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SHAYARA BANO V. UNION OF INDIA (2017)

-Rekhanshi Vasudev

DETAILS OF THE CASE

- Citation: AIR 2017 SC 4609
- Court: Supreme Court of India
- Date of Judgement: 22 August 2017
- Bench: Five-Judge Constitutional Bench
- Judges: Chief Justice J.S. Khehar, Justice S. Abdul Nazeer, Justice Rohinton Fali Nariman, Justice Uday Lalit, and Justice Kurian Joseph

INTRODUCTION

The right to equality is enshrined under Article 14 to 18 of the Indian constitution. It ensures equality before the law, equal protection of laws, and protection against discrimination on grounds of race, religion, caste, sex or place of birth. Over the years Article 14 has been broadly interpreted by the Supreme Court of India under many different cases against the practices, laws and provisions that are unfair and violating.

Shayara Bano v. Union of India, 2017¹ became a landmark case in the history of Indian legislation as it challenged the constitutionality of the practice of Talaq-e-Biddat or triple talaq which gave Muslim men the power of dissolving a marriage without the consent of their wife instantly only by announcing “talaq” three times. The petitioners Ms. Bano and other Muslim women argued that this practice violated the fundamental rights especially Article 14, Article 15 and Article 21. This case raised an important question that whether in a country like India where people associate their identity with the religion they follow. Can religious practices still be protected under Article 25 if they violate the very principles of equality and gender justice.

¹ AIR 2017 SC 4609

The Supreme court gave the judgement declaring Talaq-e-Biddat or triple talaq unconstitutional and invalid. This judgement is deeply significant as it remains as a milestone in the evolution of Right to Equality and for upholding the dignity and rights of Muslim women.²

FACTS OF THE CASE

The petitioner is a Muslim woman, Shayara Bano who was divorced by her husband Rizwan Ahmed in the year 2015 by pronouncing Talaq-e-Biddat or triple talaq by which a man could divorce his wife in one sitting by saying “talaq” three times instantly dissolving the marriage without the wife’s consent irrevocably without any judicial intervention under Muslim personal law. She claimed that during her marriage she was a victim of domestic violence and harassment. She filed a writ petition in the Supreme Court under Article 32 arguing that the practice of triple talaq violated her fundamental rights challenging the constitutionality of Talaq-e-Biddat while also raising questions of practices of polygamy and Nikah Halala.

Her petition received support from organisations like Bhartiya Muslim Mahila Andolan putting the Union of India, All India Muslim Personal Law Board and her husband as respondents in the case.³

A chunk of the population also opposed this writ on the basis that Talaq-e-Biddat was an integral part of the Muslim personal law and any judicial interference would violate the religious freedom protections of the constitution under Article 25, creating a dilemma of maintaining religious practices or upholding dignity and freedom of a woman.

The Supreme Court constituted a constitutional bench of five judges from different religious backgrounds to examine whether Talaq-e-Biddat should be protected under Article 25 or whether it is a subject to constitutional scrutiny. Questioning the relationship between personal laws and fundamental rights guaranteed by the constitution.⁴

LEGAL ISSUES BEFORE THE COURT

- Whether the practice of Talaq-e-Biddat is an essential religious practice under Article 25 of the constitution.
- Whether Talaq-e-Biddat violates Articles 14, 15, and 21 of the constitution.
- Should the practice of Talaq-e-Biddat be declared unconstitutional?

² Constitution of India, arts. 14,19,21, and 25

³ Indiankanoon.org

⁴ Lawbhoomi.com- Shayara Bano v. Union of India

- Whether personal laws can be reviewed by courts.

ARGUMENTS BY BOTH PARTIES

Advocate Amit Chadha argued from the petitioner's side that Talaq-e-Biddat was contradictory to the practices given under Quran, the Muslim holy book and that the Muslim personal law never really recognised it thus it doesn't hold any legal value and it is merely a customary practice. He also said that the Quran prescribes a procedure for divorce which includes attempts at reconciliation and mediation citing the precedent of *Shamin Ara v. State of Uttar Pradesh* (2002)⁵ where the Supreme Court clearly held that a valid divorce must be followed by attempts at reconciliation. He also argued that it is a clear violation of Articles 14, and 15 of the Indian constitution.

The petitioners also argued that most Muslim communities don't even consider divorce under Talaq-e-Biddat to be valid and if personal laws are religious, they should not violate fundamental rights enshrined under the constitution.

Advocate Kapil Sibal appeared from the respondent's side on behalf of the All-India Muslim Personal Law Board, arguing that the Muslim marriage isn't acceptable for judicial review as it is a private contract which isn't codified. He also argued that Talaq-e-Biddat isn't discriminatory towards Muslim women as they can openly seek remedies as per the Special Marriages Act 1954 or demand a higher mehr as compensation,⁶

It was argued that marriages in Islam are governed by religious practices and thus, Talaq-e-Biddat is a religious practice as well. As per Article 25 of the Indian constitution which guarantees the right to freely practice religion the courts cannot interfere in these matters.⁷

JUDICIAL ASPECTS OF THE CASE

On August 22, 2017 the Supreme Court gave a verdict with 3:2 majority declaring Talaq-e-Biddat unconstitutional. The majority consisted of Justice Nariman, Justice Lalit, Justice Kurian Joseph who held that Talaq-e-Biddat is arbitrary and that it violates Article 14 of the constitution. They also held that the 1973 Shariat Act⁸ puts personal laws as laws in force

⁵ AIR 2002 SC 3551

⁶ Legalfly.in case summary: *Shayara Bano v. Union of India*

⁷ Saanvi Udupa, Sanskriti Gogoi & Swapna Haridas, case analysis of *Shayara Bano v. Union of India*, 7, Indian journal of law and legal research, 2919

⁸ Muslim personal Law (shariat) Application Act, 1973

making them fall under the scope of Article 13.⁹The majority held that Talaq-e-Biddat isn't an essential religious practice under Article 25 and the practice has rightfully struck down as null and void.

The minority judges favoured leaving the matter to the parliament for legislative reform.

The judgement also included the application of doctrine of manifest arbitrariness where the court held that practices or laws which are irrational, unreasonable, and capricious can be struck down and declared unconstitutional under Article 14.

The court also emphasised on the fact that religious practices cannot override fundamental rights of the constitution upholding constitutional morality.

CRITICAL ANALYSIS

The judgement in the case of Shayara Bano v. Union of India has been regarded as a crucial step in gender justice reforms and protection of women's rights in India. With many important advancements like application of Doctrine of manifest arbitrariness under Article 14 and focusing on constitutional morality.

It has also been criticised for addressing personal laws which should have been done by the parliament instead. It has also been criticised for having a narrower approach and limiting the decisions to triple talaq and not address other issues of discrimination against women under personal laws.

CONCLUSION

The judgment of Shayara Bano v. Union of India represents a significant milestone in the evolution of Indian constitutional law and gender justice. It declared Talaq-e-Biddat unconstitutional. The Supreme Court in its judgement declared that religious practices cannot violate the fundamental rights guaranteed by constitution. It also paved the way for legislative reforms, including the Muslim Women (Protection of Rights on Marriage) Act, 2019 and strengthened gender equality and women's rights. While the judgment has faced its own share of criticisms for being narrow it is still an important step towards ensuring greater protection for Muslim women in India.

⁹ Constitution of India, arts. 13