

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.

\n

- 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.

\n

- **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 outside the ambit of Article 25.

\n

- 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

\n\n

Source: The Hindu, Indian Express

\n

