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THE CHANGING LANDSCAPE OF MUSLIM WOMEN'S LEGAL PROTECTION UNDER “SHAYARA BANO” CASE

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ABSTRACT

Our Indian Constitution of 1950, states that all Indian citizens must be treated equally before the law and be provided with equal legal protection. In a democratic country like India, there are also certain personal laws for its citizens. However, as long as these laws do not violate the fundamental rights granted to the people by the Indian Constitution, the judicial intervention is restricted. This article examines whether certain traditions under Muslim law violate the fundamental rights of Muslim women's as guaranteed by the Constitution? . What changes did the verdict of the Shayara Bano case bring to society?

Keywords: Indian constitution 1950, Muslim Law, Muslim Women's Rights under Constitution , Shayara Bano Case, Social Changes.

INTRODUCTION

The Indian constitution pronounced right to equality and the equality before law. The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India². In the Indian Constitution, it is stated that no individual or government can prohibit these rights. Therefore, Muslim women are guaranteed ³equality before the law and equal legal protection under the Indian Constitution. The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex , place of birth or any of them⁴. Therefore, Muslim women are being discriminated against solely on the basis of their gender, as their fundamental rights are being denied and not granted to them. Therefore, in the Shayara Bano⁵ case, the denial of the aforementioned fundamental rights and the refusal to provide them, along with the

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² <https://Constitutionofindia.net>

³ Article 4 (Constitution of India1950)

⁴ Article 15 (Constitution of India1950), Ibid

⁵ Shayara Bano Vs. Union Of India (2017)

restriction on the right to speak, were evident. In such situations, the judiciary does not remain silent. As a result, this case has brought a significant change and instilled confidence, especially among Muslim women in society.

OBJECTIVE OF THE RESEARCH

- The judiciary plays a major role in bringing about social change through the changes it makes in cases.
- The judgments written by judges introduce new laws, which in turn bring social change.
- The justice obtained by a Muslim woman is considered justice for the entire community.

RESEARCH METHODOLOGY

Researcher has opted for a doctrinal research approach, Information for the doctrinal research was collected from a range of primary and secondary sources. Primary sources included statutes enacted by legislatures, court rulings, and regulations from administrative entities. Secondary sources encompassed books, legal journals, periodicals, scholarly articles, newspapers, websites, and other publication.

RESEARCH QUESTIONS/HYPOTHESIS

1. Did the verdict in the Shayara Bano case bring about social change in the rights of Muslim women?
2. The enactment of the Muslim Women (Protection of Rights on Marriage) Act, 2019 has significantly impacted Muslim women, leading to notable social changes?

WHAT IS TRIPLE TALAQ?

“Triple Talaq” means a practice whereby uttering the word called ‘Talaq’ thrice times the Muslim man can get divorced. With the advancement of technology, this concept was misused, where husbands send talaq through even voice notes, Whatsapp messages, and all. Here the means of communication could be in any form i.e., written, oral, or even electronic, which further enhances a woman’s vulnerability in this arbitrary and unilateral divorce. It is also called as **TALAQ-E-BIDDAT**⁸. The man need not cite any reason for the divorce and the wife need not be present at the time of pronouncement of Talaq.

⁶ <https://www.scobserver.in>

⁷ Section 2 The muslim women (protection of rights on marriage) Act, 2019

⁸ Ibid

⁹**BACKGROUND AND FACT OF THE CASE**

Ms. Shayara Bano and her husband, Mr. Rizwan Ahmed, got married in April 2002 in Uttar Pradesh. Ms. Bano claimed that her husband ‘compelled’ her family to give dowry for the marriage. She stated that her husband and his family drugged, abused, and eventually abandoned her while she was sick when her family could not provide additional dowry. In October 2015 Mr. Ahmed divorced Ms. Bano through the practice of **talaq-e-biddat**, also known as instantaneous **triple talaq**. Talaq-e-biddat is a religious practice that allows a man to divorce his wife instantly by saying the word ‘talaq’ thrice. The practice does not require the wife’s consent. Ms. Bano filed a writ petition at the Supreme Court in February 2016 challenging the constitutionality of **talaq-e-biddat, polygamy, and nikah-halala**. Polygamy as an Islamic religious practice allows men to marry more than one woman at a time. If a Muslim woman wants to remarry their first husband following a divorce, nikah-halala requires them to first marry and subsequently divorce her second husband. Ms. Bano claimed that these practices violate the Right to Equality, the Right against Discrimination, and the Right to Livelihood. She further argued that these practices were not protected by the Right to Freedom of Religion—religious freedom is subject to other fundamental rights, public order, morality, and health.

¹⁰**SUPREME COURT DIRECTION**

On February 16th, 2017, the SC directed the All India Muslim Personal Law Board (**AIMPLB**), the Union Government, and women’s rights groups such as the Bebaak Collective and the Bhartiya Muslim Mahila Andolan, to give written submissions addressing the matter. All of these groups, besides the AIMPLB, filed submissions in support of Ms. Bano. While the AIMPLB conceded that Shariat strongly condemns the practice of talaq-e-biddat, they argued that the Court could not review uncoded Muslim personal law. They further argued that these practices were essential to Islam and protected by the Right to Freedom of Religion.

¹¹**“JUDICIAL BENCH UPHOLDS JUSTICE”**

Victory in war reflects the strength of the warrior; similarly, success in the judiciary depends on the judges of the case. In this case, five judges—one Sikh, one Parsi, one Christian, one Muslim, and one Hindu—sat impartially and upheld justice without any bias of this case.

⁹ AIR 2017 SC 4609

¹⁰ <https://indiankanoon.org>

¹¹ Ibid

¹²JUDGEMENT OF THE CASE:

On March 30th, 2017, the SC created a 5-Judge Constitution Bench to hear the matter. The Bench comprised Chief Justice J.S. Khehar and Justices Kurian Joseph, R.F. Nariman, U.U. Lalit and Abdul Nazeer. The Bench heard the case between May 11th and May 19th, 2017, and delivered the Judgment on August 22nd, 2017. In a 3:2 split, the majority held that the practice of talaq-e-biddat was **‘manifestly arbitrary’ and unconstitutional**¹³. Chief Justice Khehar and Justice Nazeer dissented, stating that talaq-e-biddat was protected by the Right to Religion and that it was the job of Parliament to frame a law to govern the practice.

WHAT SOCIAL CHANGES OCCURRED AFTER THE SUPREME COURT DELIVERED ITS VERDICT IN THIS CASE?

ABOLITION OF INSTANT TRIPLE TALAQ

Before the judgment, triple talaq allowed Muslim men to instantly divorce their wives by pronouncing **“talaq” three times**, often through oral means, text messages, or emails. The Supreme Court’s verdict invalidated this practice, ensuring that divorces would follow a more structured and just legal process.

¹⁴THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019

In 2019, the Indian government enacted this law, making instant triple talaq a **cognizable and non-bailable offense**. Husbands who practiced triple talaq could face up to **three years in jail**. The law also provided financial and custodial rights to affected women, ensuring that their interests were protected. With the judgment, courts became the primary authority in Muslim divorce cases, ensuring a **fair trial** and **due process**. It set a legal precedent for challenging other discriminatory practices in personal laws.

¹⁵EMPOWERMENT OF MUSLIM WOMEN

- Women were no longer left vulnerable to sudden, arbitrary divorces. They gained stronger legal backing to fight unjust separation and demand alimony, child custody,

¹² Ibid

¹³ <https://digiscr.sci.gov.in>

¹⁴ Enforced on: 19-sep.-2018

¹⁵ Rahmatunnisa Vs. State of Uttarpradesh (2021)

and financial support. Women-led movements advocating for gender justice in personal laws gained momentum.

- A Muslim woman from Maharashtra was given triple talaq over WhatsApp by her husband, leading her to approach the courts. The husband argued that since it was a private matter, courts should not interfere. He also claimed that since the divorce had been communicated, it was valid under Islamic law.
- The High Court ruled that instant triple talaq is invalid and does not dissolve a marriage. The judgment emphasized that Shayara Bano's ruling applies to all forms of triple talaq, including digital communication (WhatsApp, email, etc.). The case established that modern methods of communication do not change the illegality of triple talaq.

The fact that the “battle of rights of the women and the breakthrough that was needed so much was fought and won by determined Muslim women and specially women¹⁶” . Women in themselves should help and remove the narrative of the singular stereotype – “the blurry figure behind the burqa, illiterate, disempowered and left to fend for herself”. Ignored by all political leaders for continuous since independence since Independence, she is, in fact, perfectly able of article and standing up for her rights to be an equal citizen of this country. But now it is a good time to as to keep reminding ourselves and about just how far we still have left to travel on the road to gender equality and women empowerment.

¹⁷CHANGES IN MARITAL RELATIONSHIPS

- Husbands became more cautious and accountable in their approach to divorce. Greater emphasis was placed on reconciliation and mediation before opting for divorce. There was a decline in cases of arbitrary divorces, though social awareness campaigns were necessary to inform women of their rights.
- The court's ruling rendered the practice of a Muslim man unilaterally divorcing his wife by pronouncing ‘talaq’ three times in one sitting illegal and void. This decision provided Muslim women with legal protection against abrupt and unilateral termination of marriage.
- The abolition of instant triple talaq has contributed to greater marital stability by ensuring that divorces cannot occur without due process, thereby reducing the incidence of arbitrary divorces.

¹⁶ <https://ijalr.in>

¹⁷ <https://www.indiatoday.in>

- The ruling has empowered Muslim women to have a more equitable standing in marital relationships, knowing that the law protects them from unjust dissolution of marriage.
- Increased Legal Awareness: The case has heightened awareness among Muslim women regarding their legal rights, leading to greater assertiveness in seeking justice and equality within the marital framework.

IS THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019 CREATE A SOCIAL CHANGES?

OBJECT OF THIS ACT

- It's makes the practice of instant triple talaq illegal and void. It also provides for punishment of up to **three years** in prison for husbands who practice triple talaq.
- It gives custody of children to the Muslim woman and requires the husband to **pay maintenance**.
- The act aims to **help** Muslim women escape **domestic violence** and discrimination.
- The act deters husbands from **divorcing** their wives **through** triple talaq.

¹⁸ACHIEVEMENT OF THIS ACT

- Abolishment of Triple Talaq has contributed to woman empowerment and has given them dignity in the society.
- The government has strengthened “self-reliance, self-respect and self-confidence” of the Muslim women of the country and protected their constitutional, fundamental and democratic rights by bringing the law against the Triple Talaq.
- Triple Talaq cases have dropped by **82%** within one year of passing of the Act.
- “Muslim Women Rights Day” was observed across the country on **1st August 2021** to celebrate the enactment of the law against Triple Talaq.

¹⁸ Government of India press Information Bureau

¹⁹WHAT ARE THE SOCIAL CHANGES GET IN MUSLIM WOMEN'S IN OUR COMMUNITY:

²⁰MUSLIM WOMEN'S STATUS IN BEFORE MARRIAGE RIGHTS ACT 2019

- **Marriage under Muslim law:** Muslims have from the very beginning regarded their marriage as a contract. Muslim marriage has been defined as a **civil contract** for the purpose of legalizing **sexual intercourse and procreation of children**. It is not a sacrament but a contract, though solemnized generally with the recitation of certain verses from the Quran. Muslim law does not prescribed any religious service essential for its solemnization.
- **Holy Quran speaks about:** The Holy Quran came to redress the aberrations in thinking and Behavior of ancient civilizations and religions as concerns women. It reaffirmed women's human nature: "O Mankind!reverence your Guardian-Lord, who created you from a single person, created, of like nature, his Mate" (The Holy Quran, Surat an-Nisa'a, verse 1)
- **Divorce (Talaq²¹):** **Talaq-e-Sunnat** (approved form), **Talaq-e-Ahsan:** Single revocable pronouncement of divorce followed by **iddat** (waiting period of three menstrual cycles). Can be revoked before iddat ends, **Talaq-e-Hasan:** Divorce pronounced three times over three months with the possibility of revocation after each pronouncement, ²²**Talaq-e-Bid'ah** (Triple Talaq): Instantaneous and irrevocable pronouncement of "Talaq" three times in one sitting, even through oral, written, or electronic means (SMS, WhatsApp, etc.), **Khula** (Divorce by Wife): A Muslim woman can seek divorce unilaterally through Khula, but she must return the Mehr. The husband's consent is generally required, **Faskh**²³ (Judicial Divorce): Muslim women could also seek divorce through courts based on grounds like cruelty, desertion, or failure to maintain them²⁴.
- **Maintenance Rights:** Muslim women could claim maintenance (alimony) under **Section 125²⁵** of the Code of Criminal Procedure (**CrPC**)²⁶, 1973, applicable to all married women.

¹⁹ Agnes, Flavia muslim Women's Rights and Legal Reforms in India Oxford university Press, 2019

²⁰ Muslim Personal Law (Shariat) Application Act, 1937

²¹ Ibid

²² Ibid

²³ Dissolution of Muslim Marriage Act, 1939

²⁴ Muslim Women (Protection of Rights On Divorce) Act, 1986

²⁵ Criminal procedure Code, 1973

²⁶ Bharatiya Nagarik Suraksha Sanhita, BNSS , 2023(Ef., On 1-7-24)

However, The Supreme Court ruled that Muslim women were entitled to maintenance beyond **Iddat (3 months)**²⁷, triggering backlash from conservative Muslim groups. This led to the Muslim Women (Protection of Rights on Divorce) Act, 1986, which limited maintenance only till the iddat period, shifting responsibility to the Waqf Board if she had no means of support.

MUSLIM WOMEN'S SOCIAL STATUS AND CHANGES AFTER THE ACT OF 2019

REDUCTION IN THE PRACTICE OF TRIPLE TALAQ

The fear of criminal consequences (imprisonment and fine) has deterred many men from giving triple talaq arbitrarily. Reports indicate a significant decline in the number of talaq-e-bid'ah cases after the Act came into force. Many Muslim men now opt for a legal divorce process (Talaq-e-Hasan or Talaq-e-Ahsan), which allows time for reconciliation. Such changes are necessary in a developing society. The time when women were confined to their homes in a state of subjugation has passed. In the present scenario, it is commendable that Muslim women, in particular, are coming forward to file such cases without any fear. Moreover, the law serves as a strong support to prevent such situations from arising.

WOMEN'S INCREASED CONFIDENCE IN MARRIAGE

Earlier, many Muslim women lived in fear of being instantly divorced and abandoned. The Act has now provided stability in marriages. Women feel more empowered to speak up against domestic abuse or marital injustice, as the law is in their favour. Because the 2019 Act is very supported them allowance. Without prejudice to the generality of the provisions contained in any Other law for the time being in force, a married Muslim woman upon whom talaq is pronounced shall be Entitled to receive from her husband such amount of subsistence allowance, for her and dependent Children, as may be determined by the Magistrate²⁸.

²⁹CHANGE IN COMMUNITY PERCEPTION

The male-dominated interpretation of divorce within some Muslim communities is being challenged. There is a growing discourse on gender equality within Islamic jurisprudence, where

²⁷ Mohd.Ahmed Khan Vs. Shah Bano Begum and others AIR 1985 SCC(2) 556

²⁸ Section 5 The Muslim Women (Protection of Rights On Marriage) Act 2019

²⁹ Shamitha, Mentored by Adv. Aameer V. Kale, Effectiveness of Muslim Women (Protection of Rights On Marriage) Act 2019 AK Legal and Associates

scholars debate women's rights in Islamic law. Religious and social organizations have started advocating for more progressive family laws for Muslim women.

³⁰**STRENGTHENING WOMEN'S POSITION IN FAMILY AND SOCIETY**

Many women who were victims of triple talaq now receive legal and financial support, helping them live independently. Custody rights of children are in favour of women, ensuring better protection for divorced Muslim mothers. Women's participation in legal matters and community leadership has seen a gradual increase.

More Security in Marriage: Earlier, many Muslim women feared being arbitrarily divorced through WhatsApp, phone calls, or letters. After the ban, women feel a stronger sense of security in marriage, as husbands cannot unilaterally end the relationship without due legal process.

Increased Decision-Making Power: Women now have greater confidence to demand equal treatment in marriage. With triple talaq gone, they have more time to negotiate, seek reconciliation, or take legal steps.

Better Financial Protection: Since husbands can no longer instantly divorce their wives, women now have a better chance to claim maintenance and support.

In Society;

Legal Empowerment: The legal system now protects Muslim women from arbitrary divorces, improving their access to justice. Courts have recognized the right of Muslim women to seek a fair divorce through due legal procedures (khula or mutual consent divorce).

Reduced Social Stigma: Previously, many Muslim women who faced triple talaq were stigmatized and left without support. The abolition has helped in reducing social discrimination against divorced women, as they are no longer seen as victims of an unfair system.

ECONOMIC EMPOWERMENT

The Act mandates a subsistence allowance for women, ensuring that they are not left without financial support after divorce. Many women have started seeking education and employment to become self-sufficient rather than relying on marriage for security. There is a push for Muslim women's property rights, as financial security is being discussed beyond just talaq.

³⁰ The Hindu, Three year After Triple Talaq Ban: Impact on Muslim Women, 2022

LEGAL AWARENESS AND ACCESS TO JUSTICE

Women are now more aware of their legal rights, leading to increased cases of Muslim women approaching courts for justice. Many legal aid cells and NGOs are actively working to spread awareness about women's rights post-triple talaq.

SUGGESTION

Laws like this should continue to evolve and bring about change in society. If a woman like **Shayara Bano** had not filed a case, such laws might not have been enacted, and society would have remained in darkness without the light of justice. Therefore, the Indian judiciary, by taking up such cases, enacts impactful laws that bring change both in society and within the Muslim community. In the future, all laws enacted concerning various fields and our society will be considered highly significant.

CONCLUSION

A mother realizes her child's hunger only when the child cries. Similarly, only when a person seeks justice after facing injustice—either personally or within their community—does the issue come before the law, leading to action against the injustice. This process brings light to situations once shrouded in darkness, bringing about change through the power of law. Through this case, all Muslim women have come to realize both the injustices they face and their right to be treated equally before the law. Moreover, this awareness should not remain confined to a specific region but should spread like wildfire across the world, especially among women in the Muslim community. The government is also taking steps to raise awareness and implement necessary measures. Therefore, we must remember that an ordinary case can make history and lead to the enactment of a new law. Keeping this in mind, let us all move forward toward social change.