

SHAYARA BANO VERSUS UNION OF INDIA

Shayara Bano versus Union of India (2016) is one of the most landmark cases in Indian history, which challenged the extent of personal laws. The case resulted in the wider debate of Personal Laws versus Constitutional Laws. Personal Laws involve the subject of marriage and divorce, maintenance, inheritance and succession, guardianship and adoption. The case dealt with the practice of Triple Talaq or Talaq-i-Biddat as mentioned in Sharia Law in the Hanafi School of Law. The petitioner, Shahyra Bano, after getting divorced through this practice from her husband, moved to the Court arguing that it violated her Fundamental Rights enshrined under Articles 14, 15, 21 and 25.

Talaq-i-Biddat or Triple Talaq was a practice followed among the Indian Muslim community by which a husband could divorce his wife by saying the word 'talaq', meaning divorce, three times. This could be done orally, in writing, or even electronic medium. The wife, however, could not divorce her husband in the same manner. This made the Muslim women highly vulnerable and susceptible to divorce. Also, if the husband wishes to remarry, his wife has to marry another man, and after the latter man gives her a divorce, the husband can remarry her after a fixed period of time. This practice was highly regressive in nature. The case thus questioned Nikah-Halala, polygamy with the practice of Talaq-i-Biddat.

Shayara Bano, a 35-year-old woman from Uttarakhand, had been married to Rizwan for 15 years. The marriage was abusive in nature, with constant harassment and domestic violence. In 2016, Rizwan, by pronouncing 'Talaq' three times, divorced Shayara Bano. The Muslim Personal Law (Shariat) Application Act, 1937, provided a statutory basis for this practice. Shayara Bano filed a writ petition arguing that the Talaq-i-Biddat violated her fundamental rights of Equality Before Law (Article 14), prohibition against discrimination (Article 15), of life and liberty (Article 21), and right to freedom of conscience and religion (Article 25). Shayara Bano got support from the Union of India as well as women's rights organisations such as Bebaak and Bhartiya Muslim Mahila Andolan. The court summoned the All India Muslim Personal Law Board. The AIMPLB is a non-government organisation which looks at matters related to muslim Personal Laws. AIMPLB argued that the court has no power of judicial review as the muslim personal laws are not codified and do not come under the ambit of judicial review. They argued that divorce as a religious practice is safeguarded under Article 25.

Question of Law

The major question of law in front of the court was regarding the nature of Talaq-i-Biddat. The petitioners had argued that the practice of Talaq-i-Biddat is not sanctioned by either the Quran or Hadith. The talaq essentially was a result of wrong interpretation. Thus, the court contended on

the question of the validity of Talaq and whether it is an essential practice safeguarded under Article 25. The other significant question in front of the apex court was whether the practice of Triple Talaq violates fundamental rights or not. A bench of five judges was made for the hearing of this case.

Judgment

The court held that the practice of Talaq-i-Biddat or Triple Talaq is not an essential practice of Islam. It stated that the practice has already been abolished in various Islamic nations based on its lack of sanctions in the Quran or Hadith. The Court also held that this practice violates the fundamental rights of muslim women enshrined in Part III. Article 14 provides the right to equality before the law, while Article 15 guarantees non-discrimination on the grounds of creed, caste, religion or gender. The practice of Triple Talaq could be exercised only by the husband and thus discriminates as well as violates the right to equality before the law. The Court invoked the doctrine of eclipse and severability, which strikes down any law that violates fundamental rights of citizens. The court held that the practice violates fundamental rights and gave precedence to the Constitutional Laws over Personal Laws. The Supreme Court declared the Triple Talaq illegal and unconstitutional. In 2019, the Muslim Women (Protection of Rights on Marriage) Act was passed by the Parliament, which criminalised the practice of Triple Talaq and made it a punishable offence. The act makes triple talaq a non-bailable, cognizable offence with imprisonment up to three years and a fine.