

Triple Talaq Ordinance

Why in news?

\n\n

The central government recently passed an Ordinance making instant triple talaq a criminal offence.

\n\n

What are the purposes of a criminal law?

\n\n

\n

- Civil law deals with private wrongs or personal rights wherein compensation is considered sufficient.

\n

- But the criminal law is concerned with situations in which not just an individual is injured, but also the well-being of society.

\n

- Mere compensation is considered inadequate in that scenario and punishment is inflicted.

\n

- The state prosecutes the accused on behalf of society.

\n

- Criminal sanction is the most coercive method available to the state to regulate the behaviour of an individual.

\n

- The purpose of criminal law is to forbid and prevent conduct that threatens substantial harm to individual or public interests.

\n

\n\n

Why it is not desirable for triple talaq?

\n\n

\n

- A punishment should have only the degree of severity which is sufficient to deter others.

\n

- The Supreme Court has already set aside instant triple talaq in **Shayara Bano case** (2017).
\n
- Under this, a Muslim man can no longer use it to cause ‘harm’ to his wife.
\n
- It also no longer threatens the security and well-being of society as a whole.
\n
- Criminalising triple talaq equates it with other severe cases like rioting, promoting enmity between people etc., that attract 3 years in jail and/or fine, as this case.
\n
- These crimes are more serious than the act of an individual who, instead of taking 3 months to divorce his wife (which is permissible), pronounced talaq thrice instantly.
\n
- Thus, imprisonment of 3 years for triple talaq is excessive, arbitrary, irrational and thus violative of **Article 14** of the Constitution.
\n
- Also the debate on dealing a civil matter under criminal prosecution still remains.
\n

\n\n

What should be done?

\n\n

- In criminalising any act, the state must demonstrate “compelling state interest”.
\n
- Triple talaq can no longer break the marital tie, following shayara bano judgement, and hence there is no evil in the act that ordinance endeavours to prevent.
\n
- Hence, the ordinance itself may be struck down as unconstitutional on the grounds of arbitrary and excessive punishment.
\n

\n\n

\n\n

Source: Indian Express

\n



SHANKAR
IAS PARLIAMENT
Information is Empowering