

ANALYSIS OF TRIPLE TALAQ CASE - SHAYARA BANO V UNION OF INDIA

Animesh Nagvanshi***Case Citation: 2017 9 SCC 1****Petitioner(s):** Shayara Bano and others**Petitioner's lawyers:** Mr. Amit Chandha, Mr. Salman Khurshid**Respondent(s):** Union of India, All India Muslim Personal Law Board, Rizwan Ahmed, and Ministry of Women and Children Development Secretary**Respondent's lawyers:** Mr. Mukul Rohatgi, Mr. Kapil Sibal, and Mr. Manoj Goel.**Concerned Statutes and Provisions:** Article 14, Article 15, Article 21, Article 25, Muslim Personal Law (Shariat) Act 1937**Forum:** Supreme Court of India**Judges Bench (5):** Justice Jagdish Singh Khehar,

Justice S. Abdul Nazeer,

Justice Rohinton Fali Nariman,

Justice Uday Lalit,

Justice K. M. Joseph

(I) INTRODUCTION

In these modern times where the whole world is shunning the immoral or unjust practices in civilized society, and providing a safeguard against inequality¹, discrimination², liberty of life³, and freedom of religion⁴, however, there are such practices still in the society in India which

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¹ Article 14: Right to Equality of law and equal protection of law, Indian constitution

² Article 15: Right against gender discrimination, Indian constitution

³ Article 21: Right to Personal Life, Indian constitution

⁴ Article 25: Right to Freedom of Religion, Indian constitution

are detrimental to the progress of the Muslim wives, and practice of Triple Talaq (Talaq-e-Biddat) in the Muslim community where Muslim wives are instantly divorced by uttering a word “Talaq” three times from the Muslim husband, with the advancement of technology, a bunch of situations encountered that Muslim husbands sent talaq to their wives via voice notes, what’s app messages and other modes too available in this modern era. The bench of the Supreme Court consisting of 5 members, and the majority (3:2) of the bench of this case provided astute and justified reasoning after scrutinizing the case from various dimensions, and called this practice as unconstitutional, this further led to the abolition of the practice of “Triple Talaq” in India. This case historically is also known as the Triple Talaq Case.

(II) FACTS OF THE CASE

1. The petitioner, Shayara Bano, was married for 15 years before her husband Rizwan Ahmed granted her a divorce using the Islamic tradition of Talaq-e-Biddat (triple talaq), which allows a Muslim husband to divorce his Muslim wife without her agreement.
2. Outraged by this, she filed a writ petition in the Supreme Court asking the court to declare practices like polygamy, nikah-halala, and Talaq-e-Biddat unconstitutional because they violate the fundamental rights (Articles 14, 15, 21, and 25) of women provided by the Indian Constitution. Polygamy is the practice of having more than one wife.
3. Additionally, the Supreme Court asked the petitioner, Union of India, other women's rights organizations, and All India Muslim Personal Law Board (AIMPLB) for written responses to the arguments made regarding polygamy, nikah-halala, and Talaq-e-Biddat.
4. Women's rights organizations such as Beebak Collective and Bhartiya Muslim Mahila Andolan (BMMA) back the Union of India in its position that these practices are unlawful.
5. However, the AIMPLB contended that because Muslim law is not codified and is not susceptible to judicial scrutiny, these customs are protected by Article 25 of the Constitution, which guarantees freedom of religion.

(III) ISSUES DEALT WITH IN THIS CASE

1. Is the immediate application of Triple Talaq, as required by Islam, necessary and essential?

2. Does the practice of triple talaq violate any basic rights and is there any constitutional support for it?
3. Does triple talaq violate Article 25 of the Constitution in any way?
4. What is the function of Sharia law in this context and how does it apply?

(IV) CONTENTIONS

(A) ARGUMENTS MADE ON BEHALF OF PETITIONERS

Shayara Bano's attorneys, Mr. Amit Chanda and Mr. Salman Khurshid presented arguments in front of the court regarding Muslim personal law, arguing that the practice of triple talaq is not recognized by Muslim personal law and is not subject to any punishment in the Quran. They pointed out three major issues and urged the bench to take them seriously.

1. Why did the couple divorce?
2. Were any efforts made to find common ground before the divorce?
3. Given that the practice of triple talaq breaches articles 14, 15, and 16 of the constitution, what is its constitutional validity?

Any form of relationship has a specific, legitimate, and social reason behind it before beginning, and it is legally recognized in various ways by various laws. If a legally binding relationship is broken, there must be a legitimate reason for doing so; otherwise, it violates articles 14, and 15 of the Indian constitution, which protects everyone from being treated unequally regardless of gender discrimination.

There must be a possibility and earnest efforts must be made for the couple to reconcile before asking for the divorce, which is not there in this practice, and the quick triple talaq practice does not provide Muslim couples an opportunity to do so.

According to the wording of the Quran, one should make attempts to bring a marriage together, but if that effort is unsuccessful, one should only resort to declaring a divorce three times, with an iddat period of three months between each talaq. Triple talaq is an illegal practice according to Sunni law, which is followed by the majority of Muslim communities in India.

In addition to the aforementioned arguments, Mr. Amit Chanda and Mr. Salman Khurshid have offered an alternate resolution to this dispute, arguing that the Muslim community can obtain a divorce under the Dissolution of Muslim Marriage Act, 1939, without violating Articles 14, 15, of the Constitution.

(B) ARGUMENTS MADE ON BEHALF OF RESPONDENT

In front of the court, Mr. Mukul Rohatgi, Mr. Kapil Sibal, and Mr. Manoj Goel made the following key arguments on behalf of Rizwan Ahmad and others:

1. Does judicial scrutiny of personal legislation have any legal standing?
2. The court can only determine legality where the legislature has changed the secular activities described in article 25(2), which refers to the freedom to practice one's faith.
3. It was also noted that triple talaq is not subject to article 15 since the woman can seek a delegation of the talaq right and a larger Mehar payment, and she can also seek the protection of the Special Marriage Act of 1954.

In response to a query regarding the judiciary's participation under judicial review under article 13, CJ Nariman stated that the 1937 Shariat Act includes the state, meaning that when a conflict between constitutional validity and personal law arises, the court may step in to prevent the two from encroaching upon one another.

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Added that personal laws are subject to basic rights, that article 13, article 14, article 15, and article 21 of the Indian Constitution protect individuals, that triple talaq is a violation of one's fundamental rights, and that section 2 of the Shariat Act of 1937 need to be repealed.

The respondent's legal representative added that any marriage, including a Muslim marriage, is a private contract that is not subject to judicial review. Additionally, the respondent's legal representative argued that marriage is a personal relationship between two people, and the state is not required because it is a private contract.

(V) OBITER DICTA

To decide the case, a five-judge panel comprised of J. Nariman, J. Lalit, J. Joseph, J. Khehar, and J. Nazeer was constituted. In a 3:2 split decision, the Supreme Court ruled that triple talaq

was unconstitutional under the law. The majority was made up of J. Nariman, J. Lalit, and J. Joseph, while CJ. Khehar and J. Nazeer dissented against it.

According to Nariman and J. Lalit, The Shariat Application Act, of 1937 codified triple talaq and it means that it could be challenged on constitutional grounds because it was a statute. They concluded that the conduct was in violation of Constitutional Article 14 and the other three, on the other side, dissented and concluded that the Act does not include triple talaq in its definition. According to Justice Joseph, the practice of triple talaq is not even a part of uncodified Muslim law. However, CJ. Khehar and J. Nazeer decided that it is a component of uncodified Muslim law and cannot be challenged on constitutional grounds.

The two numbers below make things simpler. As we can see, there is a definite 3:2 divide when it comes to the choice. The rationale, however, lacks coherence, with Justice Joseph siding with the justices who dissented on the issue of whether triple talaq is codified.

(VI) JUDGEMENT

By a vote of 3:2, the judge bench decided to dismiss the case, ruling that the practice of triple talaq should be prohibited and directing the repeal of Section 2 of the 1937 Shariat Act.

1. Triple talaq is not an essential Islamic practice. An essential practice is one that has existed from the beginning of time and is currently used in society. Since triple talaq is not an essential practice, it is not protected by article 25(1) of the Indian Constitution.
2. The Quran, the Muslim faith's holy book, declared that an individual's discretion is against the Quran's principles and the Sharia law and that it cannot be valid because a majority of people adhere to it. Article 25 of the Constitution states the same thing: until and unless there is an essential religious practice, it cannot be abolished; however, when there isn't, it can be.
3. Any marriage that is broken without the wife's agreement constitutes gender inequality, and if attempts at reconciliation do not favour the husband, it is unquestionably a violation of article 14 of the constitution.
4. The Shariat Act of 1937 was passed before the Indian Constitution was enacted, and as such, it is regarded as pre-constitutional law (Article 13(1)). Under pre-constitutional law, any other law that violates a person's fundamental rights must be declared invalid

due to inconsistency with the doctrine of eclipse and severability. However, the Shariat Act of 1937 is not applicable in this case because it violated article 14, a fundamental right of a person

(VII) RELEVANT CASES

1. Ishrat Jahan v Union of India⁵
2. Mohd Ahmed Khan v Shah Bano Begum⁶
3. Aafreen Rehman v Union of India⁷

(VIII) CONCLUSION

It is a historical and landmark judgement delivered to uphold the fundamental rights of Muslim women, but there may still be differences of opinion among the general public and the legal community. The practice of instant triple talaq is no longer legal under Indian law, and the majority of the bench ruled that it is not only against Islamic law but also against the Constitution.

⁵ CIVIL WRIT JURISDICTION CASE

⁶ AIR 1985 SC 945

⁷ (2017) 9 SCC 1