

Union Cabinet approved a Bill on instant triple talaq or talaq-e-biddat

Important points of the Muslim Women Protection of Rights on Marriage Bill:

- This bill makes instant triple talaq or talaq-e-biddat a criminal offence and a Muslim husband resorting to instant talaq can be jailed for up to three years.
- This bill will deal with complaints against instant triple talaq across the country, except Jammu and Kashmir.
- The Bill also provides for a subsistence allowance of a harassed Muslim woman and her dependent children and the custodial rights of minor children.
- In August last, the Supreme Court passed a landmark judgement calling instant triple talaq as illegal and unconstitutional.

Arguments in favour of this law

- Muslim Women can now seek justice and remedies if they have been wrongly divorced.
- It is a positive step towards the Uniform civil code and formalisation of laws.
- It deters husbands who have been historically divorcing their wives on whims and trivial issues.
- It encourages more dialogue and settling issues rather than just outright divorce.
- Maintenance for wife and children will be a relief for women because willful non payment will be punished.

Arguments against proposed law

- The practice is termed a criminal offence although the issue is of civil nature. The punishment has been termed too rigorous.
- It can offset family life as it makes the institution of family very vulnerable.
- Just like IPC 498A, it can be a law exploited to tarnish and punish innocent men.
- There is no need for a fresh criminal provision when existing laws, under Section 498A of the Indian Penal Code or provisions of the Protection of Women from Domestic Violence Act, 2005, already allow the prosecution of a husband for inflicting physical or mental cruelty,
- Irrespective of the government's intent three years in prison of the convicted husband will end up penalising the already aggrieved wife and children too.

About Supreme Court Judgement:

- In August, a five-judge bench of the Supreme Court in a split verdict ruled that the practice of instant triple talaq in the Muslim community is invalid.

Marriage or Nikah in Islam:

- Nikah is essentially a contract laid down in a 'Nikahnama' drawn between the husband and the wife.

- This contract can have conditions and has a compulsory 'consideration' (Meher) to be paid at the time of the marriage.

Divorce in Islam:

- In Islam, everything is followed as per Sunnah (Deeds of the prophet). Hence, most Muslim women bodies opposing 'triple talaq' want the Muslim bodies to adopt 'Talaq-e-Sunnah' (Divorce as per the Prophet's sayings and Quranic dictation) and discard 'Talaq-e-Biddah' (Divorce as per a later formed mode of divorce which propagates instant divorce).

What exactly is this 'instant talaq'? How is it different from Talaq-e-Sunnah?

- Instant Talaq is something which has its genesis is women being divorced through SMS or over a mere phone call.
- This instant talaq is essentially 'Talaq-e-Biddah'. 'Biddah' means innovation and essentially all Muslims are advised against introducing 'biddahs' in their religion. This is Irrevocable in nature.
- After the third talaq, a woman is supposed to marry another man, consummate the relationship, and only after following the original procedure of Talaq-e-Sunnah, will she be able to marry the former husband again. This practice is known as the 'Nikah Halala', and many Muslim women have condemned this practice as barbaric and it assumes more importance, in case the talaq is given as Talaq-e-Biddah
- However, in Talaq-e-Sunnah giving talaq to a wife in a fit of rage or anger is strictly prohibited. The Quran advises the husband to settle the differences through a mutual conversation. This is revocable in nature for the first three months. Women groups who are claiming to revive this practice are only vouching for the fact that they get the maximum time to sort out their differences which is often not possible in an 'instant talaq'.

Right of Women to divorce the husband in Islam?

- A. There are broadly two methods under which a wife can claim divorce. One is Talaq-e-Tafweez and the other is Talaq-e-Khula. Under Tafweez, the husband 'may' delegate his power to give talaq to his wife or any third party. This right has to be in the form of a contract with conditions, like, 'if a man marries again' then there can be a divorce, etc. But a contract will not be without conditions or be absolute.
- The second one is Khula. This is a divorce which is at the 'request' of the wife. In this case the woman has to make an offer of divorce to the man. The man must accept the offer with consideration, which often means the woman, has to give back the Meher taken during marriage. After these two steps, a Khula is granted. The woman often approaches a qazi-court as well to demand a Khula from the man. There needs to be an execution of a Khulanama.
- But something which needs to be broadly observed is that in both the cases, it's only a request or a husband's wish to draw up a contract to give the wife an option to divorce him. Thereby, putting the husbands first, and somehow lacking in achieving gender equality in this regard.

In defence of Triple Talaq:

- The All India Muslim Personal Law Board (AIMPLB) defends triple talaq as a matter of faith and it had requested the court to let Muslims find a solution to the issue. It says the practice is protected by the right to religious freedom and courts cannot supplant their interpretations over the text of scriptures.

Reforms taken by Islamic countries on Triple Talaq

- Pakistan in 1961 had passed the 'The Muslim Family Laws Ordinance'.
- Another example is Morocco, which has a majority population of Islam. They have the Moroccan Family Code (Moudawana) passed in 2004. The code aims at putting both husband and wife on the equal footing, thereby prohibiting the man from pronouncing divorce unilaterally except when the procedure is being supervised by someone.
- Like Morocco, Algeria, Indonesia, Iran and Tunisia have similar legislations which do not recognise a divorce given by a husband unilaterally, and compel the parties to resort to a court of law.

Why triple talaq should be abolished?

- The Centre reasons that these practices are against constitutional principles such as gender equality, secularism and international laws.
- The government also argues that when these practices are banned in Islamic theocratic countries, the practices could have absolutely no base in religion and are only prevalent to permit the dominance of men over women.
- Talaq-e-bidat has no foundation in the Quran. Divorce is only permissible in extreme emergency cases and that too, only after all efforts for reconciliation have failed. Infact, around 20 Muslim majority countries including theocratic states like Pakistan and Afghanistan have banned Triple Talaq in one sitting.
- Triple Talaq is against the fundamental rights guaranteed (under Articles 14, 15, 21 and 25) by the Indian Constitution.
- Article 25 merely protects religious faith and not practices that are against "morality, public order or health."

Recommendation of Pam Rajput committee:

- It recommends reforms in personal laws of all communities in matters of marriage, divorce, succession and custody.
- In the words of the committee "The approach should not be one of ensuring that there is one law for all, but rather, that all women, whether they choose to be governed by secular laws or their personal laws, enjoy equality which the Indian Constitution promises them."
- According to Hindus, When personal laws of Hindus have been codified and reformed, then why shouldn't the same happen for Muslims.

According to All India Muslim Personal Law Board (AIMPLB), this is beneficial for women:

- The key argument to support the validity of triple talaq is that since Muslims in India are in minority, any change in their personal law would not only alter their religious practice but would pave the way for further changes.
- Saves women the shame of divorce proceedings which could damage her chances of re-marriage, and

- Prevents the “murder of wives” by their husbands.
- Article 25 of the Constitution, states that the religious faith should be protected.
- Low Divorce Rate: Despite their vulnerability to arbitrary divorce, the divorce rate — number of divorcees per 1,000 marriages — among the Muslim community is not the highest. According to census 2011, the divorce rate among women among different religious community is as follows (in descending order):1. Buddhist (6.73),2. Christians (5.67),3. Muslims (5.63), ‘Other communities’ (4.91), Jains (3.04), Hindus (2.60) and Sikhs (2.56).