



## Criminalising Triple Talaq

This article is based on [“Power, not justice”](#) which appeared in **The Indian Express** on **1 August 2019**. It critically analyses the criminalization of Triple Talaq.

Recently, the Parliament has passed the Muslim Women (Protection of Rights on Marriage) Bill, 2019, thereby criminalizing the practice of instant Triple Talaq.

The Supreme Court in **Shayara Bano** case (2017) had declared the practise of Triple Talaq (talaq-e-biddat) as unconstitutional.

However, the penal provision of the bill i.e. a Muslim husband declaring instant Triple Talaq can be imprisoned for up to three years is alleged to be disproportionate for a civil offence.

### What is Talaq-e-biddat?

- If a man belonging to the religion of Islam pronounces **talaq thrice** either orally or in written form to his wife, then the **divorce is considered immediate and irrevocable**.
- The only way to reconcile the marriage is through the practice of **nikah halala**, which requires the woman to get remarried, consummate the second marriage, get divorced, observe the three-month iddat period and return to her husband.

### Some key features of the Triple Talaq Bill

- It is applicable in whole of India but it is not extended to the State of Jammu & Kashmir.
- Any pronouncement of “talaq” by a Muslim husband to his wife in any manner, spoken or written, will be void and illegal.
- Any Muslim husband who communicates the “talaq” orally or in writing may face **punishment up to three years in jail**. The punishment may be also extended.
- If a Muslim man pronounces “talaq” to his wife, then the woman and her children are entitled to receive an **allowance for subsistence**. Such an amount can be determined by a Judicial Magistrate of the First Class.
- A Muslim woman is entitled to the custody of her minor children even if her husband has pronounced “talaq” to her.
- The **offence is also compoundable** (i.e. the parties may arrive at a compromise), if the Muslim woman insists for the same and the Magistrates allows certain terms and conditions which he may determine.
- A person accused of this offence cannot be granted bail unless an application is filed by the accused after a hearing in the presence of the Muslim woman (on whom talaq is pronounced) is conducted and the Magistrate is satisfied with the reasonable grounds for granting bail.

### What are the issues in Triple Talaq Bill?

- **Divorce is a civil matter and making Triple Talaq a criminal offence is disproportionate to criminal jurisprudence.**
- The Supreme Court declared Triple Talaq as invalid and did not ask the government to make it a penal offence.
  - **The Supreme Court by holding that Triple Talaq is unconstitutional implied that mere utterance of Talaq thrice does not result in the dissolution of marriage, rather it remains intact.**
  - **However, by criminalising Triple Talaq the law presumes marriage has ended and for that Muslim man shall be punished.**
  - **Thereby criminalizing the Triple Talaq goes against the spirit of the Supreme Court judgement.**
- Further, if the husband is imprisoned, how he can pay maintenance allowance to wives and children.
- Also similar to **misuse of Indian Penal Code section 498A** (Dowry Harassment) which led to harassment of the affected men, the penal provision in Triple Talaq can be subject to such harassment.

### Why the government criminalized the Triple Talaq?

- The Triple Talaq was held to be **violative of Article 14 (the right to equality)**, which is held by the Supreme Court from Shah Bano case 1986 to Shayara Bano case in 2017.
- The Government held that **473 cases of Triple Talaq** have taken place even after two years of judgement pronounced by the Supreme Court.
- The law has been placed as a deterrent to eradicate social evils. For example:
  - Untouchability was abolished by the Constitution, but the continued practise of untouchability forced Parliament to enact the Untouchability (Offences) Act in 1955 and later renaming it as Protection of Civil Rights Act in 1976.
  - To eliminate atrocities faced by women in domestic space parliament enacted:
    - The Dowry Prohibition Act in 1961
    - Prevention of domestic violence Act 2005
- **Triple Talaq is banned in more than 20 Islamic countries including Pakistan.**

Terming Triple Talaq as unconstitutional as **a step towards establishing uniform civil code (Enshrined in Article 44 of directive principle of state policy)**, but criminalising it goes against the ethos of Fundamental rights i.e. article 25 and 26 the freedom of religion.

Triple Talaq has led to the subjugation of Muslim women even after 72 years of independence but its **solution must come through coexistence rather than coercion.**

#### ***Drishti input***

Divorce is a civil matter and making Triple Talaq a criminal offence is disproportionate to criminal jurisprudence. Comment.