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SHAYARA BANO V. UNION OF INDIA: A LANDMARK IN GENDER JUSTICE AND CONSTITUTIONAL MORALITY

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INTRODUCTION

The Supreme Court's judgment in *Shayara Bano v. Union of India*¹ marked a significant shift in Indian constitutional jurisprudence and gender justice. The Court declared triple talaq (talaq-e-biddat) unconstitutional by a 3:2 majority, holding it violative of Articles 14, 15, and 21². The ruling renounced an arbitrary personal-law practice in the name of essential religion, affirming constitutional morality over prevailing social norms. This commentary examines the facts, legal issues, court reasoning, and broader implications, ultimately arguing that while the judgment reinforced constitutional supremacy, it also opened new questions regarding judicial restraint and legislative reform.

FACTS OF THE CASE

Shayara Bano and Rizwan Ahmed were married in 2002. She alleges dowry demands, domestic abuse, and abandonment. In 2015, Ahmed pronounced talaq three times, issuing an instant divorce. In February 2016, Ms. Bano filed a writ petition with the Supreme Court, arguing that the following three practices were violating Articles 14, 15, 21, and 25 of the Constitution, and should therefore be held as unconstitutional.

* Talaq-e-biddat

* Polygamy(multiple wives)

* Nikah - halala

The Court asked to give written submissions for the above-mentioned grounds like Talaq-e-biddat, Polygamy and Nikah Halala from Shayara Bano, Union of India, various bodies

¹ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

² The Constitution of India, arts. 13, 14, 15, 21, 25.

supporting women's rights and AIMPLB (All India Muslim Personal Law Board) ³ on 16th Feb 2017. The Union of India and Organisations specifically focused on women's rights, such as Bebaak Collective and Bhartiya Muslim Mahila Andolan (BMMA)⁴, provided support on the grounds that these practices are unconstitutional in Ms. Bano's Plea. However, AIMPLB made an argument stating that through Article 25 of the constitution, it is protected that these are some of the essential features of the Islamic religion, and uncodified Muslim Personal Law is not subject to the concept of constitutional judicial review under Article 13(2).

On 30 March 2017, the Supreme Court formed a 5 judge constitutional bench and accepted Shayara Bano's Petition. Then on 22 August 2017, by a 3:2 majority, the 5 judge constitutional bench ⁵held that the instantaneous practice of triple talaq is unconstitutional.

ISSUES OF THE CASE

1. Whether the practice of talaq-e-biddat, specifically mentioning Instantaneous Triple Talaq an essential practice of Islam?
2. Whether the practice of Instantaneous triple talaq violates any fundamental rights of the Constitution?
3. Whether Triple Talaq is protected under Act 25 of the Constitution?
4. Whether the judiciary has jurisdiction to invalidate a practice embedded in Muslim personal law?

KEY ARGUMENTS

In support of the petitioner, Mr. Amit Chadha argued that talaq-e-biddat (instant triple talaq) lacked any Quranic sanction and did not constitute a valid form of divorce under Muslim personal law. He emphasised that for a divorce to be valid in Islam, it must be based on a reasonable cause and preceded by efforts of reconciliation, neither of which is present in triple talaq. Citing Articles 14 and 15, he contended that the practice is arbitrary, discriminatory against Muslim women, and unconstitutional. He further pointed out that the Shariat Application Act, 1937⁶, did not recognise triple talaq and referred to *Shamim Ara v. State of*

³ All India Muslim Personal Law Board, <http://www.aimplboard.in>

⁴ Bharatiya Muslim Mahila Andolan, Empowering Muslim Women, <https://bmmaindia.com>

⁵ Shayara Bano v. Union of India, Writ Petition (C) No. 118 of 2016, decided on Aug. 22, 2017 (India), <https://indiankanoon.org/doc/115701246/>.

⁶ The Muslim Personal Law (Shariat) Application Act, 1937, No. 26 of 1937, INDIA CODE (1937), <https://indiacode.nic.in>.

*Uttar Pradesh (2002)*⁷, where the Supreme Court had laid down procedural safeguards for a valid talaq. He suggested that, if struck down, the Dissolution of Muslim Marriages Act, 1939,⁸ could offer a gender-neutral remedy for divorce in the Muslim community. Mr. Salman Khurshid, also supporting the petitioner, reinforced that the Quran prescribes a waiting period (iddat) and allows pronouncement of talaq only after reconciliation attempts have failed. He emphasised that even under traditional Islamic law, divorce becomes effective only after three separate pronouncements, each followed by a gap for reflection, not an instantaneous declaration. He added that 90% of Indian Muslims ⁹(Sunni sect) do not treat instant triple talaq as valid, strengthening the argument for it to be declared void.

On the other hand, Mr. Kapil Sibal, appearing for the All India Muslim Personal Law Board (AIMPLB), defended the practice. He argued that Muslim marriage is a private contract, and therefore not subject to judicial review under Article 13. He maintained that personal laws are defended under Article 25 (freedom of religion), and that any reform should come through Parliament, not the judiciary. He also stated that Muslim women could seek remedies through the Special Marriage Act, 1954, or by carrying delegated talaq rights in their marriage contract.

Attorney General Mukul Rohatgi, supporting the Union of India, contended that personal laws must conform to constitutional guarantees, pertaining to *Narasu Appa Mali* and *Masilamani Mudaliar* cases, he argued that Articles 13, 14, 15, and 21 were infringed. He urged the Court to strike down Section 2 of the Shariat Act, 1937, for enabling an unconstitutional practice.

Mr. Manoj Goel, in favour of Shayara's husband, argued that divorce was a private matter outside the state's purview. Justice Nariman, however, combated that the Shariat Act is statutory, making it subject to constitutional scrutiny.

REASONING OF THE COURT

The Supreme Court's decision in *Shayara Bano v. Union of India* navigated the intersection of constitutional rights and religious practices. The Court examined whether the practice of instant triple talaq (talaq-e-biddat) was compatible with the Constitution of India, especially Articles

⁷ *Shamim Ara v. State of Uttar Pradesh*, (2002) 7 SCC 518.

⁸ The Dissolution of Muslim Marriages Act, 1939, No. 8 of 1939, INDIA CODE (1939), <https://indiacode.nic.in>.

⁹ Sonali Sharma, Triple Talaq: An Analysis of the Landmark Judgment, Vidhi Parivartan (June 2021), <https://vidhiparivartan.co.in/wp-content/uploads/2021/06/Paper-6.pdf>.

14, 15, and 21, applying the rule of law and the doctrine of arbitrariness. The majority held the practice unconstitutional.

The bench clarified that the Holy Quran is the primary source of Islamic law, and other sources like Hadith, Ijma, and Qiyas must conform to it. This principle was affirmed by Justice Bader Durrez Ahmad in *Masroor Ahmed v. State (NCT of Delhi)*¹⁰, stating that any law or practice contradictory to the Quran lacks religious legitimacy.

The Court classified talaq into three types: Talaq Ahsan, Talaq Hasan, and Talaq-e-Biddat. It emphasised that the Prophet only approved talaq-e-sunnat forms, making talaq-e-biddat theologically improper.

The Court applied the principle laid down in *Air India v. Nergesh Meerza*¹¹ and expanded in *Masilamani Mudalia*¹² and observed that talaq-e-biddat lacks procedural fairness, is discriminatory, and fails the proportionality test. It was thus held to violate Article 14 of the Constitution.

Though the minority view deferred reform to the legislature under Article 25(2), the majority held that codified personal laws must conform to fundamental rights. The judgment reaffirmed the role of courts in vacating religious practices that breach constitutional morality.

CASE ANALYSIS

The Shayara Bano judgment fundamentally defined the interface between personal law and constitutional law in India. This case opened up new debates about the role of uncodified religious laws in a secular constitutional framework.

Constitution vs. Personal Law

The central debate revolved around whether uncodified personal law¹³ could be subject to constitutional scrutiny. Chief Justice Khehar argued that personal law is beyond the purview of Article 13. Adding to that, Justice Nariman, who wrote the majority opinion, held that any law codified or uncodified must comply with fundamental rights, thereby bringing talaq-e-biddat within constitutional review.

¹⁰ *Masroor Ahmed v. State (NCT of Delhi)*, 2007 SCC Online Del 1357, (2008) 103 DRJ 137 (Del).

¹¹ *Air India v. Nergesh Meerza*, (1981) 4 SCC 335.

¹² *C. Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*, (1996) 8 SCC 525.

¹³ Anushka Singh, Triple Talaq – Analysis of the Supreme Court Verdict, iPleaders Blog, <https://blog.iplayers.in/triple-talaq-analysis/>

Arbitrariness under Article 14

Justice Nariman struck down triple talaq not solely for gender inequality but on the broader ground of arbitrariness, a valid constitutional ground under Article 14. He asserted that the practice lacked rational justification and violated the rule of law principles established in prior decisions like *Masilamani Mudaliar*.

Gender Justice under Articles 14 & 15

Though gender inequality underpinned the case, the Court focused more on the Islamic unacceptability of triple talaq than on its discriminatory impact on women. Critics noted that the ruling did not centre the lived experiences of Muslim women, risking a repetition of the post-Shah Bano. Nonetheless, the verdict implicitly upheld gender justice by equating marriage to a constitutional value rather than a religious privilege.

Freedom of Religion

Justice Nariman asserted that Article 25 protects only essential and integral religious practices, and talaq-e-biddat—being neither essential nor approved by the Quran—does not qualify. Justice Joseph, while agreeing with the majority, adopted a different path by ruling solely on the lack of legal sanctity for triple talaq within Muslim personal law and focused on the Islamic invalidity of the practice, relying on Quranic injunctions and Muslim juristic commentary.

Legislative Reforms

The Supreme Court's verdict set a precedent but left the enforcement vacuum to Parliament. In response, the government enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, which made triple talaq illegal and punishable with up to three years' imprisonment. This move significantly reinforced the legal protection of Muslim women and brought religious divorce practices under criminal scrutiny.

CONCLUSION

Shayara Bano v. Union of India stands as a landmark in the quest for gender justice, constitutional supremacy, and judicial accountability. While applauded for empowering Muslim women and discontinuing an arbitrary practice, it also raises enduring questions about the boundaries between judicial activism and legislative prerogative. Going forward, legal reform must advance with sensitivity to cultural diversity alongside unwavering protection for constitutional rights. Scholars and policymakers alike would benefit from reflecting on this

case as a turning point, affirming that the supremacy of the Constitution cannot yield to tradition.