TRIPLE TALAQ Analysis

GS-Paper-2 Governance Women and law

The Muslim Women (Protection of Rights on Marriage) Bill, 2019 became the first legislation to be tabled in Parliament by the Narendra Modi dispensation in its second term, with Law Minister Ravi Shankar Prasad asserting the legislation was a must for gender equality and justice. The bill was introduced following a division of votes, with 186 members supporting and 74 opposing it. The bill was introduced in the lower house to replace an Ordinance issued in February by the previous BJP-led NDA government. The Bill was earlier introduced in December 2017 but owing to dissolution of the 16th Lok Sabha last month, the previous bill had lapsed as it was pending in the Rajya Sabha. The government had promulgated the Ordinance on triple talaq twice — in September 2018 and in January 2019 — as the contentious bill remained pending in the Rajya Sabha, though it was passed by the Lok Sabha. The Bill proposes to make the practice of instant triple talaq a penal offence.

What’s the issue all about- A brief history:

The case dates back to 2016 when the Supreme Court had sought assistance from the then Attorney General Mukul Rohatgi on pleas challenging the constitutional validity of “triple talaq”, “nikah halala” and “polygamy”, to assess whether Muslim women face gender discrimination in cases of divorce.

Opposing the practice of triple talaq, the Centre told the top court that there is a need to re-look at these practices on grounds of gender equality and secularism.

The Supreme Court later announced the setting up of a five-judge constitutional bench to hear and deliberate on the challenges against the practice of ‘triple talaq, nikah halala’ and polygamy.

The issue gained political momentum on March 2017 when the All India Muslim Personal Law Board (AIMPLB) told the Supreme Court that the issue of triple talaq falls outside the judiciary’s realm and that these issues should not be touched by the court.

However, on August 22, the Supreme Court set aside the decade-old practice of instant triple talaq saying it was violative of Article 14 and 21 of the Indian Constitution.
A bill in this regard:

In September, the government had proposed the Muslim Women (Protection of Rights on Marriage) Bill in the Parliament and sought to make triple talaq a punishable offence under the law.

At first, the Bill was passed in the Lok Sabha but it failed to secure a majority in the Rajya Sabha. The Bill was postponed till the winter session of Parliament. Following this, an ordinance was issued by the government after the bill failed to get cleared in Rajya Sabha amid protests by the Opposition.

Key provisions:

The Bill makes all declaration of talaq, including in written or electronic form, to be void (i.e. not enforceable in law) and illegal.

Definition: It defines talaq as talaq-e-biddat or any other similar form of talaq pronounced by a Muslim man resulting in instant and irrevocable divorce. Talaq-e-biddat refers to the practice under Muslim personal laws where pronouncement of the word ‘talaq’ thrice in one sitting by a Muslim man to his wife results in an instant and irrevocable divorce.

Offence and penalty: The Bill makes declaration of talaq a cognizable offence, attracting up to three years’ imprisonment with a fine. (A cognizable offence is one for which a police officer may arrest an accused person without warrant.) The offence will be cognizable only if information relating to the offence is given by: (i) the married woman (against whom talaq has been declared), or (ii) any person related to her by blood or marriage.

The Bill provides that the Magistrate may grant bail to the accused: The bail may be granted only after hearing the woman (against whom talaq has been pronounced), and if the Magistrate is satisfied that there are reasonable grounds for granting bail.

The offence may be compounded by the Magistrate upon the request of the woman (against whom talaq has been declared). Compounding refers to the procedure where the two sides agree to stop legal proceedings, and settle the dispute. The terms and conditions of the compounding of the offence will be determined by the Magistrate.

Allowance: A Muslim woman against whom talaq has been declared, is entitled to seek subsistence allowance from her husband for herself and for her
dependent children. The amount of the allowance will be determined by the Magistrate.

Custody: A Muslim woman against whom such talaq has been declared, is entitled to seek custody of her minor children. The manner of custody will be determined by the Magistrate.

Arguments favouring the bill:

- Bill is needed so that even Muslim women also get equality on par with other Muslim men.
- Triple talaq adversely impact rights of women to a life of dignity and is against constitutional principles such as gender equality, secularism, international laws etc.
- The penal measure acts as a “necessary deterrent”
- It significantly empowers Muslim women.
- The practice of triple talaq has continued despite the Supreme Court order terming it void.
- The practice is arbitrary and, therefore, unconstitutional
- The law is about justice and respect for women and is not about any religion or community
- It protects the rights of Muslim women against arbitrary divorce
- Instant triple talaq is viewed as sinful and improper by a large section of the community itself.
- The fine amount could be awarded as maintenance or subsistence.

Arguments opposing the bill:

- It is well established that criminalising something does not have any deterrent effect on its practice.
- Since marriage is a civil contract, the procedures to be followed on its breakdown should also be of civil nature only.
- Civil redress mechanisms must ensure that Muslim women are able to negotiate for their rights both within and outside of the marriage
- The harsh punishment defies the doctrine of proportionality.
- Three years in prison of the convicted husband will end up penalising the already aggrieved wife and children too.
- The punishment will aggravate the insecurity and alienation of the Indian Muslim community
- In the recent Supreme Court judgement, it never said that triple talaq is to be criminally punished.
- Invoke a secular law that already exists: Protection of Women from Domestic Violence Act (PWDVA), 2005.
- Parliament should have passed a law stating that the utterance of the words “talaq, talaq, talaq” would amount to “domestic violence” as defined in the
PWDVA.
- The PWDVA was conceived as a law that ensures speedy relief — ideally within three months — to an aggrieved woman
- While PWDVA is civil in nature, it has a reasonably stringent penal provision built into it

**Concerns:**

- It could be just a **piece of legislation** rather than a kind than a kind of relief to the women.
- Some representatives have given it a political and religious color.
- Some Muslim women’s groups raised concerns about “maintenance” if the husband is sent to jail.
- The **mutual divorce** provision is missing in the proposed law and needs to be debated.

Time has come to put an end to the suffering of Muslim women who have been at the receiving end of instant talaq for several years. More than 20 Islamic countries have already banned the practice.