Undoing injustice: On instant triple talaq verdict

By declaring the discriminatory **practice of instant triple talaq as unconstitutional**, the Supreme Court has sent out a clear message that personal law can no longer be privileged over fundamental rights. Three of the five judges on the Constitution Bench have not accepted the argument that instant talaq, or *talaq-e-biddat*, is essential to Islam and, therefore, deserves constitutional protection under Article 25. The biggest virtue of the two opinions constituting the majority judgment is that they do not have to undermine any religious tenet to make their point. On the contrary, as Justice Kurian Joseph says, the forbidden nature of triple talaq can be gleaned from the Koran itself. Justice Rohinton Nariman, writing the main judgment, locates the practice in the fourth degree of obedience required by Islamic tenets, namely, *makruh*, or that which is reprobated as unworthy. The main ground on which the practice has been struck down is a simple formulation: that "this form of talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it." In fact, the final summation is so simple that the court did not even have to elaborate on how triple talaq violates gender equality. On the contrary, Justice Nariman says that having held the practice to be arbitrary, there is really no need to go into the element of discrimination. The court deserves commendation for undoing the gender injustice implicit in the practice so effortlessly, within constitutional parameters as well as the Islamic canon.

The present case was initiated *suo motu* by the court, but opinion against triple talaq could not have gathered critical mass and the case against it significantly bolstered if it weren't for a **few women standing up** to the community's conservative elements and challenging it. Any other outcome would have been a great injustice to them. Even the judges in the minority have had to concede that their reasoning is based mainly on the fact that this form of talaq is a matter of personal law, and therefore entitled to constitutional protection. "It is not open to a court to accept an egalitarian approach over a practice which constitutes an integral part of religion," writes Chief Justice J.S. Khehar in his minority opinion. Interestingly, even his view segues into a somewhat egalitarian position, restraining Muslim men from pronouncing triple talaq until Parliament enacts a law to regulate it. The All India Muslim Personal Law Board, and all those who supported its regressive opinion that even an unworthy practice should not be dislodged by judicial verdict, should now accept the verdict in the interests of a modern social order. And there is no reason to contend that their faith has been unduly secularised. For, as Justice Joseph concludes, "what is bad in theology is bad in law as well."

Rajasthan's ordinance shields the corrupt, threatens the media and whistle-blowers

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