

## JOURNEY FROM SHAH BANO TO SHAYARA BANO: WOULD IT BE END OF MISOGYNY?

Aparajita Singh\*

### Abstract

*There is striking similarity between Shah Bano case which came in 1985 and Shayara Bano case which has come in 2016. Both belong to the Muslim community and are victims of personal laws. Despite the similarity they differ from each other as Shah Bano case was regarding adequate maintenance after triple talaq while shayara bano case challenges itself the constitutionality of the instantaneous triple talaq being in contravention of the fundamental rights. The era has changed but the question remains whether shayara Bano case will bring about social changes in life of the Muslim women if the decision comes in favour of Shayara Bano. Gender justice is the heart of both the cases. This judgement would be landmark in our social and political history. Shah Bano was historic in the sense of post-divorce maintenance while this case may be a milestone as far as pre divorce is concerned. It is in this backdrop that the article tries to analyse the plight of the Muslim women in reference to arbitrary divorce (triple talaq) and also tries to establish that how this case which has come before the Supreme Court is related with Gender justice.*

**Keywords:** Personal Law, Triple Talaq, Gender Justice, Constitutionality, Muslim Women.

---

\* Asst. Professor of Law @ Amity Law School, Lucknow, Email: [singhaprajita33@gmail.com](mailto:singhaprajita33@gmail.com)

Every girl has dreams about her marriage and having a family. Shayara Bano once had such dreams and they got fulfilled when she got married. Once she was a bride with lot of aspirations in regard to his future life. Situations has changed since her marriage. There is a fear in her eyes of uncertainty regarding her future and family. She had undergone multiple abortions and is continuously taking anti-depressants. Her marriage is just 15 years old and her greatest fear has been word divorce uttered thrice by his husband. The word divorce has become a nightmare for her. Soon after her marriage there were demands of more dowries failing which his husband would threaten divorce. This became everyday exercise of his husband asking for certain demands and if they were not met he would threaten her with divorce. This emotional and physical trauma turned shayara into bundle of nerves. She has undergone treatment at her parent's place. But treatment at hospital is no solution to it. Finally one day his husband sent her Talaq Nama by post.

She is a post graduate in sociology and is the most educated in the family. She is the eldest sibling in her family. She had ambition to teach which she did for very short span of time for a few months before she got married. But her life drastically changed after marriage.

In Supreme Court she has filed a petition challenging the constitutional validity not of Triple Talaq approved and allowed by Quran as long as it is three utterances spread over time period of 90 days but rather instantaneous triple talaq. This is the first case of its kind where a Muslim woman has challenged a personal practise citing fundamental rights guaranteed by the Indian Constitution.

There are various forms of divorce in Islam sometimes they are initiated by husband and at times by wife. The theory and practice of divorce in the Islamic world have varied according to time and place.<sup>1</sup> Historically, the rules of divorce were governed by shariat, as interpreted by traditional Islamic jurisprudence, and they differed depending on the legal school. In modern times, as personal status (family) laws were codified, they generally remained “*within the orbit of Islamic law*”, but control over the norms of divorce shifted from traditional jurists to the state.

**TRIPLE TALAQ** is considered as the most sinful form of divorce. It is a form of divorce where the word divorce is uttered in one single sitting as “I divorce thee” thrice. Hanafis one

---

<sup>1</sup> Maaïke Voorhoeve, Abed Awad and Hany Mawla (2013), ‘Divorce’, *The Oxford Encyclopedia of Islam and Women*. Oxford: Oxford University Press

school of thought in Islam considers it as sinful but still it is very much valid. The idea of this school of thought is that if the word divorce has been uttered thrice the wife becomes alienated and she cannot remarry. She is totally prohibited and in Islam it is called Haram. He cannot go for fresh nikah with her nor can he take her back. The only condition in which he can remarry her back when she gets married to another person and that person leaves her on ground of marital conflict or if she becomes a widow.<sup>2</sup>

Four major schools of jurisprudence accept the validity of triple talaq. If one see the jurisprudence behind divorce in Quran. It provides for two situations that is either one can keep the wife with kindness or leave her with benevolence.

Shayara Bano alone is not the sufferer of discriminatory use of talaq but Muslim women in general face it every day. Shayara has claimed for equality before law and protection from discrimination on the basis of gender and religion. She is symbolic of the change that should take place. Muslim woman has received divorce in numerous ways .Sometimes over Skype other time at Facebook and even through text messages. One can see the arbitrary way in which divorce has been given and there is no protection against it. They have their hands tied while the guillotine of divorce dangles perpetually ready to drop at the whims of their husbands who enjoy undisputed power. A woman has no say when it comes to instantaneous triple talaq. She has also challenged polygamy which gives arbitrary power to husbands.

In response to the petition filed by shayara on discriminatory practise of triple talaq common among Muslims Supreme Court has decided to check the constitutionality of the Islamic tenet and has asked solicitor general to file the response against the petition.

The time period in which this case has come is almost thirty years after the famous and controversial Shah Bano Maintenance case. That case was controversial as it brought lot of political turmoil in Politics at that time. As a consequence of such political turmoil the parliament has to pass the legislation the Muslim Women (Protection of the rights on divorce Act) 1986. This legislation was passed to override the judgement given by the Supreme Court giving Muslim women fairer maintenance as compared to what she got in their personal laws. The debate at that time was successfully framed as an Islam-versus-women's rights issue, and Shah Bano became a part of the Babri Masjid-and-Kashmir idea of injured Hindu pride in India.

---

<sup>2</sup> Available at: [http://www.irfi.org/articles/articles\\_151\\_200/triple\\_talaq.htm](http://www.irfi.org/articles/articles_151_200/triple_talaq.htm)

However, the social conditions and people's perspective has changed since then and if one sees here the question involved is more important as it talks about larger issue that disregarding gender biasness in respect of Muslim women especially in reference to arbitrary divorce. This case is significant as it is the first time a Muslim woman has challenged a personal law being in violation of the provisions of the fundamental rights of the constitution. Shayara Bano has raised few questions before the court to declare *triple talaq* (pronouncement of the word divorce thrice in one single utterance), *nikah-halala* (where a woman is made to consummate a *nikah* with another man in order to go back to her former husband) and polygamy are illegal and in violation of Articles 14 (equality before law), 15 (prohibition of discrimination on the basis of religion, caste, sex, place of birth), 21 (protection of life and personal liberty) and 25 (freedom of conscience and free profession, practice and propagation of religion) of the Constitution. With triple talaq Indian men exploit women. They say it whenever they want, in a fit of anger. Life ends for a woman. In many Islamic countries like including Saudi Arabia, Pakistan and Iraq triple talaq has been restricted or banned. It's high time that it should be banned in India as well. It is one of the ways in which Muslim women can become empowered if they are able to enjoy their fundamental rights given in the constitution in the true sense. Personal practice especially of arbitrary divorce often does not allow Muslim women to enjoy their right to life and personal liberty in the true sense.

Shayara Bano case stands for the whole community of Muslim women who have been suppressed since ages in the name of arbitrary divorce. Let's hope this case will open new doors for Muslim women as far as gender justice is concerned.