

# SC verdict on Triple Talaq

#### Why in news?

\n\n

Supreme Court has invalidated the triple talaq practise by calling it arbitrary and unconstitutional in a 3-2 majority judgment.

\n\n

#### What are the justifications of minority judges?

\n\n

\n

- Two of the five judges have argued that talaq as a personal law practise was an **integral part of Article 25** (Freedom of Religion). n
- It has been practised for over 1,400 years hence becomes a matter of firm religious faith and that it cannot be tested on the touchstone of Article 14.  $\n$
- They held that personal laws like instant talaq were an 'exception' to the Constitution's stated aim to protect gender equality.
- They had reasoned that instant talaq cannot be invalidated just because the Koran does not expressly provide for or approve of it.  $\n$

\n\n

## What are the justifications of the majority judges?

\n\n

∖n

- Three of the five judges have set aside instant talaq terming it as 'manifestly arbitrary' which makes it **violative of Article 14** (Right to Equality). n
- **Social** A mere prevalence of the practise for over 1,400 years itself cannot make it valid.

\n

• An individual's dignity and equality is placed at the mercy of their communities by this practise.

∖n

• **Religious** - It is noted that triple talaq is against the basic tenets of the Holy Koran.

\n

- Shariat Act had in the past put an end to unholy, oppressive and discriminatory customs and usages in the Muslim community.  $\n$
- So similarly Triple Talaq can also be invalidated.  $\space{1mm}$
- **Legal** A section of the Muslim Personal Law (Shariat) Application Act of 1937 has already recognised triple talaq as a **statutory right** and not a fundamental right.

\n

- This makes triple talaq outsie the ambit of Article 25.  $\space{1.5mu}{}_{\space{1.5mu}{}}$
- Hence it was made clear that instant talaq was no longer a personal law and it comes under the ambit of Article 13 of the Constitution.  $\n$
- Article 13 mandates that any law, framed before or after the Constitution, should not be violative of the fundamental rights.  $\n$

\n\n

## What are the shortcomings?

\n\n

∖n

- The narrow majority with which the judgement has come raises doubts on the long term impact on the issue of community rights over individual rights.  $\n$
- Only Triple Talaq (Talaq-e-biddat) is invalidated. The other forms of Talaqs like 'Talaq Hasan' and 'Talaq Ahsan' are still available to Muslim men.  $\n$
- Though it reached the right conclusion, there was no consensus on first principles.
  - ∖n
- The majority has not ruled that our basic constitutional values override religious belief and practice and as a result proper precedent was not set.  $\n$
- A more elaborate consideration of how Article 14 might affect personal laws would have laid down a better precedence for the future.  $\n$

\n\n

## Source: The Hindu, Indian Express

\n

