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**Presidency University**

**Bengaluru**

 **SCHOOL OF LAW**

 **MAKE-UP EXAMINATION JULY-2024**

 **Semester**: II

**Course Code**: ENG2004

**Course Name**: Critical Thinking for Lawyers

**Program & Sem**: LLB (ALL PROGRAMS)

**Date**: 03-07-2024

**Time**: 9:30AM -12:30PM

**Max Marks**: 100

**Weightage**: 50%

 **Instructions:**

1. *Read the all questions carefully and answer accordingly.*
2. *Complete the test within the time given.*

**Part A [Memory Recall Questions]**

**Answer all the Questions. Each question carries THREE marks (10Qx3M=30M)**

1. Do as directed

1. What is Rule 3(b) of 1965 in connection with Shabarimala Case? Explain. (C.O.No.3) [Knowledge]
2. How discourse analysis is different from other methods? Briefly explain. (C.O.No.2) [Knowledge]
3. Briefly explain kinds of agreements and disagreements. (C.O.No.3) [Knowledge]
4. Define Lateral Thinking with examples. (C.O.No.1) [Knowledge]
5. Give two examples for conclusion indicators. (C.O.No.3) [Knowledge]
6. “:A good Society treasures its dissidents and maverics because it needs the creative thinking that produces new hypotheses, expanded means, a larger set of alternatives, and in general, the vigorous conversation induced by fresh ideas”. (Identify Premises and Conclusion), C.O.No.3) [knowledge]
7. What do you mean by Inference in an argument? (C.O.No.2) [Knowledge]
8. What is fallacy in an argument? Briefly explain. (C.O.No.2) [Knowledge]
9. What is the fallacy of Slippery Slope? Give one example. (C.O.No.4) [Knowledge]
10. Define Deductive Argument with an example. (C.O.No.4) [Knowledge]
11. What is the fallacy of Ad hominem? Give one example. (C.O.No.4) [Knowledge]

**Part B [Thought Provoking Questions]**

**Answer all the Questions. Each question carries TEN marks. (4Qx10M=40M)**

1. Write Discourse analysis of the following in 200 words: (C.O.No.3) [Comprehension]
2. A little philosophy inclineth man’s mind to atheism; depth in philosophy bringeth man’s mind about to religion (Francis Bacon’s Essays)
3. War has the deep meaning that by it the ethical health of the nations is preserved and their finite aims uprooted. And as the winds which sweep over the ocean prevent the decay that would result from its perpetual calm, so war protects the people from corruption which an everlasting people would bring upon it. [George Hegel: Philosophy of Law]
4. Elucidate on any five fallacies with examples. (C.O.No.4) [Comprehension]
5. Enumerate the functions of language with examples. (C.O.No.3) [Comprehension]
6. Elaborate on agreements and disagreements in 200-250 words. . C.O.No.3) [Comprehension]

 (i) A. Answer a fool according to his folly, lest he be wise in his own conceit.

B. Answer not a fool according to his folly, lest though also be like unto him.

 (ii) A. Belief in the existence of god is as groundless as it is useless. The world will never

 be happy until atheism is universal

 B. Nearly all atheists on record have been men of extremely debauches and vile

 conduct.

 17. Explain Critical thinking in 200 words (CO 1) (Knowledge)

 **Part C [Problem Solving Questions]**

**Answer all the Questions. Each question carries FIFTEEN marks. (2Qsx15M=30M)**

18. Case Facts:

## Shayara Bano vs Union of India, better known as the ‘Triple Talaq Case’, gave India a historical judgment which declared the practice of Triple Talaq to be unconstitutional. The Triple Talaq judgment is widely regarded throughout the jurisdictions as a safeguard against social evils. Because of the astute and justified reasoning provided by the majority bench of the Supreme Court, India finally abolished the regressive and immoral practice of instantaneous Triple Talaq.

EQUIVALENT CITATIONS: AIR 2017 9 SCC 1 (SC)

DATE OF JUDGEMENT: 22nd August 2017

BENCH IN SHAYARA BANO CASE:

Justice Jagdish Singh Khehar, Justice S. Abdul Nazeer, Justice Rohinton Fali Nariman, Justice Uday Lalit, Justice K. M. Joseph

FACTS OF SHAYARA BANO vs UOI:

The petitioner, Shayara Bano, had been married to her husband, Rizwan Ahmed, for 15 years. In 2016, he divorced her through instant triple talaq (talaq -e biddat), i.e., a practice that allows a man to divorce his wife by saying the word “talaq” three times in one sitting without his wife’s consent. Shayara Bano filed a Writ petition in the Supreme Court pleading to declare three practises talaq-e-biddat, polygamy, and nikah-halala as unconstitutional as they violate the fundamental rights of women enshrined in Articles 14, 15, 21, and 25 of the Indian Constitution. Nikah Halala means a practise in which a divorced woman who wishes to remarry her husband must marry and get a divorce from a second husband before remarrying her first husband while polygamy means the practice of Muslim men having over one wife. On February 16th, 2017, the Court requested written submissions from Shayara Bano, the Union of India, various women’s rights organisations, and the All India Muslim Personal Law Board (AIMPLB) on the issues of talaq-e-biddat, nikah-halala, and polygamy.The Union of India supported the petitioner’s claim that these practises are unconstitutional and women’s rights organisations such as Bebaak Collective and Bhartiya Muslim Mahila Andolan (BMMA).However, the AIMPLB argued that uncodified Muslim personal law is not subject to constitutional judicial review, and that these are essential Islamic practises protected by Article 25 of the [Constitution](https://lawplanet.in/category/constitution).

ISSUES

* Whether the practice of Triple Talaq is constitutional?
* Whether the practice of Triple Talaq is an essential religious practice of Islam?

RATIO DECIDENDI

Justice Rohinton Fali Nariman: The impugned practice of Triple Talaq is a tool that allows a marital tie to be severed on the whims of the husband with no attempt at reconciliation to save it. Hence, this form of Talaq violate Article 14 and is liable to be struck down If removing a practice causes a significant change in religion, that practice is referred to as an ‘essential religious practice’ in Article 25(1) protects only such practices. The usurpation of religious practices by the state will cause a violation of the rights mentioned in Article 25(1), but not the usurpation of circumstantial and non-essential practices. That most Islamic countries have abandoned the practice of Triple Talaq also shows that it is not one that will be considered an essential religious practice. The majority bench in the Shaira Bano case relied on the decision of *Shamim Ara vs State of UP (2002).*

DECISION IN SHAYRA BANO vs UNION OF INDIA:

The Constitution Bench of the Supreme Court, by a 3:2 majority, set aside and declared the practice of instantaneous Triple Talaq or Talaq-e-biddat to be unconstitutional under Article 14 read with Article 13(1) of the Indian Constitution. In Shayra Bano vs UOI, the Court held that the Muslim Personal Law (Shariat) Application Act of 1937 had sanctioned the practice as a matter of personal law. The Court clarified that “…an arbitrary action must involve negation of equality” and determined that, because triple talaq states that “…the marital tie can be broken capriciously with no attempt at reconciliation to save it”, this arbitrariness violates Article 14 of Constitution of India. The apex court further held in Shayra Bano v UOI that the Muslim Personal Law (Shariat) Application Act 1937 is void where it recognizes and enforces triple talaq, citing Article 13(1), which states that all laws in force immediately before the commencement of the current Constitution (including the 1937 Act) are void where they are inconsistent with the fundamental rights enshrined in the constitution.

The SC ruled that the practice of Talaq-e-biddat is not protected by the exception set out in Article 25, as the court determined that it is not an essential component of the Islamic religion. The court justified its position by stating that, while the Hanafi School practices it, it is sinful in it. Triple Talaq contradicts the basic tenets of the Quran, and whatever contradicts Quranis contradicts Shariat; thus, what is bad in theology cannot be good in law.

CONCLUSION OF SHAYARA BANO v UNION OF INDIA:

The landmark decision in Shayra Bano case is unquestionably a step toward equality, and it has provided a foundation for future personal law and social amendments. This decision in Shayara Bano v UOI also dealt with the minority in a very viable manner, which is a step toward secularism.

Although the primary focus was not gender justice, it will have significant positive implications for advancing women’s rights and gender equality in India. It is expected that this judgment will be viewed objectively and will assist Muslim women in living a better and more secure life as guaranteed by the law of the land.

What are the Concurrences and Dissents of the Case? Explain. (C.O.No. 2) [Application]

 19. Critically examine Portia’s monologue “The Quality of Mercy is not strained” in the play Merchant of Venice. (250-300 words). (C.O.No.4) [Application]

20. Critically examine the court scene in Silence! The Court is in Session by Vijay Tendulkar (250-300 words) (C.O.No.3) [Application]