

## THE SUPREME COURT JUDGEMENT-

A Step towards Gender Justice.



A file photo from India Today.

The Supreme Court five member bench gave a historic judgment :it decided by a 3;2 majority the practice of unilateral ,instant Talaq also known as Triple Talaq or talaq-e-biddat) unconstitutional. It established that the practice was contrary to principles of equality enshrined in the Constitution as well as the Quran. It clearly stated that the instant triple talaq was not prescribed in the Quran Nor is it fundamental to the religion of Islam in India

The Supreme Court bench made a detailed study of laws in 19 countries which include Egypt ,Palestine, Turkey ,various nations in the Arab Peninsula ,South East Asia and South Asia which have abolished or enacted laws against the practice of triple talaq.

The Supreme Court in its judgment directed the Union of India to consider appropriate legislation, particularly with reference to talaq-e-biddat.

It stated that .. “Till such time a legislation in the matter is considered we are satisfied in injuncting Muslim husbands ,from pronouncing “talaq-e-biddat” as a means of severing their matrimonial relationships. The instant injunction ,shall in the first instance ,be operative for a period of six months .If the legislative process commences before the expiry of six months and a positive decision emerges towards defining “talaq-e biddat(three pronouncements of” talaq”, at one and the same type) as one ,or alternatively , it is decided that the practice of ”talaq-e-biddat “ be done away altogether, the injunction would continue till legislation is finally enacted. Failing which , the injunction shall cease to operate.”

The Supreme Court judgment brought on center stage the dichotomy between Quranic injunctions and the practices followed by large population of Muslims and misused by many in a patriarchal society. One oft asked question is how and why did the practice of instant triple talaq come into practice when the Quran does not sanction triple talaq. The Quran lays down a detail procedure in which the word Talaq is pronounced over a period of three months ,with ample time for adjudication and reconciliation. This procedure ensured that the marriage would not be terminated in haste, rage or whim.

During the time of Prophet Mohammed - three utterances of talaq in one sitting were taken as one statement. Hazrat Omar ,the second Caliph of Islam took a different view due to administrative reasons . Instant triple talaq was considered talaq –e biddat .It was sinful but legal and irrevocable. However to discourage the practice ,those who resorted to talaq-e-biddat were flogged.

Unfortunately the talaq-e-biddat procedure continued due to the strict interpretation of the Muslim clergy and the stand taken by Abu Hanifa. But the flogging was discontinued . So in India where most Sunni Muslims are adherents of the Hanfi school of jurisprudence this practice of talaq e biddat is taken recourse to by men which puts the wife in a very vulnerable position without any chastisement for the man as prescribed by the 2<sup>nd</sup> Caliph. Therefore there was considerable resentment amongst women and those who became victims of this practice. The first movement against Triple Talaq started in Maharashtra on April 18 1961.

The injustice and suffering of a woman were highlighted by many Muslim Women organizations from time to time. However there was little impact on the situation .With the advent of communication technology men took recourse to uttering talaq on phones, through courier and email. The Muslim clergy didn't bother to intervene nor did the Muslim Personal Law Board – an NGO which has representatives from various Muslim sects who are experts in the Shariat Law.

Hence five courageous women – Shayara Bano (36),Gulshan Parveen(30) Afreen Rehman(28)Ishrat Jahan(31) and Atiya Sabri(28-who had suffered through this arbitrary mode

of divorce, filed a petition in the Supreme Court supported by the Bharatiya Muslim Mahila Andolan an NGO working towards codification of Muslim Personal law and abolition of triple talaq and other malpractices contrary to Quranic injunctions.

These women braved threats and intimidations to fight this case and their win is not only for for themselves but also thousands of miserable women who are victims of this misuse. Their victory will provide impetus to many more Muslim Women to seek social justice through India's judicial system.

The Supreme Court Judgment has reaffirmed the Muslim women's faith in the Judicial system of India and the ideals enshrined in the Constitution .