

Triple Talaq Bill [UPSC Notes for GS II]

Triple Talaq Bill

Context: The Muslim Women (Protection of Rights on Marriage) Bill, 2019

About Triple Talaq:

- Triple Talaq is the process of divorce under Sharia Law (Islamic law) where a husband can divorce his wife by pronouncing 'Talaq' three times. This is also called oral talaq.
- There are three types of divorce under Islamic law, namely, Ahsan, Hasan and Talaq-e-Biddat (triple talaq).
- While the former two are revocable, the last one is irrevocable. It is mainly prevalent among India's Muslim communities that follow the Hanafi School of Islamic Law.
- Under this law, wives cannot divorce husbands by means of triple talaq. Women have to move a court for divorcing her husband under the Muslim Personal Law (Shariat) Application Act 1937. (This Act was passed to make provisions for the application of Sharia or Islamic personal law to Muslims in India).

The Muslim Women (Protection of Rights on Marriage) Bill, 2019

After getting passed in both houses of Parliament, President has given assent to the triple talaq bill passed by Parliament, turning it into a law which makes the practice of instant divorce among Muslims a punishable offence. The Act will replace an ordinance promulgated on February 21 this year to the same effect.

Introduced in Lok Sabha	June 21, 2019
Passed Lok Sabha	June 25, 2019
Passed Rajya Sabha	July 30, 2019
Received Presidential Assent	July 31, 2019

Background:

Shah Bano case (1985):- The Supreme Court ruled in her favour in 1985 under the "maintenance of wives, children and parents" provision (Section 125) of the All India Criminal Code, which applied to all citizens irrespective of religion. Further, It recommended that a uniform civil code be set up.

Facts about the case:

- Under Muslim personal law, maintenance was to be paid only till the period of iddat. (three lunar months-roughly 90 days).
- Section 125 of CrPC (criminal procedure code) that applied to all citizens, provided for maintenance of the wife

Impact - After this historic decision, nationwide discussions, meetings and agitations were held. The then government under pressure passed The Muslim Women's (Right to protection on divorce) Act (MWA) in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.

Daniel Latifi case - Muslim Women's Act (MWA) was challenged on the grounds that it violated the right to equality under Articles 14 & 15 as well as the right to life under Article 21. The Supreme Court while holding the law as constitutional harmonised it with section 125 of CrPC and held

that the amount received by a wife during iddat period should be large enough to maintain her during iddat as well as provide for her future. Thus under the law of the land, a divorced Muslim woman is entitled to the provision of maintenance for a lifetime or until she is remarried.

Sarla Mudgal Case - In this case, the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnise a second marriage. The court held that the Hindu marriage solemnized under Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act 1955. Conversion to Islam and marrying again, would not by itself dissolve the Hindu marriage under the act and thus, a second marriage solemnized after converting to Islam would be an offence under section 494 of the Indian Penal Code (IPC).

Shayara Bano Case: Shayara Bano, a 35-year-old woman, challenged the practice after getting divorced under the triple talaq custom. In 2017, the Supreme Court, in a landmark 3-2 verdict, had struck down instant triple talaq. Three of the five judges on the Constitution Bench had called the practise un-Islamic and “arbitrary” and disagreed with the view that triple talaq was an integral part of religious practice. The ruling of SC is truly a watershed moment in women empowerment movement in India. The court has given progressive thoughts enshrined in the Constitution precedence over personal law in society.

What is there in the triple talaq bill?

- The triple talaq bill makes declaration of talaq-e-bidat in spoken, written or through SMS or WhatsApp or any other electronic chat illegal.
- Talaq-e-biddat refers to the pronouncement of talaq three times by a Muslim man in one sitting to his wife resulting in an instant and irrevocable divorce.
- The triple talaq bill also makes declaration of talaq-e-bidat cognisable offence that gives a police officer powers to arrest the offender without requiring a warrant.
- To check misuse of cognisable nature of the offence, the triple talaq bill makes declaration of talaq-e-biddat only if the complaint is filed by the aggrieved woman or any of her relation by blood or marriage.
- A Muslim man pronouncing instant triple talaq attracts a jail term of three years under the triple talaq bill. The accused under the triple talaq bill is entitled to bail, which can be granted by a magistrate. But the bail can be granted only after the magistrate has heard the aggrieved woman.
- The triple talaq bill also provides scope for reconciliation without undergoing the process of nikah halala if the two sides agree to stop legal proceedings and settle the dispute.
 - Nikah halala refers to practice under which a divorced Muslim woman has to marry another man and consummate the marriage and get a divorce. Only then can she be eligible to remarry her former husband.
- Under the triple talaq bill, the divorced Muslim woman is entitled to seek custody of minor children. This would be determined by a magistrate.
- A woman divorced through talaq-e-biddat is entitled to demand a maintenance for her and her dependent children under the triple talaq bill. The magistrate has the power to determine the amount of subsistence allowance.

Arguments against triple talaq:

- According to a study, 92% of Muslim women in India wanted the triple talaq to be banned.
- It goes against the rights of equality and women’s empowerment. It propagates the dominance of men over women.
- It gave men the right to arbitrarily divorce their wives without any valid reason.
- New-age technology has given birth to new modes of triple talaq such as through skype, text messages and email.
- The ‘triple talaq’ has been abolished in 21 Islamic theocratic countries including Pakistan, Bangladesh, and Indonesia. There is no reason for a democratic and secular India to continue this lopsided practice.
- It goes against the constitutional principles of gender equality, secularism, right to life of dignity, etc.
- It goes against Article 14 (Right to Equality) and Article 15(1) which states that there shall be no discrimination against any citizen on the basis of gender, race, etc. and this kind of talaq is biased

against the interests of women.

- The constitution of the country says that it shall strive to bring a uniform civil code for the entire country. Doing away with triple talaq will definitely be a step closer to the constitution-makers' dream of having a uniform civil code for all citizens.
- However, the National Commission of Women says that this matter cannot be linked to uniform civil code. Nevertheless, it should be banned in order to protect the interests of Muslim women.
- The Supreme Court has also declared that this practice is unconstitutional and not protected by Article 25 which regards the freedom of religion. Also in December 2016, the Allahabad High Court had said that no personal law board was above the constitution.
- Experts also opine that only the essential or integral features and aspects of a religion are protected by the Constitution. Triple talaq was not an integral feature of Islam.

Arguments in favour triple talaq:

- It is well established that criminalising something does not have any deterrent effect on its practice. 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.
- 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 Protection of Women from Domestic Violence Act (PWDVA), 2005.
- 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.
- 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.
- Five arguments the All India Muslim Personal Law Board (AIMPLB) provided to the SC in favour triple talaq:
 - Triple talaq provides security to wife.
 - Women get killed when men don't have easy divorce.
 - Obtaining divorce from courts scandalises women's character, for men the damage is little.
 - Obtaining divorce from courts “deters re-marriage” prospects of men, women.
 - Triple Talaq is sin, but ‘valid and effective’ form of divorce.

Challenges in banning triple talaq:

- Religious groups infer the banning of a traditional practice sanctified by Sharia as interfering in the religious aspects of minorities.
- Low literacy rate among Muslim Womens and knowledge about their rights.
- It might be possible that Womens will not get support from her parents/relatives during legal proceedings.

The act is a right step to put an end to the suffering of Muslim women who have been at the receiving end of instant talaq for several years. But still there are certain provisions like criminalisation of Triple Talaq which need careful thought and should be debated. On the same lines, steps should be taken to end evil practises/discriminations against women in the other religions/society as a whole.

