

**PRESIDIUM MODEL UN CONFERENCE 2017**

*“1. Question of Personal Laws with regards to the Triple Talaq Rule*

*2. Challenging the Prevention of Cruelty (Regulations to Livestock Markets) Rules, 2017”*



***SUPREME COURT OF INDIA  
(SCoI)***

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### **CASE-1: Tahira Bano v. Union of India (Triple Talaq Case)**

#### **STATEMENT OF FACTS**

The petitioner has approached the Court under Article 32 of the Constitution of India praying for a direction against the Union of India and others seeking a writ or order or direction in the nature of mandamus declaring the practices of talaq-e-bidat, nikah halala and polygamy under Muslim personal laws as illegal, unconstitutional for being violative of Articles 14, 15, 21 and 25 of the Constitution, and to pass such further orders as this Hon'ble Court may deem appropriate to provide a life of dignity to Muslim women. This petition is filed by the Petitioner in her individual capacity.

The petitioner is a Muslim female from Uttar Pradesh. She comes from meagre means and has also been undergoing serious medical ailments. The Petitioner was married to Respondent (Qabal Khan) on 11.04.2006 at Allahabad as per Muslim Shariyat law rites and customs and has two children from the wedlock. Her parents had been compelled to give dowry before the marriage. Her husband and his family not only subjected her to cruelty after the marriage (including physical abuse and administration of drugs that kept her unconscious), but also demanded additional dowry in the form of a car and cash which her family was unable to provide. Due to the unreasonable demands, the torturous behaviour of her husband and his eventual decision to abandon her, the Petitioner has been forced to stay with her parents since April 2015. The Petitioner-wife was divorced by triple-talaq, pronounced in one sitting, which was confirmed by a divorce deed dated 10.11.2015 issued by Respondent.

#### **ISSUES:**

1. Whether the divorce pronounced and confirmed on 10.11.2015 void ab initio being illegal and unconstitutional?
2. Whether Section 2 of the Muslim Personal Law (Shariat) Application Act (hereinafter Shariat Act), 1937 is unconstitutional in so far as it seeks to recognise and validate talaq-e-bidat (triple-talaq) as a valid form of divorce?

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3. Whether Section 2 of the Shariat Act, 1937 is unconstitutional in so far as it seeks to recognise and validate the practice of nikah halala?
4. Whether Section 2 of the Shariat Act, 1937 is unconstitutional in so far as it seeks to recognise and validate the practice of polygamy?

### MAJOR ARGUMENTS:

#### *Petitioner:*

- Various eminent Muslim scholars have said that triple talaq is not only unconstitutional and offends Articles 14, 15, 21 and 24, but also treats women as chattel, which goes against the principles of the Holy Quran.
- Entry 5 of List III in the 7 th Schedule confers power on the legislature to amend or pass new laws in all matters governed by personal laws, but the Legislature has failed in its duty to ensure the fundamental rights of Muslim women are protected. Therefore, there is a need for judicial intervention.
- That the freedom of religion as enshrined in Article 25 is subject to public order, health and morality.
- That the Dissolution of Muslim Marriages Act, 1939 fails to secure protection from bigamy for Muslim women.

#### *Respondent*

- The questions raised by the petitioner have already been considered by this Hon'ble Court in Ahmedabad Women Action Group v. Union of India (1997) 3 SCC 573, where the Court declined to entertain the issues stating that they were a concern of state policies which should be dealt with by the legislature, and not the Court.
- Part III of the Constitution does not touch upon the personal laws of the parties and therefore their constitutional validity cannot be questioned. the expression 'personal law' has not been used in Article 13 and therefore the framers wanted to leave them outside the purview of Part III.

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- That the rights of Muslim women are already protected by the Muslim Women (Protection of Rights on Divorce) Act, 1986

### PRIMARY READINGS

- ❑ <http://www.thehindu.com/news/national/the-hindu-explains-triple-talaq/article18590970.ece>
- ❑ [http://www.thehinducentre.com/multimedia/archive/03080/132\\_Muslim\\_Person\\_3080262a.pdf](http://www.thehinducentre.com/multimedia/archive/03080/132_Muslim_Person_3080262a.pdf)
- ❑ <http://feministsindia.com/wp-content/uploads/2015/11/Triple-Talaq-Report.pdf>
- ❑ <https://www.thequint.com/india/2017/05/20/triple-talaq-supreme-court-hearings>
- ❑ <http://www.ili.ac.in/lawrvol1.pdf> (Page 129)
- ❑ <https://edoc.hu-berlin.de/bitstream/handle/18452/9167/37.pdf?sequence=1&isAllowed=y>
- ❑ <http://www.lawyerscollective.org/the-invisible-lawyer/issues-stake-triple-talaq-case>
- ❑ <http://scobserver.clpr.org.in/cases/triple-talaq-case/>

**CASE 2 - That the present matter is listed before the Hon’ble Supreme Court of India on the 10<sup>th</sup> day of July 2017.**

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The Parliament enacted the Prevention of Cruelty to Animals Act, 1960, taking cognizance of the proposals of the Committee for Prevention of Cruelty to Animals. The said Act characterizes cruelty to animals under section 11. Section 38 of the Act authorizes the respondent to make Rules subject to the condition of previous publication for carrying out the provisions of the Act and for various other matters enumerated under section 38(2) of the Act.

In the present matter, the respondent, has framed the Rules, “Prevention of Cruelty to Animals (Regulations of live Stock Markets) Rules 2017”, purportedly under section 38 (1) and (2) of the Act of 1960. Rule 22 provides restriction on sale of cattle. It is to be noticed that this Court has previously held that the right to food is a part of right to personal liberty, conscience and privacy

The petitioner has subsequently filed the present Writ of Declaration to declare Rule 22(b)(iii) and Rule 22(e) of the Prevention of Cruelty to Animals (Regulations of live Stock Markets) Rules 2017 as ultra vires the Prevention of Cruelty to Animals Act 1960 and Article 14, 19, 21, 25 and 29 of the Constitution of India and pass such further orders as this Hon'ble Court may consider fit and legitimate in the circumstances of the case.

### **ISSUES**

1. Whether the validity of Rule 22(b)(iii) and Rule 22(e) can be sustained given that the right to food inheres in the right to life and personal liberty?
2. Whether the right to food includes the right to food of one's choice and is part of the right protected by Article 21 of the Constitution?
3. Whether directive principles of state policy ought to only be employed in a manner that expands the scope of fundamental rights?

### **MAJOR ARGUMENTS**

#### **Petitioner**

1. The Respondent claiming to frame Rules to give effect in the provisions of the Act had Infact acted beyond the power of Rulemaking and had legislated Rules prohibiting slaughter of animals, which is specifically permissible under the parent Act.

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2. The impugned provisions by prohibiting slaughter for religious purposes, has sought to emasculate the right of every citizen to freely practice his religion according to the belief of his community.

3. The fields of legislation, concerning “Markets and fairs” and “Preservation or protection and improvement of stocks”, falls, within entry 28 and 15 of the State list and thus it is only the State legislature, which is empowered to make laws on the said fields of legislation

### **Respondent**

1. That a right under Article 25 can be restricted on the grounds of public order morality and health or grounds enumerated under Article 25(2)

2. Article 19(1)(g) of the Constitution of India is subject to reasonable restriction under Article 19(6) by a law made by the competent legislature in the interest of public or for providing professional or technical qualification or to monopolize either partly or completely in exclusion of the other citizens.

3. Article 48 directs that the state shall “organise agriculture and animal husbandry on modern and scientific lines, and shall, take steps for preserving and improving the breeds”. It also prohibits the slaughter of “cows and calves and other milch and draught cattle.”

### **PRELIMINARY READINGS**

1. Fundamental Rights V. Directive Principles: Minerva Mills Revisited, Kunika Pandey, 2011

2. <http://ijlljs.in/wp-content/uploads/2014/10/Submission-Anhad-Miglani-NLSIU.pdf>

3. <http://www.thehindu.com/news/national/reconsidering-ban-on-sale-of-cattle-for-slaughter-centre-tells-supreme-court/article19256776.ece>

4. <http://www.thehindu.com/opinion/lead/cow-slaughter-and-the-constitution/article18683942.ece>

5. Mohd. Hanif Qureshi & Ors. Vs. State of Bihar (AIR 1958 SC 731)

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6. State of Gujarat vs Mirzapur Moti Kureshi Kassab

7. The Prevention of Cruelty to Animals Act, 1960 (59 Of 1960)