

Criminalising Talaq

What is the issue?

\n\n

The proposed law on instant triple talaq misreads the SC's talaq judgment.

\n\n

Why is the move illogical?

\n\n

\n

- The Centre's has proposed a legislation to criminalise triple talaq (talaq-e-bidat), which is a way to instantly dissolve a marriage.

\n

- This appears to be ill-conceived as it completely ignores the Supreme Court judgment that declared "triple talaq" futile and not integral part of Islam.

\n

- Consequently, no Muslim marriage can be dissolved through instant triple talaq at present – thereby criminalizing it holds no ground.

\n

- Notably, criminal jurisprudence states that no person shall be punished for an act that is not harmful to anyone.

\n

- Hence, unless the husband physically/mentally harasses his wife by insisting that his talaq pronouncements have broken the marriage, there is no case.

\n

\n\n

What are the usual cases in talaq pronouncements?

\n\n

\n

- Most men have resorted to talaq-e-bidat, either in a fit of emotional rage, or out of a misunderstanding of Muslim law.

\n

- **1st case** - When the pronouncement is in a fit of rage, men usually express regret within a short time as irrevocable divorce was never the intention.

\n

- While the SC order helped in keeping marriages intact despite a pronouncement in such cases, the draft law seeks to stigmatise such mistakes.
\n
- This might lead to eventual breakup of a marriage that wasn't headed there.
\n
- **2nd case** - In the second case, men think that instant talaq irrevocably breaks the marriage due to their reliance on sectarian fatwas.
\n
- Here, the fatwas derive the validity of talaq-e-bidat from the disputed legacy of Caliph Umar's rulings and its proponents oppose the SC ruling on talaq.
\n
- Notably, instead of verifying the actuality of the Caliph's ruling, most Muslim theologians had held a blind faith in it for long.
\n

\n\n

How has the draft law been perceived?

\n\n

- **Islamic View** - Islam while recognizing Talaq-e-bidat (triple Talaq), believes that its use is the commission of a sin.
\n
- Notably, even before the SC judgment, All India Muslim Personal Law Board (AIMPLB) had proposed social boycott as punishment for resorting to it.
\n
- This probably explains why most Muslim religious organisations have not opposed the current draft criminalising triple talaq.
\n
- **The Confusion** - But the SC has already declared instant triple talaq illegal and hence triple talaq is being ineffective.
\n
- While instant triple talaq as such holds no significance currently, making its pronouncement an offence would mean recognizing it as a marriage breaker.
\n
- This would be contrary to the SC judgement and also in alignment with the AIMPLB's view of recognising it while seeing it as a sin.
\n

\n\n

What is the way ahead?

\n\n

\n

- The right approach would be to launch a massive campaign to publicise the Supreme Court judgment on triple talaq.

\n

- Also, stopping Muslim theologians from issuing misleading fatwas on talaq is needed.

\n

\n\n

\n\n

Source: Indian Express

\n

