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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

CASE COMMENT: SHAYARA BANO V. UNION OF INDIA

AUTHORED BY - GARIMA AGGARWAL

Asian Law College, Noida

LL.B (Batch 24-27)

FORUM: Supreme Court of India

CITATION: AIR 2017 SCC 1 (SC)

DATE OF JUDGEMENT: 22nd August 2017

JUSTICE BENCH (5): Justice Jagdish Singh Khehar

Justice S. Abdul Nazeer

Justice Rohinton Fali Nariman Justice

Uday Umesh Lalit Justice K.M. Joseph

LAWS APPLIED: Muslim Personal Law (Shariat) Act 1937

PARTIES OF THE CASE:

Petitioner: Shayara Bano

Petitioner's Lawyer: 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)

Respondent's Lawyer: Mukul Rohatgi, Kapil Sibal, and Manoj Goel.

INTRODUCTION

In the modern times of society where the whole world is shunning the immoral and unjust practices in civilized society there are such practice still in the society in India which are detrimental whereas, In the case of “***SHAYARA BANO V. UNION OF INDIA***” led to ban the concept of triple talaq practices. It is the process under the “sharia law” where the Muslim man can instantly divorce with his wife by pronouncing the word of TALAQ times without stating any state intervention. That there are three type of law under sharia law from which talaq-e-biddat is irrevocable. Under this law, Muslim women can’t divorce husbands whereas husband can. Women need to go court proceeding for divorce under the Muslim Personal Law Application Act, 1973. Thus the major impact seen on women’s or on their life’s those are not financially strong by this controversy. Hence, Shayara Bano is the one and only women who created the history and didn’t remain silence or fought for their rights. However, this case is also known as triple talaq.

FACTS OF THE CASE

Shayara Bano, A Muslim girl, was married to Rizwan Ahmed for 15 year, But in 2016, he divorced her by way of **triple-talaq** without stating any reason.

In return, she filed a writ petition in **the supreme court** **challenging the constitutionality of talaq-e-biddat** along with practices of polygamy and nikah halala as they infringe upon the fundamental right of women.

Article-14,15,21,25

Women’s right organization like bebak collective and **Bhartiya Muslim Mahila Andolan** supported her.

The opposition All India Muslim Personal Law argued on the fact that muslim law is not codified and hence, not subject to judicial review and that **divorced is a religious practice under Article-25** of the constitutional thus protected.

On 16th February 2017, Shayara Bano, the Union of India, various women's rights bodies, and the All-India Muslim Personal Law Board (AIMPLB) were asked by the court to introduce written submissions on the problems and issues of talaq-e- bidat, nikah-halala, and polygamy.

ISSUES IN SHAYARA BANO CASE

1. Whether the practice of talaq-e-biddat custom is an essential practice according to the Muslim Personal Law
2. Whether the triple talaq is violates the fundamental rights i.e., Article 14,15,21, and 25 of the Indian constitution

ARGUMENTS FROM THE PETITIONER:

Amit Chadha, an advocate from the Petitioner's side stated the triple talaq was never recognized by Muslim Personal Law and was entirely 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.

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 completed, He also argued that most Muslim communities do not even consider Triple-talaq to be valid one source for separation, it must be considered void.

ARGUMENTS FROM THE RESPONDENT:

Kapil Sibal, an advocate from Respondent's side made an advent stating that judicial review is not acceptable and also mention that Article 13 is something which is not included personal law stating that the Triple-talaq is not discriminatory towards Muslim women as they can seek remedies as per the second marriages.

Mukul Rohatgi, an advocate from the Respondent's side made an advent stating the constitutional validity of Triple-talaq, Polygamy, and Nikah-halala.

Manoj Geol, an advocate from the Respondent's side he stated that the divorce is actually between the two individuals and no state action involved also cited the Quran to argue that marriage and divorce have sources in religious scriptures and thus are the essential matters of religion protected under Article 25 and 26 of the Indian Constitution.

RATIONALE:

That the judgement passed by the five judges bench of the Supreme Court and gave the decision in favour of Shayara Bano and the others. It declared that the practice of Triple-talaq unconstitutional by 3:2 majority and to take measures

action to stop this abuse against the women. The minority also contended that its widespread use rendered it vital.

The lawsuit concentrated on striking and balance between the religious freedom and basic rights. That the Court held the practice of talaq is unconstitutional and void.

CRITICALLY ANALYSIS THE VALIDITY OF TRIPLE-TALAQ:

1. That this practice of Triple-talaq is partially and wholly evaded through it count it as an religious practice and concluded in it whereas, the women's endure and sustain a loss on vary basis.
2. As they said that the Triple-talaq is the way to dissolve the marriages as per Muslim Law whereby, the husband can divorce his wife just by uttering talaq three times in a row. However, no reason required to be given to the wife for divorce.
3. The one or brave women namely as the Shayara Bano who also endured and undergo from this hence, she fought against it and not remain silent.
4. Shayara Bano says in this matter its violate the fundamental right and challenging the constitutional validity and the Article 14,15,21 and 25 its violates women equality and non-discrimination.

It is noted that Article 25 is not absolute right. It subjected to certain restriction such as public order, morality, and health. The right to practice of triple-talaq is against public morality and violates the fundamental rights to non- discrimination equality and personal liberty under Article 14.15 and 21 of the Indian Constitution.

*In the case of **Aaqil Jamil v. State of U.P** where the husband divorced his wife by way of triple-talaq method, In which Allahabad High Court held that divorce to be unlawful and violative Article 14 of the Indian Constitution.*

5. That this case balanced constitutional morality with religious freedom, tilting in favour of the women's dignity and equality.

CONCLUSION AND SUGGESTION:

The Shayara Bano v. Union of India case is a landmark case which was helped improved the status of gender equality and dignity of Muslim women in India. It signify in the light of

constitutional validity that which addressed that the questioned mark on Triple-talaq.

Apart from this, 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 talaq.

