



Activity 1 – Shah Bano and the Triple Talag Debate in India

In this activity we will study two particular instances in India, one in the 1980s, and one more recent, where the Supreme Court of India has had to address the conflict between the rights of communities and the rights of individuals. In examining these examples, we will try to think about questions of how multi-cultural societies can address these conflicts.

The Shah Bano Case

In 1985, a judgement by the Supreme Court of India stirred a debate on the rights of Muslim women. Shah Bano, an elderly Muslim woman had claimed maintenance from her husband following her divorce under the secular law (Section 125 of the Criminal Procedure Code). The husband, however, claimed that he no longer had an obligation to maintain his wife as he had already fulfilled his obligation under Islamic law. He argued that Islamic law only required the husband to maintain his wife for 3 months after the divorce. The Supreme Court gave a landmark judgment in the case whereby it awarded maintenance to Shah Bano under the secular law. The Court also held that there was no conflict between the secular law and the tenets of Islam.

The Shah Bano judgment pitted three competing parties against one another in the public sphere:

- Women's rights activists who thought Muslim women should have the same rights as women of other communities.
- Orthodox Muslim clergy who saw the Shah Bano judgment as an attack on the rights of Muslims.
- The Hindu right-wing who argued that a separate legal system for Muslims was a form of Muslim appeasement.

Read the following articles about the Shah Bano judgment and take up the questions that follow for discussion:

- o <http://www.thehindu.com/thehindu/2003/08/10/stories/2003081000221500.htm>
- o <http://indianexpress.com/article/india/india-news-india/shah-bano-case-india-islam-divorce-muslim-women-alimony-2767429/>

After reading the articles, attempt to answer the following questions:



1. How do Muslim women themselves think of Islamic law? For instance, in the second article, what sense do we get about Shah Bano's relationship with the law?
2. Do religious laws work against the interests of women? (Note for example, the arguments put forward by the feminist lawyer Flavia Agnes in the first news article)

The Triple Talaq

In more recent times, a petition was filed in the Supreme Court asking for a ban on the practice of *triple talaq*. The *triple talaq* is a form of oral divorce recognised by some schools of Muslim law where the husband can pronounce the word *talaq* ('divorce') arbitrarily three times to get a divorce. In India, a collective of Muslim women who identify as the Bharatiya Muslim Mahila Andolan ('Indian Muslim Women's Movement') are leading a movement to get the government to impose a ban on the practice of *triple talaq*.

In a Supreme Court judgment in 2002, the Court had already laid down restrictions on this arbitrary practice of *talaq*. But the present women's movement wants a complete ban on the practice. The group has cited a survey to show that 59% of women divorced in India are divorced using the *triple talaq*.

After reading the articles below we will try to understand the nature of this women's movement:

- o <http://www.aljazeera.com/indepth/features/2016/06/india-muslim-women-fight-overturn-triple-talaq-160626120705908.html>
- o <http://indianexpress.com/article/india/india-news-india/bmma-collects-50000-signatures-against-triple-talaq-seeks-ncw-support-2827970/>
- o <http://indianexpress.com/article/india/india-news-india/triple-talaq-ban-quran-mention-supreme-court-bharatiya-muslim-mahila-andolan-3077703/>

1. What kind of rights are these women arguing for?
2. Are they asking for rights as Muslim women or as citizens of India, or both?
3. Notice that the third article mentions the Quran. What is the significance of this move?



You may also find the below resources useful for further consideration of the issues:

This video touches upon all the arguments in the triple talaq debate

<https://www.youtube.com/watch?v=EO47rUUEpZY>

Here's a link to the survey carried out by the Bharatiya Muslim Mahila Andolan:

<https://drive.google.com/file/d/0B620GpkWZ9-UT294TUVaLXF3OXM/view>