

Shah Bano Case – A Historical Blunder In Negating The Rights Of A Minority Woman

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Abstract

The Mohd. Ahmad Khan vs. Shah Bano Begum & Ors. or the Shah Bano maintenance case is seen as one of the legal milestones in battle for protection of rights of Muslim women. While the Supreme Court upheld the right to alimony in the case, the judgment set off a political battle as well as a controversy about the extent to which courts can interfere in Muslim personal law. The case laid the ground for Muslim women's fight for equal rights in matters of marriage and divorce in regular courts. After the verdict, the Indian National Congress intervened in the Indian Parliament and nullified the case as it was a matter related to the personal laws of the Muslims nullifying the justice rendered by the Supreme Court of India.

Key words : Supreme Court, verdict, discriminations, constitution, alimony

As we celebrate jubilee's of our freedom from the colonial British, the case of denial of justice to an ordinary Muslim women still linger around human rights activists and the belief we have in our constitution.

The case of Shah Bano, shook India in the mid-1980s when we had India's youngest tech-savvy, pilot Prime Minister, Shri Rajiv Gandhiⁱ. The Shah Bano judgement was delivered by a five-member bench of the Supreme Court on April 23, 1985ⁱⁱ. This was a landmark judgement in India's constitutional history upholding the plight of a hapless woman to seek alimony from her estranged husband, who divorced her after having five kids and forty-five years of married life.

Shah Bano was married to Mohammed Ahmed Khan, her first cousin in 1932ⁱⁱⁱ, after forty five years in 1978, the husband divorced her and stopped paying alimony after a couple of years. Shah Bano filed a case in the High court which ruled in her favour and then the Supreme court upheld the decision after her former husband filed a review petition in the Supreme Court.^{iv}

The hardline Muslim clerics and their supporters felt that it was a direct interference by the Supreme Court into the Muslim personal laws as India does not have a Uniform Civil Code^v.

However, caught between the protesting Muslim clergy, who were backed by the All India Muslim Personal Law Board, and the Hindu right wing that had leaped on the verdict to push for a uniform civil code, the then Rajiv Gandhi government passed the Muslim Women (Protection on Divorce) Act, 1986, essentially overturning the Supreme Court verdict. Counted as one of Rajiv Gandhi's most misguided decisions, the Shah Bano moment deeply antagonised the Indian middle class and powered the Hindu right wing's subsequent attempts to pillory and erode the ideals of Nehruvian secularism.^{vi}

At one stroke the progress made by the Supreme court to correct the illogical denial of the secular constitutional rights of the Muslim women was trampled by the Rajiv Gandhi government to publicly appease the hard-line Muslim community, though some progressive Muslim organisations had supported the Supreme Court verdict.

As per the constitution of India, we have no religion, in that case why did the government of the day interfere in the functioning of the Supreme Court and denied justice to a woman? This appeasement of the hard-line Muslim community weaned away the hard-line Hindus from the Congress party. It led Rajiv Gandhi to appease the hard-line Hindus by allowing the Shilanyas or the foundation stone laying ceremony^{vii}.

The party in power questioned the provisions of the Preamble of the constitution which refers to justice, liberty, secularism, and equality.

Further the government went to the extent of not considering the provisions in the following articles. Article 14. Equality before law. —The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India^{viii}.

Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. — (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste sex, place of birth or any of them.... (3) Nothing in this article shall prevent the State from making any special provision for women and children^{ix}.

The provisions of Directive Principle under Article 39 states that Certain principles of policy to be followed by the State. —The State shall, in particular, direct its policy toward securing—

a) that the citizen, men and women equally, have the right to an adequate means of livelihood^x

One of the aims of the state is to introduce the Article 44 of the Directive Principle by which Uniform civil code for the citizens would come into effect. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India^{xi}.

The Judgment of the Court was delivered by CHANDRACHUD,C.J. This appeal does not involve any question of constitutional importance but, that is not to say that it does not involve any question of importance. Some questions which arise under the ordinary civil and criminal law are of a far-reaching significance to large segments of society which have been traditionally subjected to unjust treatment. Women are one such segment. 'Nastree swatantramarhati" said Manu, the Law giver: The woman does not deserve independence. And, it is alleged that the 'fatal point in Islam is the 'degradation of woman'(l). To the Prophet is ascribed the statement, hopefully wrongly, that 'Woman was made from a crooked rib, and if you try to bend it straight, it will break; therefore treat your wives kindly.

Does the Muslim Personal Law impose no obligation upon the husband to provide for the maintenance of his divorced wife ? Undoubtedly, the Muslim husband enjoys the privilege of being (1) 'Selections from Kuran'-Edward William Lane 1843, Reprint 1982, page xc (Introduction) able to discard his wife whenever he chooses to do so, for reasons good, bad or indifferent. Indeed, for no reason at all. But, is the only price of that privilege the dole of a pittance during the period of iddat ? And, is the law so ruthless in its inequality that, no matter how much the husband pays for the maintenance of his divorced wife during the period of iddat, the mere fact that he has paid something, no matter how little, absolves him for ever from the duty of paying adequately so as to enable her to keep her body and soul together ? Then again, is there any provision in the Muslim Personal Law under which a sum is payable to the wife 'on divorce' ? These are some of the important, though agonising, questions which arise for our decision.

In this manner it was amply demonstrated that the government was more interested in its vote bank politics than its commitment towards making India a model state where women and men were equal and truly secular in nature where the state sticks to its principles of non-interference in religious matters questioning the democratic credentials of our existence as the world's largest democracy.

How can women be empowered when their basic survival is threatened by such incidents? Women empowerment in the genuine sense can only be achieved when the government takes a firm stance on such cases without discriminating on religious grounds. The politicisation of the case of Shah Bano completely exposed the vulnerability of women irrespective of the party in power or the ideology they follow, especially if they are from the minority communities.

Mahatma Gandhi said that 'India will be free when the women feel safe to walk in the streets of India in the midnight'^{xii}. Are the women in India safe to walk on streets even in broad daylight? The question of how long it would take to achieve Gandhiji's vision of a liberated India persists. Do women need to live in-DEPENDENCE, will it be the men who always decide for women, and is a question to ponder by every patriotic Indian!

ⁱhttps://www.pmindia.gov.in/en/former_pm/%E0%A4%B6%E0%A5%8D%E0%A4%B0%E0%A5%80-%E0%A4%B0%E0%A4%BE%E0%A4%9C%E0%A5%80%E0%A4%B5-%E0%A4%97%E0%A4%BE%E0%A4%82%E0%A4%A7%E0%A5%80/

ⁱⁱMody, Nawaz B. “The Press in India: The Shah Bano Judgment and Its Aftermath.” *Asian Survey*, vol. 27, no. 8, 1987, pp. 935–53. *JSTOR*, <https://doi.org/10.2307/2644865>. Accessed 11 Oct. 2022.

ⁱⁱⁱCarroll, Lucy. “SHAH BANO, THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT AND MUSLIM WOMAN’S RIGHT TO MATAA: BANGLADESH SHOWS WAY OUT OF IMBROGLIO.” *Journal of the Indian Law Institute*, vol. 39, no. 1, 1997, pp. 83–95. *JSTOR*, <http://www.jstor.org/stable/43951680>. Accessed 13 Oct. 2022.

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^v Singh Satyam & Srivastav Shobhita, uniform civil code: a critical study of individual rights and the role of secular state, *Journal on contemporary issues of law [JCIL] VOL.3 ISSUE 11, Nov 2017*

^{vi} <https://frontline.thehindu.com/the-nation/india-at-75-epochal-moments-1985-shah-bano-case/article65730545.ece>

^{vii} <https://www.freepressjournal.in/india/ayodhya-how-rajiv-gandhi-rekindled-the-ram-janmabhoomi>

^{viii} <https://indiankanoon.org/doc/367586/>

^{ix}[https://www.constitutionofindia.net/constitution_of_india/15/articles/Article%2015#:~:text=\(1\)%20The%20State%20shall%20not,birth%20or%20any%20of%20them.&text=\(b\)%20the%20use%20of%20wells,use%20of%20the%20general%20public.](https://www.constitutionofindia.net/constitution_of_india/15/articles/Article%2015#:~:text=(1)%20The%20State%20shall%20not,birth%20or%20any%20of%20them.&text=(b)%20the%20use%20of%20wells,use%20of%20the%20general%20public.)

^x <https://www.latestlaws.com/bare-acts/central-acts-rules/coi-article-39-certain-principles-of-policy-to-be-followed-by-the-state>

^{xi}Ibid 4

^{xii} https://globaljournals.org/GJHSS_Volume15/2-The-Day-a-Woman.pdf

