

TOPIC 3: THE TRIPLE TALAQ ORDINANCE: IS A STEP TOWARD WOMEN EMPOWERMENT?

THE CONTEXT: In September, 2018, the Union Cabinet made instant talaq a criminal offence by an ordinance for promoting social justice among the Muslim women. In this article, we will analyse the necessity of this step and its possible implications.

THE PROVISIONS IN THE ORDINANCE

- The ordinance is based on the Muslim Women (Protection of Rights on Marriage) Bill, which was passed by the Lok Sabha in December 2017.
- The Ordinance makes all declaration of talaq, including in written or electronic form, to be void and illegal. It defines talaq as **talaq-e-biddat** (instant divorce by saying three times talaq) or any other similar form of talaq pronounced by a Muslim man resulting in instant and irrevocable divorce.
- **Offence and penalty:** Three years imprisonment with a fine. The offence will be cognizable only if information relating to the offence is given by:
 - The married woman (against whom talaq has been declared), or
 - Any person related to her by blood or marriage.
- Only after hearing the victim woman, the Magistrate may grant bail to the accused if s/he is satisfied that there are reasonable grounds for granting bail and terms and conditions of the compounding offence will be determined by the Magistrate.
- **Allowance:** Victim woman is entitled to seek subsistence allowance from her husband for herself and for her dependent children, which will be determined by the Magistrate.
- **Custody:** Victim woman is entitled to seek custody of her minor children. The manner of custody will be determined by the Magistrate.

THE BACKGROUND OF THE ORDINANCE

No. of instant triple talaq

- Nearly 530 instant triple talaq cases have been reported in last one year. The divorce rate among Muslims is third highest (5.63 per 1,000 marriages) among the religious community.

Supreme Court judgement

- In August, 2017 in Shayara Bano v. Union of India & Others case Supreme Court examined it as unQuranic and unIslamic and hence the judgement criminalizing the act and directions made to the Government to enact a formal law criminalising Instant Triple Talaq.

NOTE

In Murshidabad alone, a Muslim majority district of the state of West Bengal, over 100,000 women have suffered due to the practice of triple talaq.

The demand for the banning of the practice

- Feminists' activists in India are regular demanding stop triple talaq practice.
- Many Muslim communities and Muslim majority countries have banned the practice decades ago.

The Bill

- To ban instant triple talaq, the government had brought the Muslim Women (Protection of Rights on Marriage) Bill, 2017, in the Lok Sabha on December 2017, where it had been passed. However, the government did not table it in the Rajya Sabha due to a lack of consensus over some of the law's provisions.

Possible implications of the government decision

- It is **prevalent among India's Muslim community** majority of who follow the Hanafi Islamic school of law.
- 90 percent of women (as per the survey of Bhartiya Muslim Mahila Aadolan) wanted a ban on unilateral divorce.
- Criminalization becomes important as an initial step for creating an effective deterrence.
- Empowered of women: Out of 4,710 Muslim women from the economically weak strata of the community, found 525 women (11.14%) were divorced. Of these women, 78% had been given unilateral divorce by their husbands.
- It will reduce the divorce rate. For example, after the triple talaq bill (Dec. 2017) the number of instant talaq cases are very low (just 100). While between July to December 2017 the cases were 430.

The issues with the ordinance:

- Is the ordinance adequate enough to effectively tackle the issues?
- Will it really help to empower Muslim women?
- Should it be cognisable offence?
- Will legal and judicial remedies work effectively?

ANALYSIS OF THE ORDINANCE

<p>Is it an adequate ordinance?</p>	<ol style="list-style-type: none"> 1. What is marriage and divorce? <ul style="list-style-type: none"> ➤ According to the Muslim law marriage is contract but the Ordinance does not define marriage and it is just about the divorce. 2. The grave imprisonment for husband: <ul style="list-style-type: none"> ➤ It fails to mention any strong reason for imposition of three years grave punishment for husband. ➤ Even some serious crime such as insult of religion, rioting and bribery have less punishment and some other crimes as like rioting, Promoting enmity between classes of people, Import or export of counterfeit coin have same punishment.
--	--

	<p>3. What about the men divorce?</p> <ul style="list-style-type: none"> ➤ According to the provision men always be culprit but according to the Census 2011 Muslim men have a divorce rate of 1.59 per 1,000 marriages. <p>4. Question of custody of children:</p> <ul style="list-style-type: none"> ➤ The present Ordinance does not even enlist the interest of the children and makes a sweeping provision awarding custody by mother. ➤ What will happen when mother is of unsound mind or when the mother is not willing to keep the children or when the minor children are unwilling to reside with the mother? ➤ The Ordinance does not even envisage the existence of any such exceptional circumstances. <p>5. About the compensation:</p> <ul style="list-style-type: none"> ➤ It may be determined by the Magistrate but it does not consider as to how such a provision will be implemented. ➤ How an economically weaker person will pay the allowance when he will be in prison.
--	--

The Ordinance says the Supreme Court held triple divorce unconstitutional. In fact, the court merely set aside the practice. But it seems that the Ordinance itself may be struck down as unconstitutional on the grounds of harm theory, arbitrary and excessive punishment.

WILL IT REALLY HELP EMPOWERMENT OF MUSLIM WOMEN?

It seems that the ordinance will not empower Muslim women because it more focuses on the husband and there is very little about the protection of women.

- It is true that Muslim women do need legal protection, which has been denied to them for too long. But this bill does little to improve the situation of the women.
- Husband will pay monthly allowance but the ordinance does not talk about women and what will happen to them.
- Without having a system of proper rehabilitation for women the ordinance put victim life at risk because sending husbands to jail can increase their life risks as the men can take revenge on their wives by torturing them.
- The effect on women of instant triple talaq and desertion of wives is the same. But there is no provision about desertion.
- Triple talaq is present in the Kashmiri community just like anywhere else in India. But Jammu and Kashmir cannot implement this ordinance, as it has to be passed by the state government first.

It can be said that it will start a new phase of the harassment of Muslim women by the relatives or husband and more than this, it will create an environment of fear. The ordinance does not seem to address the core issues of Muslim women.

What should be the way forward?

- **Need to address the core issues of Talaq:** The Halala, harassment in the name of talaq and rehabilitation after talaq. The best way to address these issues is institutionalization of talaq (dissolution of husband-wife by the court on valid reasons).
- **Uniform civil code:** According to the 2011 census, the divorce rate is the highest for the Buddhist community (6.73 per 1,000 marriages), followed by Christians (5.67) and Muslims (5.63). 'Other communities' (4.91), Jains (3.04), Hindus (2.60) and Sikhs (2.56) follow. This data show that divorce is the issue of all major communities in India, so there should be a uniform civil code to the address the issue.

- **Provision about the separation:** The rate of women who are separated in India stands at 8.09 for every 1,000 married women. There should be provision to solve this issue.
- **Implementation:** Due to the various religious institutions, the implementation of these provisions is challenging task. There is a need for strong will to implement them.

Conclusion: The practice of triple talaq is a social evil and it will not end by merely criminalising it. Furthermore, it is also erroneous to believe that after being criminalised, Muslim men would not resort to it as there is no credible empirical evidence to suggest that the rate of crime has been reduced substantially with harsher laws and punishment.

Just add to your knowledge

Know about the talaq

Talaq-e-Ahsan:

- The husband gives talaq to wife (in a single sentence) and waits for period of iddat.
- This type of talaq is revocable during the period of iddat.
- After iddat, it becomes irrevocable

Talaq-e-Hassan:

- There must be 3 successive pronouncements of talaq, but three pronouncements are to be made in consecutive intervals of 30 days. It can be revoked any time before the third pronouncement.
- After third pronouncement, it becomes irrevocable

Talaq-e-biddat: Triple Talaq.

- This type of talaq is not purely Islamic.
- It was innovated later to suit patriarchy.
- Here 3 pronouncements can be made instantly.

Note: This practice of instant divorce is un-Quranic i.e. the Quran does not have this provision. According to the Quran, Talaq-e-Hassan is the proper way for the dissolution of marriage.