Triple Talaq Case

Why in news?

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- The Supreme Court today will begin hearing arguments in **Shayara Bano v. Union of India** also known as the “triple talaq case”.
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- In this case the constitutional validity of certain practices of Muslim personal law such as triple talaq, polygamy, and nikah halala has been challenged.
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What are the approaches for the case?

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- The court will have to decide first,\n\n
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1. **Narrow View -** whether to adjudicate the case in at assessing the relationship just between triple talaq and Muslim personal law or
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2. **Broad View -** whether personal law can be subject to the Constitution at all.
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How the narrow view can be interpreted?

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- Some hold that triple talaq is invalid because it has no sanction in Muslim personal law.
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- They believe that the religious domain does not allow for triple talaq.
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- They draw a distinction between instantaneous talaq, or talaq-i-bidat (where

divorce is complete when “talaq” is uttered three times in succession) with talaq ahasan, which requires a 90-day period of abstinence after the pronouncement, and talaq hasan, which requires a one-month-long abstinence gap between utterances.
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- The latter two are part of Islamic personal law, but the first one is not.
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- They point out that only those features of a religion are constitutionally protected which are “integral” or “essential” parts of it.
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- There is no evidence to show that talaq-i-bidat constitutes an integral part of the Islamic faith.
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- This view has created a paradoxical situation where, as long as personal laws are uncodified, they escape constitutional scrutiny, but the moment they are legislated by the state (as large parts of Hindu laws were in the 1950s), they become subject to the Constitution.
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- This view would be the easy and natural path for the court to take, it would also entail missing a significant opportunity.
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How the broad view can be interpreted?

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- The court should ask whether a challenged practice of personal law violates anyone’s fundamental rights.
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- In order to subject triple talaq to constitutional norms, the court must first overrule a 1951 judgment of the Bombay High Court in which it held that uncodified personal laws may not be scrutinised for fundamental rights violations.
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- They did so on the technical reasoning that Article 13 of the Constitution subjected only “laws” and “laws in force” to the scrutiny of fundamental rights, and that “personal laws” are neither “laws” nor “laws in force”.
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- They assumed there is a distinction between law, as created by the state or its agencies and “personal law”, which had its source in the scriptures.
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- There does not exist a “pure” domain of personal law, which has its source in

scriptures independent and untouched by state influence.
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What should be done?

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- Irrespective of the judgment a marriage contract or nikahnama (prenuptial contracts) is the easy solution to the problems at hand — polygamy, triple divorce and halala.
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- These bar domestic violence, prohibit the husband from marrying another woman and bar him from leaving the wife for long periods.
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- Any violation of any of these conditions entitled the wife to divorce the husband or get the marriage annulled.
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- Let the prohibition on polygamy and triple divorce be included in the nikahnama and once triple divorce goes, halala too will automatically go as in revocable divorces, parties can remarry without halala.
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Source: The Hindu & The Indian Express

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