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SHAYARA BANO V. UNION OF INDIA¹

Diksha

COURT: Supreme Court of India

CITATION: (2017) 9 SCC 1

DATE OF JUDGMENT: 22nd August 2017

JUDGES BENCH (5): Hon'ble Justice Jagdish Singh Khehar, Justice S. Abdul Nazeer, Justice Rohinton Fali Niraman, Justice Uday Umesh Lalit, Justice K.M. Joseph

LAW APPLIED: Muslim Personal Law (Shariat) Act 1937

PARTIES TO THE CASE:

- **Petitioner:** Shayara Bano

Advocate on behalf of Petitioner: Amit Chandha, Salman Khurshid

- **Respondent:** Union of India, Ministry of Law and Justice, Ministry of Women and child development, Ministry of minority affairs, National Commission for women, AIMPLB, Ahmad (Bano's Husband).

Advocates on behalf of the Respondent: Mukul Rohatgi, Kapil Sibal, and Manoj Goel.

INTRODUCTION

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

The case of *Shayara Bano v. Union of India* (2017), a five-judge constitution bench struck down the instant triple talaq (*talaq-e-biddat*) practice, under which a Muslim man could divorce his wife by simply uttering “talaq” three times during a sitting. The petitioner, Shayara Bano, contended that this practice is arbitrary and discriminatory, and policies such as triple talaq just for the sake of it cannot be allowed to infringe the fundamental rights of women under Articles 14, 15, 21, and 25 of the Constitution. The case raises a question of whether personal religious practices can override the constitutional guarantees of equality and dignity.

FACTS

In October 2015, Shayara Bano, an educated Muslim mother of two who was then aged 35, was divorced abruptly when her husband resorted to the practice of *talaq-e-biddat*, under which a Muslim man can divorce his wife by merely pronouncing *talaq* (divorce) thrice in succession, in a single sitting. The repudiation was effected in the presence of two witnesses and without notice, discussion, or effort at reconciliation.

This one-way statement was preceded by a history of cruelty. Shayara Bano alleged years of domestic violence, mental and physical abuse, and unreasonable dowry demands, including a demand for ₹5 lakhs and a car. She claimed she was given drugs that impaired her memory and was abandoned in a near-death condition. In her petition, she described being locked in a room, beaten, and humiliated, yet when she resisted the abuse, the price she paid was the loss of her marriage, her dignity, and her legal protection.

Despite all this, her husband filed in court for restitution of conjugal rights, only to withdraw it and give her a triple talaq. She had then moved the Supreme Court under Article 32, claiming that *talaq-e-biddat* violated Articles 14, 15, 21, and 25 of the Constitution of India.

ISSUES RAISED

1. Whether the practice of *talaq-e-biddat* (instant triple talaq) is an essential religious practice protected under Article 25 of the Constitution?
2. Whether *talaq-e-biddat* is arbitrary and violates Articles 14, 15, and 21 of the Constitution?

3. Whether the 1937 Shariat Act gives *talaq-e-biddat* statutory status, making it subject to Article 13?
4. Whether the continued practice of *talaq-e-biddat* undermines constitutional morality, gender justice, and human dignity in a secular democratic framework like India?

ARGUMENTS ON BEHALF OF THE PETITIONER

1. VIOLATION OF FUNDAMENTAL RIGHTS (ARTICLES 14, 15, AND 21)

It was contended by the petitioner that *talaq-e-biddat* is arbitrary and it is a violation of fundamental rights as it allows Muslim men to go scot-free when they abrogate a marriage and subject their wives to indignity without giving any cause and chance to be heard. This violates:

- Article 14 - Right to equality
- Article 15 - Prohibition of gender-based discrimination, and
- Article 21 - Right to Life and Liberty

2. NOT ESSENTIAL RELIGIOUS PRACTICE

That *talaq-e-biddat* is not covered by Article 25, the petitioner contended, because it is not even an integral part of the Islamic faith. Only *talaq-e-ahsan* and *talaq-e-hasan* (which involve reflection and reconciliation) are mentioned in the Quran, and *talaq-e-biddat* is considered sinful even by Islamic scholars.

3. PERSONAL LAW ENACTED BY STATUTE IS OPEN TO CONSTITUTIONAL SCRUTINY

It then argued that the practice is protected under Article 25 as an integral part of the faith of the followers and hence efforts to have it declared as void would violate Article 25 (2A). The petitioner had also argued that '*talaq-e-bidat*' is not "law in force" as contemplated under Article 13 to be tested on the touchstone of constitutional supremacy.

ARGUMENTS ON BEHALF OF RESPONDENT

1. RELIGIOUS FREEDOM (ARTICLE 25)

The All India Muslim Personal Law Board (AIMPLB) argued that *talaq-e-biddat* is a part of Muslim personal law and hence protected under Article 25(1), which guarantees the right to freely profess, practice, and propagate religion. Any interference would be unconstitutional.

2. PERSONAL LAW NOT “LAW” UNDER ARTICLE 13

The respondents claimed that personal laws are not "laws" or "laws in force" within the meaning of Article 13, and thus cannot be tested on the grounds of fundamental rights. They emphasized that personal laws derive their validity from religion, not the legislature.

3. JUDICIAL OVERREACH

AIMPLB cautioned the Court against entering into matters of religious doctrine. They argued that such intervention would amount to judicial overreach and breach the doctrine of separation of powers, asserting that any reform should come through Parliament, not the judiciary.

4. TRIPLE TALAQ IS RECOGNIZED BY THE HANAFI SCHOOL

The husband argued that under the Hanafi school of Sunni Islam, *talaq-e-biddat* is a valid and recognized form of divorce. Therefore, his act was in accordance with religious and personal law principles.

JUDGMENT

In a landmark 3:2 majority decision by the Supreme Court of India, the practice of *talaq-e-biddat* (instant triple talaq) has been held to be unconstitutional, arbitrary, and violative of fundamental rights. Justices Nariman & Lalit held that the practice is manifestly arbitrary; consequently, it is void, violating Article 14. It forms part of statutory personal law under the Muslim Personal Law (Shariat) Application Act, and is liable to be struck down as void under Article 13. Justice Kurian Joseph, concurring, held that *talaq-e-biddat* did not find sanction in the Quran, and was hence not covered under Article 25 as a fundamental religious practice.

Conversely, Chief Justice Khehar and Justice Abdul Nazeer dissented, noting that the practice is essential to Muslim personal law and is guaranteed by Article 25, and thus not liable to constitutional challenge. Still, the dissent, too, recommended that the government legislate on the subject. In the end, the majority of the Court invalidated *talaq-e-biddat*, thus affirming

constitutional morality and gender justice, and granting relief to millions of Muslim women in the country.

ANALYSIS

This is not just a victory for a woman; it's a significant marker in India's journey for gender justice, secular constitutionalism, and individual dignity. I believe, as a big picture lawyer, that the issue is more than the legality of a personal law practice; it's a question of the new morality under Indian constitutional jurisprudence, where faith has to be in league with fairness.

Nobody disputes that religious freedom under Article 25 is indeed a core right, but this case demonstrates that no right can be absolute, especially when it clashes with another person's right to live with dignity, equality, and respect. Talaq-e-biddat was not so much a matter of personal choice; it was a legal marital weapon used disproportionately against women, suddenly divorcing them and throwing them out into the world, not only divorced, but also socially fallen and economically insecure, frequently not even after a conversation.

The novelty of this case is that it connects theology to constitutional values. Justice Kurian Joseph's opinion, that talaq-e-biddat is un-Islamic, provides the mooring (for the believers), Justice Nariman and Justice Lalit's opinion, that it's manifestly arbitrary and hence unconstitutional, gives the judgment its explicit legal grounding.

This twofold reasoning bolsters the legitimacy of the judgment between a religious and a constitutional perspective.

For me, Shayara Bano represents the rise of the Indian woman's voice in its constitutional courts. It is a statement that women are not victims of personal law but agents of change who must get together for a change in personal law in the case of a temple or a mosque, and for new norms in courtrooms or parliament. The dissent is rooted in a highly punctilious reading of religious autonomy, but also serves as a sober reminder of how legal change often proceeds on a slender tightrope in a pluralist culture.

But in the final analysis, the majority did the right thing by reminding us that the Constitution is the king, and every practice, however old, must be subject to the test of equality, dignity, and non-discrimination.

CONCLUSION

Shayara Bano is a milestone in the development of personal laws in the light of constitutional rights. In making talaq-e-biddat unconstitutional, the Supreme Court preserved the principles of equality, dignity, and non-discrimination, demonstrating that one cannot use religious practices to violate women. Its effect was sweeping and immediate; not only was the practice made illegal, paving the way for the Muslim Women (Protection of Rights on Marriage) Act of 2019, which provides legal safeguards against arbitrary divorce. This case gave courage to Muslim women across the country and reasserted that in India, constitutional morality overrides individual patriarchy.