
CASE ANALYSIS OF SHAYARA BANO VS UNION OF INDIA

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ABSTRACT

Shayara Bano v. Union of India¹, the landmark case that questioned the constitutional validity of Triple Talaq and the fundamental rights of Muslim women in India. It took a step towards women's rights to equality and dignity and secularism of the country. The case held the Talaq-e-biddat custom invalid and unlawful. It also declared Triple Talaq to be unconstitutional as per Article 14 of the Indian Constitution. There have been several studies made to understand and analyse the consequences of this case on society regarding gender equality and the cruelty that Muslim women have faced due to the Triple Talaq. This paper aims to analyse and comment on the case from the view of the validity of Triple Talaq, personal law and gender equality, reform of Muslim Personal Law, the validity of the previous judgements made, and the religious and legal validity of the case. Following the judgement of this case, the Muslim Women's Act, 2019, was passed which criminalised the practice of instant Triple Talaq, thereby making it unlawful. Additionally, this case helped in classifying the constitutional status of Muslim personal laws.

Keywords: Triple Talaq, gender equality, secularism, legal validity, dignity

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

INTRODUCTION

The *Shayara Bano v. Union of India*² (2017), also known as the “Triple Talaq case”, is a landmark case related to the atrocious act of “triple talaq”. This action comes under Muslim law, where the husband can dissolve his marriage by simply saying the word “talaq” thrice in a sentence. With this, the husband can single-handedly revoke their marriage, and the wife will have no say in it but to accept it. Muslim law is a personal law, and some rules control the private matters of a particular religion or group of people. If a husband realizes he made a mistake, feels sorry for his behaviour, and wants to marry his ex-wife again, it won’t be possible. He has to go through a process called Nikah Halala. This means if he divorces his wife and then wants to marry her again, she first has to marry another man. Then, her ex-husband can divorce her again, and she has to wait for a certain period before marrying her first husband again. This rule can be seen as unfair and harsh towards women. This practice lasted around 1400 years and was mentioned neither under the Quran nor the Sharia. Its validity was questioned in this case. This case revolves around the life of Shayara Bano, a domestic violence and dowry harassment survivor who was also a victim of this practice when her husband divorced her by triple talaq. The Bench that presided over this case constituted Justice Jagdish Singh Khehar, Justice S. Abdul Nazeer, Justice Rohinton Fali Nariman, Justice Uday Lalit, and Justice K.M. Joseph. It is an intersection of Personal law and Constitutional law, a matter where the court does not usually interfere, and this time, it was an exception based on the flexibility and restrictions of Article 25 of the Constitution of India. It questions the concept of Secularism in India. It also sheds light on women’s rights in Muslim Law. This case is a massive milestone in women’s rights.

LITERATURE REVIEW

1. Invalidating Instant Triple Talaq: Is the Top-down Approach of Reforming Personal Laws Prudent? – Niraj Kumar & Akhilendra Pratap Singh

In this paper, the authors talk about the famous *Shayara Bano v. Union of India* case³, which banned the practice of Triple Talaq in India. This paper aims to understand and analyse the verdict given in the case and its effects on society concerning gender equality, Muslim laws, marital and divorce matters, and fundamental rights in India. The authors shed light on the

² *Shayara Bano v. Union of India*, AIR 2017 9 SCC 1 (SC).

³ *Id.* At. 1.

inconsistencies in Indian courts' ability to have a systematic approach to personal laws in a diverse country like India.⁴

2. Triple Talaq- Counter Perspective with Specific Reference to Shayara Bano – Avantika Tiwari

The author delves into the concept of Triple Talaq and uses the landmark case of Shayara Bano v. Union of India to support her arguments. It talks about how Triple Talaq can cause grave consequences in a woman's life, especially one coming from an economically weaker background, as she cannot rely upon her husband financially anymore. The theme followed in this paper is gender rights in the context of religion in

India. The paper has analysed various legal cases and religious contexts to understand the intersectionality of religion and gender rights highlighted under Muslim law.⁵

3. Triple Talaq Judgement and Act: Do Muslim Women Really Benefit? - Neha Kishore Banka

In this paper, the author primarily advocates legal reforms that deal with the challenges faced by Muslim women due to Triple Talaq. While deciding whether the Muslim family law or constitutional law should prevail or not, the state has forgotten the main subject involved in this, which is the lives of women. This paper critically evaluates the Shayara Bano judgement and the subsequent Act, which is the Muslim Women Act, 2019. This paper has delved deep into the constitutional and religious values with particular emphasis on women's rights.

ANALYSIS

FACTS:

Shayara Bano was in an abusive relationship with her husband for a period of 15 years. In 2016, her husband divorced her using the Triple Talaq method. Following this Shayara filed a petition in the Supreme Court, stating that triple talaq, polygamy, and Nikah Halala were illegal and

⁴ Niraj Kumar Kumar & Pratap Singh, Invalidating Instant Triple Talaq: Is The Top-down Approach of Reforming Personal Laws Prudent?, 11 NUJS L.Rev. 189 (2018) NUJS LAW REVIEW 189–211 (2018).

⁵ Avantika Tiwari, Triple Talaq- Counter Perspective with Specific Reference to Shayara Bano, 1 ILI Law Review 85–94.

violated fundamental rights guaranteed by the Indian Constitution. The Union of India and women's rights organizations helped Shayara fight for her case. However, the All-India Muslim Personal Law Board (AIMPLB) argued that Muslim personal law is protected under Article 25 of the Constitution.

ISSUES IN SHAYARA BANO CASE:

1. Whether the talaq-e-biddat custom is an essential practice according to the Muslim Person Law.
2. Whether the Triple Talaq is violative of the Indian Constitution under Article 25.
3. Whether the Triple Talaq is applicable under the Shariat Act.

ARGUMENTS FROM THE PETITIONER:

Amit Chadha, an advocate from the Petitioner's side, stated that Triple Talaq was never recognized by the Muslim Personal Law and was completely contradictory to the principles given under the Quran. Hence, Triple Talaq has no legal value whatsoever. He also stated that since the Triple Talaq is violative of Articles 14 and 15 of the Indian Constitution, it should not be valid and must be struck down.

Salman Khurshid, another advocate from the Petitioner's side, stated that the Triple Talaq is followed by a period of three months, Iddat, where the couple try to reconcile. If, however, there is no reconciliation during this period then the third time the husband says 'talaq', the divorce would be complete. He also argued that most Muslim communities do not even consider Triple Talaq to be a valid one, therefore, it must be considered void.

ARGUMENTS FROM THE RESPONDENT:

Kapil Sabil, an advocate from the Respondent's side, made an advent stating that judicial review is not acceptable because Muslim marriage is a private contract. He also argued that personal laws are not included in Article 13. He also stated that Triple Talaq is not discriminatory towards Muslim women as they can seek remedies as per the Special Marriages

Act 1954⁶, or asking for a higher Mehar amount.

Mukul Rohatgi, an advocate from the Respondent's side, made an advent stating the constitutional validity of Triple Talaq, polygamy, and Nikah Halala.

JUDGEMENT:

India's Supreme Court argued whether triple talaq was a necessary Islamic practice. The majority said it infringed women's rights and wasn't required under Muslim law. The minority contended that its widespread use rendered it vital. The lawsuit concentrated on striking a balance between religious freedom and basic rights. The court held the practice of talaq as unconstitutional and void.

CRITICAL ANALYSIS

1. VALIDITY OF INSTANT TRIPLE TALAQ (TALAQ-E-BIDDAT)

Triple Talaq is a way to dissolve marriages as per the Muslim Law, whereby the husband can divorce his wife just by uttering talaq three times in a row. No reason is required to be given to the wife for the divorce.

This, however, works contradictory to the Quranic principles as according to the Quran, the marriage is supposed to be unbounded in time. This is because the main reason they get married is because they are in love and it is based on mutual consent. As seen in the case of *A.S. Parveen v. Union of India*⁷, it was held that the practice of Triple Talaq was unlawful as per the Quran and considered to be sinful. The practice of the Triple Talaq custom is even banned in certain Islamic countries owing to the fact that it is not mentioned in the Quran.

The talaq-e-biddat (instant talaq) custom mistreats women and is neither in line with gender equality nor, is it an essential component of the Islamic belief. It is arbitrary in nature. There have been countless instances where women have been divorced through the method of triple talaq via Skype, Facebook, etc.

⁶ Special Marriages Act, 1954, Acts of Parliament, 1954.

⁷ A S Parveen Akhtar v The Union of India , 2002 SCC OnLine Mad 836

Article 25 of the Indian Constitution⁸ provides for the freedom to profess, practice, and propagate religion to all the citizens of India. It clearly states that religious activities that are essential to that particular religion are protected under it and not secular activities related to that religion. Even though the All-India Muslim Personal Law Board argues that the Triple Talaq is an essential custom of Islam, organizations such as Bharatiya Muslim Mahila Andolan (BMMA) have stated that it is not. According to the AIMPLB, the talaq-e-biddat is a custom that has been followed by the majority of Muslim Indians for 1400 years.

However, the AIMPLB also stated that the talaq-e-biddat is sinful and patriarchal, and can be avoided by including a condition to that effect in the Nikkah -nama. If the Triple Talaq custom is indeed sinful and can be avoided, then it cannot fall under the ambit of an essential practice of a religion.

It should also be noted that Article 25⁹ is not an absolute right. It is subjected to certain restrictions such as public order, morality, and health. The right to practice the triple talaq custom is against public morality and violates the fundamental rights to non-discrimination, equality, and personal liberty as given under Articles 14,¹⁰ 15¹¹, and 21¹² of the Indian Constitution.

The triple talaq custom is a practice that gives the husband the right to divorce his wife but not vice-versa and the reason is not required. However, women can only divorce their husbands by approaching the court on specific grounds. This discriminates between Muslim men and women as only men have the privilege of practicing instant talaq. It also creates inequality between Muslim women and women who follow other religions as they have more rights compared to Muslim women. This violates the rights of women, equality, and non-discrimination as given under Articles 14, 15, and 21 of the Indian Constitution. In the case of *Aaqil Jamil v. State of UP*¹³, where the husband divorced his wife by the triple talaq method, the Allahabad High Court held the divorce to be unlawful and violative

⁸ INDIA CONST, art.25.

⁹ INDIA CONST, art.25.

¹⁰ INDIA CONST, art.14.

¹¹ INDIA CONST, art.15.

¹² INDIA CONST, art.16.

¹³ *Aaqil Jamil v. State of U.P.*, 2017 SCC OnLine All 1325.

of Article 14 of the Indian Constitution. Even though personal laws fall within the ambit of Article 25, they in no way can violate Articles 14, 15, and 21.

2. PERSONAL LAW VS. GENDER EQUALITY

2.1. CAN A PRACTICE WITHIN MUSLIM PERSONAL LAW (LIKE INSTANT TRIPLE TALAQ) SUPERSEDE A WOMAN'S FUNDAMENTAL RIGHTS OR NOT?

The instantaneous Triple Talaq is a divorce practice under the Muslim Law. Muslim laws such as the Waqf Act of 1995¹⁴, which concerns property and the Shariat Act of 1937¹⁵, which deals with inheritance, different ways marriages end, widow's share, responsibility for minors, etc., are the Muslim Authorities that govern Muslim personal law in the Islamic community of India. In this case, we come across the practice of Triple Talaq and the injustice faced by women due to it and Shayara Bano is a victim of the same. Article 25¹⁶ of the Indian Constitution gives every citizen right to have their own religious beliefs to practice and share their religion with others freely.

A landmark case under this is the *Bijoe Emmanuel v. State of Kerala*¹⁷ 1987, where a few students were expelled from school as they remained silent during the national anthem on the claim that their religion prohibited them from singing the national anthem. The Supreme Court held that the school authorities violated the students' right to religion. In this case, their fundamental rights were violated due to their personal laws. This is derogatory and discriminative to the citizens as their fundamental right was violated due to their personal law practice. Connecting this to the Shayara Bano case, the victim's Right to Equality under Article 14¹⁸ was violated due to instantaneous divorce under Muslim law invoked by her husband.

Another case to take into value is the *State of Bombay v. Narasu Appa Mali*¹⁹ (1952). The petitioner challenged the validity of the Bombay Prevention of Bigamous Hindu Marriages

¹⁴ Waqf Act, 1995, Acts of Parliament, 1995.

¹⁵ Shariat Act, 1937.

¹⁶ *Id.* at 7.

¹⁷ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615.

¹⁸ *Id.* at 10.

¹⁹ *Khursheed Ahmad Khan v. State of U.P.*, (2015) 8 SCC 439.

Act, 1946²⁰, which aimed to void and criminalize bigamy among Hindus. The court ruled that personal law is beyond the scope of Part III of the Constitution and that personal laws need not be defined as laws under Article 13. Drawing parallels to the Shayara Bano case, we can infer that religious practices cannot be used to justify the violation of fundamental rights.

The final case to refer to is the *Indian Young Lawyers Association and Ors vs. State of Kerala and Ors*²¹, where women between the ages of 10-50 were prohibited from entering the Sabarimala shrine in Kerala. In a 4:1 verdict, the Court struck down Rule 3(b) as unconstitutional, allowing women of all ages to enter the Sabarimala Temple. Connecting this case to Shayara Bano, we see that personal laws cannot supersede fundamental rights. Therefore, Muslim Personal laws must not supersede a woman's fundamental rights as they are part of the Constitution of India and are the supreme law in India.

2.2. DOES THE 1937 SHARIAT ACT GRANT STATUTORY STATUS TO PRACTICES POTENTIALLY VIOLATING GENDER EQUALITY?

Several people have criticized the Shariat Act of 1937²² for being partial towards men and offering them an upper hand or advantage. When it comes to inheritance, according to the Shariat Act, the male heir is often granted a higher share than the female heir. This puts the female heir at a disadvantage solely based on her gender. This leads to wives, daughters and widows being granted a significantly smaller share than their male counterparts. This is a violation of their fundamental rights, with emphasis on Article 14²³ and Article 15²⁴, which are Equality before the law and prohibitions of discrimination based on sex. A landmark case under this issue would be *Danial Latifi vs Union of India*²⁵, where the weight of a woman's testimony only held half the weight of a man's in legal matters. The case highlighted the ongoing struggle for gender equality within the legal framework.

Another example to take into consideration is Mahr's financial burden, which is an obligation in the form of money or possessions that the groom has to give the bride. The

²⁰ Bombay Prevention of Bigamous Hindu Marriages Act, 1946.

²¹ *Indian Young Lawyers Association and Ors. vs. The State of Kerala and Ors.* (2019) 11 SCC 1.

²² Shariat Act, 1937.

²³ *Id.* at. 10.

²⁴ *Id.* at. 11.

²⁵ *Danial Latifi v. Union of India*, (2001) 7 SCC 740.

bride can ask for anything, and the groom has to fulfil his obligation to do so. It is considered as the bride's right under the Shariat Act. This places a huge financial burden on the groom, and he has to do it for the sake of his marriage. The most widely known example is the practice of polygamy under Muslim Law, which allows men to have up to four wives, but the vice versa is not permissible for women. These examples depict the disadvantages and unfairness women are treated with due to the Shariat Act 1937²⁶.

3. REFORM OF MUSLIM PERSONAL LAW:

DOES THE CASE NECESSITATE REFORMS IN MUSLIM PERSONAL LAWS TO ENSURE GENDER EQUALITY?

In order to necessitate reforms, we must first recognize and understand in the depth the various sources and customs that have been imbedded into the Muslim personal law.

There are mainly four sources in the Muslim personal law or the Islamic law – (i) Quran (ii) Hadith (iii) Ijma (iv) Qiyas. Amongst the four sources, Quran is considered to be the most sacred and sanctimonious one. The Quran is considered to be the first source of law and has precedence over hadith, Ijma and Qiyas. This was noted by Justice Bader Durrez Ahmad in *Masroor Ahmed v. State (NCT of Delhi) & Another*²⁷.

The dissolution of Muslim Marriages Act, 1939²⁸ was passed on 17th March 1939 by the central legislature. The primary cause for this dissolution was to clarify and consolidate provisions relating to the dissolution of marriage by women under the Muslim personal laws. The women in Hanafi Code of Muslim Law lacked the legal rights to divorce their husbands who failed to pay their wife maintenance, deserted or ill-treated her. In order to free themselves, the Muslim women converted to other religions which served as a valid reason for dissolution of marriage.²⁹ Though it was enacted to serve the women of this religious community, the act had its shortcomings as it lacked the clarity on matters such as maintenance, custody of children etc.

²⁶ Shariat Act, 1937.

²⁷ *Masroor Ahmed v. State (NCT of Delhi)*, 2007 SCC OnLine Del 1357.

²⁸ Muslims Marriage Act, 1939.

²⁹ QAZI SARAH RASHEED & SHARMA A K, *Muslim Women's Rights in India: Codified Personal Laws Needed*, 51 Economic and Political Weekly 22 (2016), <http://www.jstor.org/stable/44003703> (last visited Mar 13, 2024).

There are two legal ways which enforce the husband to provide maintenance for the women. Firstly, the personal law applicable under their religious community. Secondly, under section 125 of the Criminal Procedure Code of 1973. This Act is applicable to all the citizens of India, irrespective of their religion. Under Muslim personal law, a divorced woman's financial assistance is limited to the iddat period (3 months) and the predetermined dower sum. However, Section 125 of the Criminal Procedure Code³⁰ (CrPC) provides greater support, possibly prolonging maintenance until the woman remarries. This results in a contradiction between personal law and a possibly more favourable legal provision. The Hon'ble Supreme Court in the case of *Mohd. Ahmed Khan v. Shah Bano Begum*³¹ upheld the validity of maintenance order under section 125 of the CrPC. However the enactment of The Muslim Women (Protection of Rights on Divorce) Act, 1986 furthered the misery and inequality faced by Muslim women. The act exempted the men from section 125 of the CrPC. It stated that the husband is entitled to pay his wife maintenance only during the period of Iddat. After that the responsibility falls onto her relatives to provide her a living.

As we have analysed the different sources of Muslim personal law, it becomes evident that the legislature and judiciary exercised their powers to ensure the safety and security of women but all the enactments and precedents had certain gaps and shortcomings that deeply affected the rights and liberties of Muslim women.

Therefore, the case of *Shayara Bano V. Union of India*³² was considered to be a landmark judgement as it protected the Muslim women against exploitation and established guidelines to safeguard to their rights and liberties in the contract of marriage. The values of equality and dignity were upheld that granted Muslim women the right to life and personal liberty as provided under Article 21 of the constitution. The current case tried to fill the inequality gap present in the various Muslim Personal Laws enacted over the decades. By eliminating the practice of Talaq and the arbitrariness associated with it, the court has paved the way for the women of the Muslim community to be uplifted.

This can be seen in the case of *Muzaffar Ahmad Thoker Vs. Shaheena Akhter and Ors*³³.

³⁰Code of Criminal Procedure, 1986, § 125, Acts of Parliament, 1986.

³¹ Mohd. Ahmed Khan v. Shah Bano Begum, (1985) 2 SCC 556.

³²Shayara Bano v. Union of India, AIR 2017 9 SCC 1 (SC).

³³ Muzaffar Ahmad Thoker vs. Shaheena Akhter and Ors. (06.03.2018 - JKHC) : MANU/JK/1055/2018

The court held that a divorcee is entitled to file and maintain a petition under Section 488 Cr PC. The petitioner did not abide by the terms of the settlement by payment of the settlement amount to the wife's counsel and not to the wife. the court rejected the petitioner's arguments that triple talaq was an essential part of religious practice. The court also held that triple talaq was violative of the fundamental right guaranteed under Article 14³⁴ of the constitution as it was derived under the Shayara Bano case. The order in the revision petition was quashed.

To ensure gender equality within a particular section of the community, whose practices are discriminatory towards one sex, the laws of the country must be definite and binding over that of their personal religious practices. Customs are viewed as sanctimonious form of law, but only if they are still relevant to the contemporary times. Thus, there are two ways to reform the laws. Firstly, the implementation of the Uniform Civil Code as per Article 44³⁵ of the Indian constitution. This would bring the personal law under the ambit of the constitution as it will be codified form of law. The view should be to create a secular modern state which recognises the constitutional ideals of liberty, justice and equality. The equality of women amongst men would be served as it would be under the direct authority of Article 14³⁶ of the Indian Constitution. Freedom to practice and Profess religion would be curtailed in so far as the discriminatory practices involved.

Secondly, codifying the law and making amendments and creating reforms to address the above lacunae. The Muslim reformists as well the women's organisations were seen more open to this sort of reform. The reformists have tried doing this by interpreting the Islamic sources of law in progressive terms. In their view, the Quran has given clarity for the existence of equality between men and women. On these lines, some organisations have suggested measures like Nikahnama, which is voluntary declaration by husband and wife of the progressive rights of the wife.³⁷ However, these Nikahnama do not have legal validity. Therefore, at most times it's not practically applicable as the women cannot seek relief if the nikahnama are not followed or respected. The Nikahnama must be made into a

³⁴ *Id.* at.10.

³⁵ INDIA CONST, art.44.

³⁶ *Id.* at. 10.

³⁷ RAZIA PATEL, *Indian Muslim Women, Politics of Muslim Personal Law and Struggle for Life with Dignity and Justice*, 44 ECONOMIC AND POLITICAL WEEKLY 44 (2009), <http://www.jstor.org/stable/25663732> (last visited Mar 13, 2024)

law in order to prevent a husband from retracting from his words.

These reforms can be implemented to ensure equality of women in the Muslim community as well as a method to secure their rights.

CASE COMMENT

The case of *Shayara Bano v. Union of India*³⁸, focused on the constitutional validity of the Triple Talaq custom prevalent in the India, for 1400 years, the gender equality and dignity of women. Many arguments surfaced regarding the essential practices of a religion. Whether a judicial review can be allowed in such religious practices.

However, it was held that according to Article 25³⁹ of the Indian Constitution, only practices essential to a particular religion are protected under this article and not secular activities that are only related to the religion. Hence, Triple Talaq does not come within the ambit of Article 25. Even if the talaq-e-biddat was an essential practice as per the Islam religion, it is still violative of a woman's rights and dignity. It violates a human's rights as mentioned under Article 14⁴⁰, 15⁴¹, and 21. Hence, it was declared unconstitutional and unlawful. Due to this case, there has improvement in the status of women. It has brought more stability to the life of Muslim women. Previously, because of the arbitrary nature of the Triple Talaq system a woman could be abandoned by her husband without any reason or any justification, leaving them vulnerable. With the criminalisation of this system, Muslim women need not live in a state of constant fear of when they will be abandoned.

CONCLUSION & SUGGESTIONS

The *Shayara Bano v. Union of India*⁴² case is a landmark case which has helped improved the status of gender equality and dignity of Muslim women in India. By questioning the constitutional validity of the Triple Talaq system the case has not only addressed the plight of women, but has also challenged the intersection of personal and constitutional law with regards to religious matters.

³⁸ *Id.* at. 1.

³⁹ *Id.* at. 9.

⁴⁰ *Id.* at. 10.

⁴¹ *Id.* at. 11.

⁴² *Id.* at. 1.

The judgement reaffirms the principles of justice and equality as provided under the Indian Constitution. It stresses on the fact that religious customs and practices cannot supersede over the fundamental rights of a person. Additionally, the judgement has helped pave the way for legislative reforms as seen with the enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalizing the practice of instant Triple Talaq.

Even though this case helped immensely in improving the status of Muslim women in the country. The country is still far away from achieving harmonious construction of religious practices and constitutional law. It is essential to continue advocating for reforms that promote gender equality and uphold constitutional principles. This includes protecting the rights and dignity of all individuals irrespective of their religion.