

SHAYARA BANO v. UNION OF INDIA

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The landmark judgment of Shayara Bano vs. Union of India¹ led to the ban on the practice of Talaq-e-Biddat, or Instantaneous Triple Talaq, a practice in which the ties of matrimony were abruptly, unilaterally, and irrevocably terminated.

The 'talaq-talaq-talaq' left Muslim women vulnerable and frequently resulted in serious emotional, financial, and social repercussions. Shayara Bano helped herself through this case as well as other Muslim women who were victims of the practice.

WHAT IS TRIPLE TALAQ?

Divorce in Islamic law is of three types- Talaq-e-Ahsan, Talaq-e-Hasan and Talaq-e-Biddat.

In Talaq-e-Ahsan, 'Ahsan' means the best, stating this mode of talaq the most ideal way. In accordance with this type of Talaq, the husband must declare the divorce in a single sentence, following which the woman must observe the *iddat* period, a three-month waiting period. If the couple resumes cohabitation or intimacy during the *iddat* period, the talaq will be lifted; otherwise, the divorce will be complete and irrevocable.

A "proper" divorce procedure called Talaq-e-Hasan requires the husband to say the word "talaq" three times over the course of three monthly courses. In the event that cohabitation is resumed within one month of the first divorce decree, the divorce decree is deemed to have been revoked.

In Islam, talaq-e-biddat is seen as undesirable and "sinful," although it is legal according to Sharia law. In this type of divorce, the husband issues three talaq simultaneously. Regardless of *iddat*, divorce takes place instantly and becomes irrevocable as it is declared. As a result, once pronounced, it cannot be revoked.²

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¹ Shayara Bano v. Union of India AIR 2017 9 SCC 1(SC)

²Triple Talaq verdict: What exactly is instant divorce practice banned by court?, Hindustan Times (August 22, 2017)

FACTS OF THE CASE

Shayara Bano, a Muslim woman, was married to Rizwan Ahmad. After 15 years of marriage, her husband unilaterally divorced her in 2016 using the Triple Talaq or Talaq-e-biddat system. She subsequently filed a writ petition in the Supreme Court stating that the practice of talaq-e-biddat infringes on citizens' fundamental rights which are protected by Articles 14, 15, and 21 of the Indian Constitution. She also suggested the abolishment of customs like Polygamy and Nikah Halala along with Triple Talaq. It was also submitted that talaq-e-biddat cannot be protected under the rights granted to religious denominations (or any sections thereof) under Articles 25(1), 26(b) and 29 of the Constitution. She received additional support from the BEBAK collective and the Bharatiya Muslim Mahila Andolan.

ISSUES RAISED

- Whether the practice of talaq-e-biddat an essential religious practice of Islam or not?
- Whether the practice of talaq-e-biddat violates fundamental rights?

CONTENTIONS

Arguments from the petitioner

- Mr. Amit Chaddha, the advocate of Shayara Bano, argued that the instantaneous triple talaq is not recognized by the Muslim Personal Law (Shariat) Act, 1937. It neither has Quranic Sanction nor was encouraged by the Prophet. It is a custom that was brought into existence through misinterpretation.
- Additionally, it was claimed that the Supreme Court and High Courts had heard multiple cases challenging the triple talaq practice. He argued that Articles 14 and 15 are violated by this kind of talaq.
- It needs to be declared illegal so that the Muslim community, regardless of gender, can be subject to the Dissolution of Muslim Marriage Act, 1939.

Arguments from the respondent

- Mr. Kapil Sibal, the advocate of the respondents, submitted that the Shariat Act establishes guidelines for decision-making rather than codifying Muslim personal law.
- Additionally, it was stated that under Islamic law, divorce and marriage are private contracts, and the government shouldn't become involved in such private conflicts.

- He asserted that the concurrent list makes clear mention of personal laws, showing that the framers of the Constitution had no intention of including personal laws within the scope of Article 13.
- The triple talaq practice does not discriminate against Muslim women, according to Mr. Sibal, who also suggested that they might get quick relief from abusive relationships. He stated four ways a Muslim woman could safeguard herself against discriminatory use of triple talaq: first, she could register the marriage under the Special Marriage Act of 1954; second, she could add clauses to the *Nikahnama* to prevent her husband from exercising a triple talaq; third, she could assign the right to talaq to herself; and finally, she could demand the payment of a high *Mehra* amount in order to prevent the use of triple talaq.

JUDGEMENT

On March 30th, 2017, the Supreme Court created a 5-Judge Constitution Bench to hear the matter. The Bench comprised Chief Justice J.S. Khehar and Justices Kurian Joseph, R.F. Nariman, U.U. Lalit, and AbdulNazeer. The Bench heard the case between May 11th and May 19th, 2017, and delivered the Judgment on August 22nd, 2017.

- Majority: Rohinton Nariman J. and U.U. Lalit J.
- Concurring: Kurien Joseph J.
- Dissenting: CJI J.S. Khehar and Abdul Nazeer J.

According to Justice Nariman and Justice Lalit, the practice of Instantaneous Triple Talaq is arbitrary in nature. Additionally, in this type of talaq, the divorce is solely the husband's decision and does not involve the wife, making it unjust and against women's rights. On the other side, Justice Kurian emphasized that triple talaq lacks the Quranic sanction. He wrote, "What is held to be bad in the Holy Quran cannot be good in Shariat and, what is bad in theology is bad in law as well".³

According to Justices Khehar and Abdul Nazeer, Triple Talaq is protected by Article 25 as an integral part of Muslim Personal Law and should not be subject to judicial intervention. They suggested that Triple Talaq may be rendered ineffective for a period of six months so that Parliament could draught legislation governing Triple Talaq.

³Shayara Bano v. Union of India AIR 2017 9 SCC 1(SC)

In the aforementioned case, the Apex Court ruled by a 3:2 majority that the practice of triple talaq (talaq-e-biddat) is unconstitutional. And most recently, on July 30, 2019, the Indian parliament enacted the Muslim Women (Protection of Rights on Marriage) Bill, 2019, which deemed triple talaq to be unlawful, and unconstitutional, and constituted it a crime starting in August 2019. The women who were victims of triple talaq have now received justice from the courts.

CONCLUSION

Regarding the constitutionality of Triple Talaq, judges held a variety of views, with some arguing that personal law should take preference over constitutional law. Given that India's Constitution is the country's highest law, the verdict was reasonable and justified. Numerous women who had suffered as a result of the practice were given solace by the ruling, which was welcomed as a significant step towards gender equality. The court urged the government to pass legislation that would govern Muslim divorce proceedings. The ruling signaled a change to more inclusive and progressive legal norms and was a significant step forward in India's fight for women's rights and equality.

