SC Verdict on Triple Talaq - II

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What is the issue?

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- The recent SC verdict on triple talaq is commendable for undoing the gender injustice.
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- However, the judgement failed to address some crucial constitutional questions.
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What are the shortcomings?

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- **Codification of personal laws** - 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.
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- This brings it under the ambit of Article 13 of the Constitution and thereby providing for constitutional scrutiny.
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- Bombay High Court decision in 1951 is often referred by courts to hold that personal laws doesnot come under Article 13.
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- If the Supreme Court had held that personal laws are 'laws in force' under Article 13(1), the **problem of discrimination, arbitrariness and gender bias in all personal laws** would have been solved.
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- However the court has missed on this.
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- **Court's jurisdiction** - One of the majority judges held that talaq-e-biddat found no mention in the Koran, and was no part of Muslim personal law.

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- His judgement was based on the ground that talaq-e-biddat was un-Islamic, rather than unconstitutional.
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- This raises the question as to whether secular courts have the jurisdiction to adjudicate on such grounds.
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- **Individual and community rights** - The basic unit of the Constitution, as Ambedkar said, is the individual.
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- However, the minority judgement has placed community claims above the individual constitutional rights.
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- It has advanced the view that religion could become the arbiter of individuals' civil status and civil rights.
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- **Constitutional protection** - There is a need for distinction between religious rituals and beliefs as against laws relating to tenancy, succession and marriage.
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- This distinction has not been properly conveyed.
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- **Gender Discrimination** - The Muslim women who challenged triple talaq invoked the Constitution because there was no equivalent within their personal law system.
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- The minority judgement denied this opportunity to an individual oppressed and unequally treated by her religious community.
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- The value of a Supreme Court judgment lies in the possibilities and avenues that it opens for the future, for further progressive-oriented litigation.
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Source: The Hindu

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