

Triple Talaq Bill: A Social Reform or Just a Dead Man's Gun?

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Abstract: *The Central Government in 2017 passed a Bill that seeks to protect the rights of Muslim Women from divorce in the form of Triple Talaq. The Bill now is commonly called as Triple Talaq Bill. The Bill was drafted to address the demands, with keeping the fact of Muslim Women's plight to abolish the age-old Islamic Law in mind. But the Bill had major offsets and demanded an immediate correction by lot of Muslim Activists and with many people protesting the passing. This article circles the major issues in the Bill and how the Bill criticizes the confidence of laywoman in today's world.*

Keywords: Triple Talaq Bill, A Social Injustice, Actual Plight of a Muslim Woman, Drawbacks of Triple Talaq Bill

1. Introduction

The Lok Sabha recently passed The Muslim Women (Protection of Rights on Marriage) Bill, 2017 and the main objective of the bill was very simple that “to protect the rights of married Muslim women and to demolish the idea of divorce by just saying Talaq Talaq Talaq by their husband”.

This article is just a glimpse of what had happened behind in the making of the Bill and its passing in Lok Sabha and what are the blunders that were made in the Bill and would this be just a letter of law with no legal effects or whatsoever?.

The Muslim Women (Protection of Rights on Marriage) Bill, 2017 serves as a baton to punish any Muslim husband who uses Triple Talaq for divorce, under criminal offence which could lead him a Jail Term up to 3 years and a fine. But anyway, as we know the Bill can be made as a Law under Indian Constitution only when passed in Rajya Sabha, and which is yet to happen.

But in August, The Supreme Court made very clear that the practice by which the Muslim men divorce their wives by saying the word Talaq three times in just one sitting is “Unconstitutional”.

But what's more interesting is that, the Bill when passed by Lok Sabha, had so many riddles with many contradictions internally that one is left pondering on what purpose this Bill would serve.

2. Overview of Triple Talaq Bill, 2017

The Supreme Court in the matter of Shayara Bano Vs. Union of India and Others, on 22nd August, 2017 in the majority judgement of 3:2 set aside the practice of Talaq-e-biddat, practiced by certain Muslim Husbands to divorce their wives. This Judgement boosted the Government, to free Muslim woman from the age-old practice and method of divorce.

The Triple Talaq Bill simplifies just one thing i.e., Any Muslim Husband who would carry on the act of Divorce by verbally saying Talaq three times (Talaq-e-Biddat) and similar forms of divorce like Talaq-e-Ahsan & Talaq-e-Hasan are all on the same and are void & illegal and also a criminal offence.

The Bill was drafted and presented by Shri Ravi Shankar Prasad, Minister of Law & Justice in Lok Sabha and the Bill had three chapters and seven sections.

But many Muslim Sharia Law Experts condemn this and many Muslim Communities & Leaders across India see the Bill, having so many blunders and senseless sections which have zero legal effect and makes the marriage remains intact, even after the husband utters Talaq three times or zillion times.

What's even worse is that the Bill proposes to make the Talaq-e-Biddat a criminal offence, punishable by up to three years and a fine that remains unclear even still now. Also for some act which has no legal effect, the government proposes to arrest the Muslim man with cognizable offence and also making it non-bailable.

3. Outcry and Aftermath of Passing of Triple Talaq Bill, 2017:

If you could keenly observe the unjust in the Bill and the exclamations made by many Muslim Agencies and Muslim Men & Women, they did not oppose the bringing of the Bill which was based on the policy of an age-old religious law, but were strongly against the subject and the riddled contradictions found in the Bill. Take for an example, in Section 2(b) of the bill, “Talaq' means talaq-e-biddat or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband”, which directly implies triple talaq. But, however, if you could skim through the Section 3 of the Bill, it says “Any pronouncement of talaq by a person upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal”. These two sections are so much is

direct contradiction, which makes the definition of Talaq tautological and Section 3 becomes meaningless.

The outcry was for this tautological definition of Talaq and asked for broader definition of Talaq. The Bill should have clearly stated the legal process and mechanism as to how a Muslim husband should utter Talaq and practice legal divorce with his wife. But the Bill is silent about it. Also the Bill is silent about whether the other forms of Talaq remain valid.

Are There Any Jurisdiction Hindrance In This Bill?

Yes, there are. Plenty.

For Example, if this Bill was to be made a Law under Constitution, it will make the position of Muslim Husband vulnerable.

When a Muslim Husband is accused of uttering Talaq three times by his wife or anyone whomsoever, violates this law and hence as per law, can be jailed under criminal offence for three years with no bail to be ever granted. But what if the Muslim Man had not said it in one sitting? Even if no, he would be arrested.

Let's assume another scenario, the Husband has indeed pronounced Talaq three times in one sitting. The wife then will lodge a complaint with the police and the husband would be arrested. Then the case would go to the court, where the wife has to prove the fact that her husband has practiced Talaq-e-biddat. How is she going to provide the evidence? Since court is not involved during the practice of Talaq-e-biddat, and also since Talaq-e-biddat is not pronounced in front of people or any witness, the husband in court would deny that he had uttered the word Talaq three times. So what would court do without the evidence?

Also as mentioned in Section 5 that when the Muslim Husband pronounces Talaq to his wife, the wife is thereby entitled to maintenance. But if we continue to Section 6, the wife is also thereby entitled to custody of her minor children. But as per Section 3, if Talaq is void, there can never be any space for maintenance and custody of whomsoever.

Such contradictions in the Bill makes it a mere letter of Law, having no legal effect and meaning and thus fundamentally unenforceable in Indian Constitution as a Social Reform Law.

4. Conclusion

The Bill clearly shows that it was drafted without due diligence and was not consulted with Muslim Agencies or affected Muslim Women Organizations. This Bill was a result of poor drafting and hence need an expertise review on the definitions and Rajya Sabha should take more time in correcting some contradictions and process in such a manner that no families, men and women are negatively impacted. Since this Bill is covered in Family Law, makes it much more complex and cumbersome in a country like India, where Laws have numerous judicial pronouncements and other legislations have to be

considered. The current Bill is in naked form, and if Rajya Sabha does nothing and passes this naked Bill, there would be no gain and mean no political victory. If Government needs to bring a strong social reform to enlighten the lives of Muslim women, the Bill has to be drafted well, add more definitions, mechanism and legal process and punishment under Law and then passed with consultation of other House Members of Rajya Sabha and by not passing it through brute majority in Upper House.

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