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CASE COMMENT: SHAYARA BANO V. UNION OF INDIA AND ORS.

KHUSHI BADGUJAR

Case Name – Shayara Bano v. Union of India and Ors.

Court – Supreme Court of India

Date of Judgment - 22nd August 2017

Bench - Justice Jagdish Singh Khehar, Justice S. Abdul Nazeer, Justice Rohinton Fali Nariman, Justice Uday Lalit, and Justice K.M. Joseph constituted the Bench.

Citation - AIR 2017 SC 4609 & (2017) 9 SCC 1

INTRODUCTION

The Shayara Bano v. Union of India (2017) case is a historic milestone where the Supreme Court of India banned Talaq-e-Biddat (instant triple talaq). This controversial practice allowed a Muslim man to instantly divorce his wife by simply repeating the word "talaq" three times, even through phone calls, text messages, or letters. The apex court declared the practice unconstitutional, arbitrary, and legally invalid. The Court ruled that instant triple talaq directly violates Article 14 of the Indian Constitution, which guarantees the fundamental right to equality. The historic judgment strongly emphasized that religious personal laws cannot be used to shield patriarchal customs that degrade women or deny them basic human dignity. This landmark ruling paved the way for subsequent statutory protections, firmly establishing that constitutional morality and gender justice must override discriminatory traditional practices.

BACKGROUND / BRIEF FACTS

Shayara Bano was married to Rizwan Ahmad for 15 years until 2016, when he suddenly divorced her using the instant triple talaq (*Talaq-e-Biddat*) system. To challenge this, she filed a writ petition in the Supreme Court, arguing that this practice violated a citizen's fundamental

rights to equality, non-discrimination, and life with dignity (Articles 14, 15, and 21 of the Indian Constitution). Her petition did not stop at triple talaq; she also called for the end of related practices like polygamy and *Nikah Halala*. She argued that these customs are not essential religious practices and therefore cannot be protected under Articles 25(1), 26(b), or 29. During her legal struggle, she received strong backing from advocacy groups like the BEBAK Collective and the Bharatiya Muslim Mahila Andolan. The respondent's advocate, Mr. Kapil Sibal argued that it is not discriminatory and give other ways to safeguard. Under Islamic Law, divorce and marriage are private contracts, is another contention and also stated the government should not interfere in it. He emphasised on framework of the Shariat Act as it provides guidelines for decision making not codify Muslim laws.

JUDGMENT

The Supreme Court's five-judge panel ruled in favor of Shayara Bano and others. By a 3:2 majority, it ruled that the practice of triple talaq was unlawful and instructed the legislature to take action to end the mistreatment of women. In this instance, the Court emphasized that triple talaq is a sinful practice, although it is primarily practiced by the Hanafi School. The Court stated in its ruling that many other Muslim nations have already outlawed this practice since the Quran does not support it and the Prophet did not support or uphold it. According to Part III of the Constitution, the Court determined that the practice violated fundamental rights. The Supreme Court came to the conclusion that "this form of Talaq is manifestly arbitrary in the sense that a Muslim man can break the marital tie capriciously and whimsically without any attempt at reconciliation to save it." Therefore, it must be concluded that this type of talaq violates the fundamental rights outlined in Article 14 of the Indian Constitution. Insofar as it aims to acknowledge and uphold triple talaq, the Muslim Personal (Shariat) Application Act, 1937 falls under the definition of "laws in force" in article 13(1) of the Constitution. As such, instant triple talaq must be declared null and void.

Justice Kurian Joseph stated, "Triple Talaq is not an integral part of the religious practice, merely because a practice has continued for long, that by itself cannot make it valid if it has been expressly declared to be impermissible". Further, he held that "What is held to be bad in the Holy Quran cannot be good in Shariat and, in that sense, what is bad in theology is bad in law as well". The Supreme Court also instructed the government to take the court's ruling into account and enact laws governing Muslim divorce practices. Chief Justice J.S. Khehar and Justice Abdul Nazeer held the minority opinion that although triple talaq was undesirable, the

courts lacked the power to outlaw it and that Parliament should create legislation to regulate the practice.

ANALYSIS

There are some matters in the society, those must be address as soon as possible. This particular judgment is one of them. In this judgment, the court recognised those practices that violate the Fundamental Right given by the Constitution of India. These practices include Instant Triple Talaq, Polygamy, and Nikah Halala etc. Whenever, these kind of judgments came, the boost the trust and faith of common people in the judiciary. In this judgements, the Hon'ble Justices held that fundamental rights of Muslim Women must be protection too. The personal laws became the shackles on the life of Muslim Women, due to their patriarchy practices. The judgment prohibited these practice which reduced the exploitation against the women. The crucial thing is that the actual number of sufferings cannot be even possible to calculate, since many women did not show up about their exploitation to the court for their rights due to societal pressure. This ruling gives Muslim Women the strength and bravery to report any wrongdoing, if ever happens to them in the future. It shows that the articles of the Constitution of India do not discriminate the victim on the basis that he is governing by any personal law, the constitution is supreme law. Moreover, the ability to acquire a fundamental right is also a fundamental right guaranteed under the Constitution of India.

The court thoroughly examined the provisions and interpretation of Quran. Even in the judgement, the standpoint of women dignity and talaq in the verses of Holy Quran, for instance, verses 222 – 228 are duly quoted. In addition to keeping the Quran's stance in mind, the court emphasized overseas Islamic countries where it was prohibited. The countries which have abolished 'talaq-e-biddat' have been divided into Arab States, Southeast Asian States, and Subcontinental States. It is a legitimate argument that the dissolution of Muslim Marriages Act, 1939 has no bearing on the current dispute because the issue in hand does not pertain to the dissolution of marriage at the behest of a Muslim wife (but pertains to the dissolution of marriage, at the behest of a Muslim husband). This practice give immense trauma to the Muslim Women, sometimes, men also suffer from their mistake, as 'Talaq-e-biddat' is effective, the very moment it is pronounced and it is irrevocable too, when it is pronounced. Muslim women are shielded from the long-standing fear of instant triple talaq by this ruling.

CONCLUSION

The Triple Talaq judgment is a broad judgment, in which the court looked every aspect connected to the matter, whether directly or indirectly, for instance, the Quran, oversees laws and prevailing Acts in India. This ruling established that everyone's fundamental rights are protected, regardless of whether they are governed by Sharia law or another type of personal law. The significance of this ruling is demonstrated by the fact that, following the judgment of Triple Talaq, the parliament passed the Muslim Women (Protection of Rights on Marriage) Act, 2019, a specific law for the protection of Muslim women. The parliament penalized the offenders in addition to outlawing it in this Act.

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