

# The Muslim Women (Protection of Rights on Marriage) Bill, 2017

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## I. Introduction

Talaq, under Islamic law, refers to the husband's right to dissolve the marriage and divorce his wife. One such form of *talaq* is that of talaq-e-biddat or instantaneous triple talaq. This is a practice that has been highlighted for its discrimination against Muslim women, and has touted as a capricious custom that goes against the Constitutional mandated principles of gender justice and equality<sup>1</sup>.

On 22nd August, 2017, a recent judgment by the Supreme Court brought this practice into the limelight, with the five-judge bench ruling the triple-talaq as a form of divorce void in the Shayara Bano Vs. Union of India case. While this judgment was a landmark decision, and signified a momentous change in the lives of Muslim women across the country, it was not enough to stop the practice altogether. It has been protested against by several stakeholders, including The All India Muslim Personal Law Board (AIMPLB), on the grounds that the court has no jurisdiction to decide the validity of judicial practices, and that only legislature can make this change.

It is in the context that The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was introduced. It was introduced in Lok Sabha by the Minister of Law and Justice, Mr. Ravi Shankar Prasad on December 28, 2017. The aim of the bill is to give effect to the judgment of the Supreme Court, and to protect Muslim women who are still prone to being victims of the practice of triple-talaq. The Bill proposes to declare pronouncement of talaq-e-biddat by Muslim husbands void and illegal, and it also makes the act of pronouncement a punishable offence. It is an important step in ensuring the rights of Muslim women, as citizens of India, and providing them with Constitutional protection of gender equality and justice.

## II. The Muslim Women (Protection of Rights on Marriage) Bill, 2017

The Muslim Women (Protection of Rights on Marriage), 2017 aims to declare the practice of '*talaq -e-biddat*' and other such forms of instantaneous *talaq* as illegal, while also incorporating provisions for the protection of married Muslim women upon whom *talaq* is declared.

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<sup>1</sup> The Muslim Women (Protection of Rights on Marriage), 2017

## Salient Features of the Bill

- **Declaration of *Talaq* as Void and Illegal:** Here, “*talaq*” refers to *talaq -e-biddat* or any form of *talaq* that has the effect of instantaneous and irrevocable divorce on pronouncement by a Muslim husband. The Bill declares any such pronouncement of *talaq* by a person to his wife, in spoken or written or electronic form or any other manner, to be void and illegal.
- **Punishment for Pronouncing *Talaq*:** As a consequence of declaration of the practice as illegal, the person who pronounces *talaq* shall be punished with imprisonment up to three years and a fine.
- **Subsistence Allowance to Protect Rights of Married Muslim Women:** A married Muslim woman against whom *talaq* has been pronounced will be entitled to a subsistence allowance from her husband for herself and her dependent children. The amount in question will be determined by the Magistrate (Magistrate of First Class exercising jurisdiction under the Code of Criminal Procedure).
- **Custody of Minor Children:** In the event of pronouncement of *talaq*, the married Muslim woman will be entitled to custody of the married couple’s minor children.
- **Offences to be Cognizable and Non-Bailable:** Any offence under this Bill, will be cognizable and non-bailable within the meaning of the Code of Criminal Procedure 1973.

## Shortcomings of the Bill

The salient features highlight the strengths of the Bill in providing a protective framework to Muslim women and taking forward the cause of women’s rights. There is broad consensus regarding the undesirability of the principle of *talaq-e-biddat*. However, criticism raised against the Bill attempts to bring in more effective ways of discontinuing this practice.

- **Criminalisation of the Practice:** The criminalisation of *talaq* under section 3 and 4, while intending to protect the married Muslim women, face some legal and operational challenges.
  - Since marriage under Islamic law is a civil contract, the Bill must follow civil procedure. The current criminal nature of the offence is, in this respect, inappropriate given the nature of the subject.
  - Moreover, scholars suggest that the legislation should have included the offence under the ambit of the Domestic Violence Act instead of complete criminalisation. In this manner,

women would receive many more benefits such as protection against violence, right to residence in marital home which are not available under the current provisions.<sup>2</sup>

- Scholars have also questioned how *talaq-e-biddat* can be termed an offence under section 4 and 7 given that it has been made void and inoperative based on section 3.<sup>3</sup>
- **Discriminatory Treatment of Muslim Men:** Under the law, Muslim men can be prosecuted even without the agreement of the wife, due to declaration of illegality. But, in the case of similar crimes within other religions, males cannot be prosecuted without assent of the wife. This would be differential treatment of men of different religions.
- **Removal of Judicial Oversight:** The Bill, under section 7, makes the pronouncement of *talaq* a cognizable offence, implying that the police have the authority to make an arrest without a warrant and to initiate investigation without permission of the court. This opens up the possibility of the law being misused against Muslim men.<sup>4</sup>
- **Contradiction in Provision of Custody and Allowance:** The Bill, under section 3, declares that *talaq* has been declared void, implying that *talaq* cannot result in divorce. Yet, the Bill goes on to discuss post-divorce matters pertaining to custody of minor children and subsistence allowance under sections 5 and 6.<sup>5</sup>

### III. Conclusion

There is undoubtedly an urgent need to curb the practice of *talaq-e-biddat*, given the blatant violation of Muslim women's rights that it entails. The Bill very rightly initiates the process to punish and prevent this practice. However, there remain certain concerns with the Bill that may hamper its effectiveness. These concerns must be extensively discussed and addressed in order to produce a legislation that can put an end to *talaq-e-biddat*.

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<sup>2</sup> <http://www.livelaw.in/need-reconsideration-triple-talaq-bill/>, accessed as on 02 August , 2018.

<sup>3</sup> <https://www.thehindu.com/opinion/op-ed/a-very-flawed-law/article22288659.ece>, accessed as on August 2, 2018.

<sup>4</sup> <http://www.livelaw.in/need-reconsideration-triple-talaq-bill/>, accessed as on August 2, 2018.

<sup>5</sup> <https://www.thehindu.com/opinion/op-ed/a-very-flawed-law/article22288659.ece>, accessed as on August 2, 2018.