

No, no, no: SC on instant triple talaq

Justices Rohinton Fali Nariman and U.U. Lalit termed instant talaq “irregular or heretical”.

“Triple talaq (instant talaq) is instant and irrevocable, it is obvious that any attempt at reconciliation between the husband and wife, essential to save the marital tie, cannot ever take place ... this form of talaq must, therefore, be held violative of the fundamental right contained under Article 14 of the Constitution,” Justice Nariman wrote.

Far from being an essential religious practice worthy of protection under Article 25, Justice Nariman held that instant talaq fell within the boundaries of *jiaz* or *mubah* (permissible acts as to which Islam is indifferent).

Unworthy act

The judge wrote that the irrevocable act of divorce was even considered *makruh* (an unworthy act) in Islam.

Justice Nariman held that even the Hanafi jurisprudence castigated instant talaq as “sinful”.

“It is clear that the fundamental nature of Islamic religion, as seen through an Indian Sunni Muslim’s eyes, will not change without this practice (instant talaq),” Justice Nariman observed.

The verdict by Justices Nariman and Lalit differs with the Chief Justice’s suggestion that instant talaq should be sent to Parliament for legislation.

Article 142

Chief Justice Khehar had invoked the extraordinary powers of the Supreme Court under Article 142 of the Constitution to injunct Muslim husbands from committing instant talaq for the next six months.

This six months’ time was for the government to frame a law addressing the issue of triple talaq, especially instant talaq.

This injunction has no validity now as the majority on the Bench has already set aside instant talaq.

However, the door is always open for the legislature to discuss the legality of the other two forms of triple talaq — talaq ahasan and talaq hasan.

END

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