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Website: www.the lawway with lawyers.com

Email: thelawwaywithlawyers@gmail.com

Authored By : Janvi Goyal

DETAILS OF THE CASE:

TITLE OF THE CASE: SHAYARA BANO V. UNION OF INDIA

CITATION: AIR 2017 9 SCC 1 (SC)

NAME OF APPELLANT: SHAYARA BANO AND ORS.

NAME OF RESPONDANT: UNION OF INDIA, ALL INDIA MUSLIM PERSONAL LAW BOARD AND RIZWAN AHMEND

COURT: THE SUPREME COURT OF INDIA

DATE OF JUDGEMENT: 22ND AUGUST 2017

BENCH: JUSTICE JAGDISH SINGH KHEHAR, JUSTICE S. ABDUL NAZEER, JUSTICE ROHINTON FALI NARIMAN, JUSTICE UDAY LALIT AND JUSTICE K. M. JOSEPH

ABSTRACT

This detailed commentary examines the Supreme Court ruling in *Shayara Bano v. Union of India* (2017)—a landmark case that deemed the practice of instant triple talaq as void and unconstitutional. The analysis covers the factual context, the legal arguments put forth, the constitutional matters addressed, the judiciary's response, and the broader social and legal ramifications of the ruling. The foundation of the judgment is based on the principles of equality, non-discrimination, and justice, with the Court asserting that no personal or religious practice supersedes the fundamental rights guaranteed by the Constitution. Additionally, this case commentary evaluates the verdict's impact, especially regarding gender justice and reforms in personal law, and places it within the larger conversation on secularism and societal advancement in India. [2][1][6].

INTRODUCTION

In the context of gender equity and the interaction between religion personal laws and constitutional duties, the Supreme Court's historic ruling in *Shayara Bano v. Union of India*¹ was a turning point in Indian jurisprudence. The case concerned the Muslim custom known as "triple talaq" (talaq-e-biddat), which allows a husband to immediately and permanently divorce his wife by saying the word "talaq" three times in a row. The lawsuit, which was started by Shayara Bano, a woman who was divorced under this method after 15 years of marriage, came to represent the continuous fight for women's equality and rights within the context of India's diverse legal system. The Supreme Court's decision not just deemed the practice unlawful, but it also sparked a heated discussion on the broader topics of secularism, constitutional supremacy, and reform of personal legislation, as well as significant legislative changes. [2][1][6].

FACTUAL BACKGROUND

Shayara Bano entered into marriage with Rizwan Ahmed in 2001, and they were blessed with two children. In 2015, Rizwan executed a divorce by uttering "talaq" three times in a single session, a method referred to as triple talaq or talaq-e-biddat. Distressed by the abrupt and irreversible nature of her divorce, Shayara Bano submitted a writ petition to the Supreme Court of India, contesting the constitutionality of triple talaq, as well as polygamy and nikah halala (a practice that necessitates a woman to marry another man, consummate that marriage, and subsequently obtain a divorce if she desires to remarry her original husband). She argued that these practices infringed upon her fundamental rights as enshrined in Articles 14 (equality before the law), 15 (prohibition of discrimination), 21 (protection of life and personal liberty), and 25 (freedom of religion) of the Indian Constitution. [2][1][3][5][6].

Public support for Bano's case was strong, particularly from organisations that advocate for women's rights, such as the Bharatiya Muslim Mahila Andolan and the Bebaak Collective, who emphasised the wider effects of these practices on the status and rights of Muslim women in India.

THE SUPREME COURT EXAMINED KEY CONSTITUTIONAL QUESTIONS:

- Whether the practice of triple talaq qualifies as an "essential religious practice" under Article 25 and is therefore constitutionally protected;
- Whether the judiciary has the authority to scrutinize uncodified personal laws based on fundamental rights;
- Whether triple talaq is arbitrary and discriminatory, thereby infringing Articles 14, 15, and 21; and
- Whether personal laws can be upheld if they are evidently arbitrary and unjust.

ARGUMENTS PRESENTED BY THE PETITIONERS

The petitioners asserted that the practice of triple talaq is not prescribed by the Quran, which instead advocates for a waiting period and opportunities for reconciliation prior to divorce.

¹ 2017

They emphasized that the only method of divorce supported by Islamic scripture is one that is gradual and equitable, rather than abrupt or unilateral.

Furthermore, they argued that triple talaq unjustly grants men unilateral and absolute authority, thereby perpetuating significant gender discrimination and undermining women's rights to equality, security, and dignity.

The petitioners urged the Court to acknowledge that personal law should not violate constitutional rights and must consistently align with India's commitments under international human rights treaties. [2][1][6].

ARGUMENTS PRESENTED BY RESPONDENTS

In defence of the practice, the All India Muslim Personal Law Board (AIMPLB) and others claimed that Muslim personal law is uncodified and not subject to judicial examination since it is protected by Article 25 as a fundamental component of religion.

They maintained that any intervention by the Court into the realm of religious practices would be an infringement on the freedom of religion and an unacceptable invasion into areas best left to the community and its leaders.

Additionally, the respondents voiced worries about the potential consequences of judicial intervention in personal laws, which might jeopardize India's pluralistic legal system. [2][1].

THE REASONING AND DECISION OF THE SUPREME COURT

To hear this important matter, a five-judge constitutional bench was assembled, consisting of Chief Justice J.S. Khehar, Justices Kurian Joseph, Rohinton Fali Nariman, Uday Umesh Lalit, and S. Abdul Nazeer.

Majority Opinion

On August 22, 2017, the Supreme Court determined, by a 3:2 majority, that the practice of instant triple talaq is unconstitutional and invalid. The main reasoning was articulated as follows:

- **Manifest Arbitrariness:** The Court concluded that triple talaq was "manifestly arbitrary," devoid of any rational connection to a legitimate social purpose. It infringed upon Article 14² by permitting Muslim men to divorce their wives without justification or the chance for reconciliation, thereby depriving women of their autonomy and security.
- **Not an Essential Religious Practice:** The prevailing consensus among scholars indicates that the Quran does not endorse the practice of instantaneous triple talaq. Consequently, as this practice is neither fundamental nor vital to the principles of Islam, it does not warrant protection under Article 25³.

² The Constitution of India

³ The Constitution of India

- **Comparison with Other Legal Systems:** The Court noted that numerous Islamic nations, including Pakistan and Bangladesh, have already abolished the practice of triple talaq, highlighting its classification as non-essential and outdated.
- **Personal Law and Fundamental Rights:** Most notably, the majority dismissed the contention that uncodified personal law is exempt from constitutional review. The judgment clarified that any law or customary practice infringing upon fundamental rights must be declared invalid, regardless of its origin in custom, tradition, or religious practice. [2][1][3][5].

Dissenting Opinion

The minority⁴ argued for a legislative fix, noting that radical social reform is best enacted by Parliament through democratic procedures rather than by judicial pronouncement, and they refrained from declaring the practice unconstitutional right away. [1][2].

LEGAL OBSERVATION AND ETHICS

Rights and Constitutionality

Equality Before the Law (Article 14)⁵: The equality principle was determined to be violated by the arbitrary one-sidedness of triple talaq; men were granted unrestricted authority over women, which ran counter to the constitutional goal of equal treatment for all citizens.

Article 15⁶ – Non-Discrimination: The Court determined that the practice of triple talaq facilitated discrimination solely based on gender, which is not allowed under the Constitution.

Article 21⁷ – Right to Life and Personal Liberty: The unpredictability, lack of security, and suddenness linked to instant triple talaq were significantly harmful to women's lives and dignity, violating their personal liberty. [2][1][5][6].

Article 25⁸ – Freedom of Religion: Although Article 25 protects the freedom of religion, the Court observed that this freedom is not unconditional and must adhere to other fundamental rights as well as considerations of public order, morality, and health. Religious practices must not take precedence over the rights to equality and non-discrimination.

SOCIAL AND LEGAL IMPACT

Gender Justice Movement

The ruling has emerged as a symbol of the struggle for women's rights in India, providing significant advantages to millions of Muslim women by eliminating a substantial source of legal uncertainty and gender-based oppression. Furthermore, this judgment has empowered

⁴ Chief Justice Khehar and Justice Nazeer

⁵ The Constitution of India

⁶ The Constitution of India

⁷ The Constitution of India

⁸ The Constitution of India

women from various communities to confront and challenge discriminatory practices. [1][5][6].

Legislative Action

In reaction to the court ruling, Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalizing the practice of instant triple talaq and establishing it as a cognizable offense punishable by imprisonment for up to three years. This legislative measure aligns with the judgment's rationale by reinforcing legal enforceability and serving as a deterrent. [1][5].

More extensive consequences from a social and legal standpoint

- **Reforms to Personal Law:** The Shayara Bano ruling sparked renewed discussions on the codification and reform of all personal laws, leading to new thoughts about the long-standing notion of a Uniform Civil Code (UCC).
- **Secularism and Pluralism:** In India, the case offered a clear explanation of the constitutional relationship between secularism, pluralism, and individual rights. It emphasized the primacy of constitutional values over religious or personal practices. [6].
- **Judicial Activism:** The ruling serves as an example of how the judiciary can uphold basic principles and spur forward-thinking societal change, particularly in situations where legislative reforms are insufficient or delayed.

CRITICISMS AND CHALLENGES

Some critics have suggested that judicial invalidation may prove inadequate without a foundation of grassroots social awareness, as legislative prohibitions alone are insufficient to alter entrenched patriarchal beliefs. Others argued that punitive actions could be exploited or may fail to truly empower women unless they are paired with comprehensive educational and social reforms.

The AIMPLB⁹ and various Muslim organizations perceived the ruling as an overreach of judicial authority, expressing apprehensions regarding the intrusion into issues of faith and the autonomy of religious communities.

CONCLUSION

The case of Shayara Bano v. Union of India¹⁰ marks a significant turning point for gender justice, secularism, and the rule of law in India. By deeming triple talaq unconstitutional, the Supreme Court has reinforced the supremacy of the Constitution and fundamental human rights, affirming that personal law must not infringe upon principles of justice, equality, and human dignity. The enduring legacy of this case is reflected not only in legislative reform but also in its ambitious vision for a fair, secular, and inclusive society. [2][1][6][5][3].

SOURCES

⁹ All India Muslim Personal Law Board

¹⁰ 2017

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