

# Triple Talaq

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## Manifest pedagogy

Triple Talaq as an issue has many aspects to it. It is linked with Indian Society and also has linkages with Constitution. In order to have a better grip on it certain Historical aspects of Islamic culture also need to be looked into. Now it has got current linkages as well with Triple Talaq Bill.

## In news

Lok Sabha passes Triple Talaq Bill

## Placing it in syllabus

Indian Society :Role of Women and Women organizations

Indian Polity :Fundamental Rights

## Static dimensions

1. Triple Talaq practice
2. Rulings of Judiciary on the practice
3. Arguments for and against the practice

## Current Dimensions

1. Triple talaq Bill, provisions and criticisms

## What is triple talaq?

Triple talaq is the practice under which a Muslim man can divorce his wife by simply uttering “talaq” three times. It is prevalent among India’s Muslim community majority of who follow the Hanafi Islamic school of law.

Triple Talaq, also known as talaq-e-biddat, instant divorce and talaq-e-mughallazah (irrevocable divorce), is a form of Islamic divorce which has been used by Muslims in India, especially adherents of Hanafi Sunni Islamic schools of jurisprudence. It allows any Muslim man to legally divorce his wife by stating the word talaq (the Arabic word for "divorce") three times in oral, written, or more recently, electronic form

## **Arguments against triple talaq**

1. Three schools of Islam does not support Triple Talaq except the **Anafi School**. However, Anafi School has the provision of **Ijtihad** – which means 'critical reasoning will be considered to change laws with changing times'
2. Gender parity is an universal concept and Triple Talaq goes against this principle
3. **Article 15(3)** states that : Nothing in this article shall prevent the State from making any special provision for women and children.
4. **Article 13** of the Constitution includes customs within its scope and hence, state can intervene in this matter
5. Matters with respect to Religion can be questioned as per Article 25 of the Indian Constitution and is subject to other Fundamental Rights and to Positive Secularism
6. The practice of Triple Talaq goes against the tenets of Essential Religious Practice
7. It is an Oral practice and has no legal backing to it
8. Triple Talaq does not take into account the will of the woman in the marriage.

## **Arguments in favor of triple talaq**

1. Muslims consider Triple Talaq a divine practice supported by Quran.
2. The Muslim community consider Triple Talaq an Essential Religious Practice and that the State nor the Judiciary

should interfere in this matter

3. Removal of triple talaq would be imposition of majoritarian practice on a minority community
4. Articles 25 to 28 gives protection to religious practices

## **Supreme Court judgment on it**

In **Shayara Bano V/S Union of India** case the Supreme Court of India set aside the practice of *talaq-e-bidat*, (saying it was violative of Article 14 and 21 of the Indian Constitution) which allowed certain Muslim men to divorce their wives instantaneously and irrevocably, on the basis that it violated the Constitution of India. The case itself does not primarily focus on gender justice but has strong positive implications on advancing women's rights and gender equality in India.

The court's ruling was restricted to the constitutional validity of triple talaq and did not include issues like polygamy and nikah halala under the Muslim personal law.

## **Triple talaq bill and its 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. 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.

## **Criticisms**

- What makes the Bill such a missed opportunity is that unilateral talaq would continue to remain an exclusive privilege of men, as even in methods of Talaq-e-ehsan and Talaq-e hasan (where divorce takes place over three months and there are attempts to reconcile) men need not cite any grounds for divorce. A suggestion to rectify this was repeatedly made by BMMA, which sought Talaq-e-ehsan to be uniformly available to men

and women but to no avail.

- The new Bill holds the husband responsible for maintenance of his wife, which is understandable in a context where in most homes women exiting bad marriages continue to face stigma even in their maternal homes. However, an amendment laying down how exactly the maintenance would reach an abandoned wife then becomes necessary, if the husband faces a jail term.
- While potential misuse can never be an argument against enactment of a law itself, the undue power that this Bill would grant to the police (a non-bailable offence, where arrests can be made without warrant) is not an unreasonable concern.
- Most importantly, the drafters of the bill have failed to note that often when a petitioner approaches the court, it is to seek that the talaq given at whim can be disregarded so that the marriage can continue.
- So far as criminalisation is concerned, if bigamy, dowry, desertion can all come with criminal consequences, triple talaq should indeed be no exception, but by hanging a sword of a three-year jail term, the law not only contributes to the society's existing anxiety over divorce but also lays down an ambiguous course of action which prolongs the marriage on paper but presumes de facto separation, if any of the clauses are to actually apply.

## **Test yourself :Mould your thoughts**

The practice of Triple Talaq violates principle of gender equality, and Triple Talaq bill doesn't follow the test of proportionality. Critically examine the statement