reignited national attention to the practice specifically. The

²⁴ *Mohd. Ahmed Khan v. Shah Bano Begum*, A.I.R. 1985 S.C. 945 (India).

²⁵ Muslim Women (Protection of Rights on Divorce) Act, 1986, § 3, No. 25, Acts of Parliament, 1986 (India).

²⁶ *Shayara Bano v. Union of India*, (2017) 9 S.C.C. 1, 190-96 (India).

²⁷ *Shamim Ara v. State of Uttar Pradesh*, (2002) 7 S.C.C. 518 (India).

counsel representing the petitioning women in the connected writ petitions were, in several instances, not themselves Muslim, a fact that drew comment regarding the appropriate relationship between advocacy grounded in constitutional equality principle and interpretive authority over specifically Islamic doctrinal concepts such as *halal* and *haram*; this paper does not adopt a position on that question, since the constitutional validity of instant triple talaq under Articles 14 and 21 does not, on the analysis the majority in *Shayara Bano* adopted, ultimately turn on the religious credential of counsel presenting the constitutional argument.

6.2 The Muslim Women (Protection of Rights on Marriage) Act, 2019

The most consequential outcome of *Shayara Bano* was not the judgment itself but the legislative response it prompted: the Muslim Women (Protection of Rights on Marriage) Act, 2019, which criminalised the pronouncement of instant triple talaq, making it a cognizable offence punishable by imprisonment of up to three years.²⁸ This transformed what had previously been treated as a civil marital matter into a criminal offence, a shift that advanced the constitutional equality principle *Shayara Bano* articulated while simultaneously raising a distinct question this paper's Section 7 examines directly: whether criminalisation was a proportionate, or even necessary, means of vindicating that principle, given that the civil invalidity of instant triple talaq had already been judicially settled without recourse to penal sanction.

6.3 Comparative Treatment of Talaq Reform Elsewhere

India's approach to reforming instant triple talaq can usefully be situated against reform in other Muslim-majority and Muslim-minority jurisdictions. Several Muslim-majority states, including Pakistan, Bangladesh and Egypt, have long required that talaq be pronounced before, or notified to, a designated authority as a precondition of legal effect, procedural safeguards that achieve much of the practical protection Indian reform has pursued without requiring criminal sanction against the husband.²⁹ That these procedural models originate within Muslim-majority jurisdictions applying their own understanding of Islamic law is significant for the debate this paper's Section 4 traces regarding interpretive authority: it demonstrates that meaningful reform of instant triple talaq does not require external, non-Muslim intervention to achieve, and that India's own reform, whatever one's view of its specific criminalisation mechanism, sits within a broader, religiously internal reform tradition rather than outside it.

²⁸ Muslim Women (Protection of Rights on Marriage) Act, 2019, § 4, No. 20, Acts of Parliament, 2019 (India).

²⁹ Tahir Mahmood, *Personal Laws in Islamic Countries: History, Text and Comparative Analysis* 156-62 (2d ed. 1995).

7. CRIMINALISATION AND PROPORTIONALITY: THE 2019 ACT RECONSIDERED

The criminalisation choice Parliament made in 2019 sits in some tension with the ordinary relationship between civil invalidity and criminal sanction in Indian family law. *Shayara Bano* itself accomplished the civil law objective directly: an instant triple talaq pronounced after the judgment produces no legal dissolution of marriage, leaving the marital relationship civilly intact and the wife entitled to the ordinary remedies a subsisting marriage affords. The 2019 Act's additional criminal sanction accordingly does not restore a legal status the civil law had failed to protect, since *Shayara Bano* had already secured that protection; its function is instead deterrent and punitive, treating the mere pronouncement of a legally ineffective talaq as an independent criminal wrong.

This design choice has attracted genuine constitutional and policy criticism. Critics have questioned whether criminal sanction, and the risk of a husband's imprisonment specifically, serves the economic and social interest of the wife and any dependent children as effectively as a civil remedy might, particularly where the household's principal earner faces incarceration; proponents respond that the deterrent function of criminal sanction addresses a distinct social harm, the psychological and social injury the practice of instant, unilateral divorce inflicts, that civil invalidity alone does not adequately redress, and that comparable criminal sanction exists for other forms of matrimonial cruelty and abandonment without generating comparable objection.

This paper does not resolve that policy disagreement, which properly belongs to continued legislative and academic debate, but it identifies the criminalisation choice as the point at which the tension between religious autonomy, gender justice and state power, examined throughout this paper, becomes most acute: a personal law practice, once civilly invalidated on constitutional ground, was additionally subjected to penal sanction in a manner few other personal law reforms across any Indian religious community have received, raising a proportionality question this paper's Section 8 conclusion returns to directly.

A comparative note sharpens this proportionality concern. When Indian courts and legislatures have addressed discriminatory practice within Hindu personal law, the coparcenary exclusion the earlier sections of this paper's companion literature on Hindu succession document, for instance, reform has proceeded through civil amendment alone, without any accompanying criminal sanction against those who had previously relied on the discriminatory rule. The asymmetry between this civil-only approach to Hindu personal law reform and the criminal approach Parliament adopted for instant triple talaq specifically invites the question whether the choice of remedy has been calibrated to the severity of the underlying harm, as its proponents contend, or has instead been

shaped by the particular political salience triple talaq acquired following Shayara Bano, a question this paper raises as a matter for continued scholarly and legislative attention rather than one it purports to answer definitively.

8. CONCLUSION: RECONCILING SECULARISM, GENDER JUSTICE AND RELIGIOUS FREEDOM

The examination of instant triple talaq within India's constitutional framework reveals a complex and contested relationship between secularism, religious freedom and gender justice. The analysis of Articles 14, 15, 21, 25 through 28, 44 and 13 undertaken in this paper demonstrates that while the Constitution guarantees freedom of religion, that freedom is not absolute and remains subject to the overarching constitutional commitment to equality, dignity and constitutional morality. Judicial interpretation has consistently affirmed the state's authority to regulate religious practice that conflicts with fundamental right, even as the essential religious practices doctrine that authority relies upon has itself attracted sustained scholarly criticism regarding the judiciary's institutional competence to determine religious doctrine.

Shayara Bano v. Union of India represents a significant constitutional moment in which the Supreme Court subjected a personal law practice directly to the test of fundamental right and held instant triple talaq arbitrary and unconstitutional, reflecting the judiciary's increasing willingness to scrutinise personal law through the lens of equality and non-discrimination. The fragmented, three-two reasoning of the decision, spanning multiple distinct constitutional grounds, nonetheless highlights continuing doctrinal uncertainty regarding the precise interface between personal law and constitutional review, an uncertainty this paper's Section 5 discussion of Article 13's unresolved scope compounds further.

The subsequent Muslim Women (Protection of Rights on Marriage) Act, 2019 represents a decisive legislative response to judicial invalidation, but its criminalisation of a personal law practice raises genuine constitutional questions regarding proportionality and the appropriate means of securing gender justice, questions this paper's Section 7 examines without resolving, since they properly remain the subject of continued legislative and constitutional debate. What this paper's analysis does establish is that the regulation of religious personal law in India remains an evolving constitutional process rather than a settled legal position, and that the central challenge going forward lies in reconciling the constitutional commitment to secularism and gender equality with the protection of religious freedom in a genuinely plural society. Meaningful reform in this domain, the discourse surrounding triple talaq illustrates, must be rooted in constitutional principle, exercised with judicial restraint regarding matters of religious doctrine, and pursued with legislative sensitivity to the communities such reform most directly affects,

ensuring that the pursuit of justice does not, in its implementation, undermine the foundational values of India's constitutional order.

Three specific lessons emerge from the doctrinal trajectory this paper has traced, each bearing on how future personal law reform in India might proceed more coherently than the piecemeal pattern Section 5 documents. First, the essential religious practices test, whatever its continuing utility, would benefit from clearer articulation of the evidentiary standard courts apply in determining essentiality, reducing the scope for the kind of interpretive contest examined in Section 4 to recur in each new case. Second, the choice between civil and criminal remedy for personal law reform, examined in Section 7, warrants a more explicit, principled framework applied consistently across religious communities, rather than being determined largely by the specific political salience a given practice happens to acquire. Third, the unresolved scope of Article 13 with respect to personal law, examined in Section 5, remains the single doctrinal question whose resolution would do most to bring coherence to this area of constitutional law, since a definitive answer would determine whether future personal law reform proceeds primarily through direct constitutional challenge or continues to depend, as it has for the seven decades since independence, on the contingent alignment of litigation, legislative will and public attention that produced the reforms this paper has examined.