

SC Verdict on Triple Talaq - II

Click [here](#) for Part I

\n\n

What is the issue?

\n\n

\n

- The recent SC verdict on triple talaq is commendable for undoing the gender injustice.

\n

- However, the judgement failed to address some crucial constitutional questions.

\n

\n\n

What are the shortcomings?

\n\n

\n

- **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.

\n

- This brings it under the ambit of Article 13 of the Constitution and thereby providing for constitutional scrutiny.

\n

- Bombay High Court decision in 1951 is often referred by courts to hold that personal laws doesnot come under Article 13.

\n

- 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.

\n

- However the court has missed on this.

\n

- **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.

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

\n\n

\n\n

Source: The Hindu

\n