

IMPATIENT MOVE: ON THE ORDINANCE ON TRIPLE TALAQ

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The [Union Cabinet's decision to take the ordinance route](#) to enact a diluted version of its law making instant triple talaq a criminal offence is a sign of undue impatience. This is a matter that required deliberation, especially after serious objections were raised to some provisions of the Bill passed by the Lok Sabha; also, there is an ongoing debate on the desirability of criminalising instant triple talaq. The Muslim Women (Protection of Rights on Marriage) Bill, as approved by the Lok Sabha, sought to give statutory form to the Supreme Court ruling of 2017 that declared talaq-e-biddat as illegal. The Bill made this form of divorce punishable by a three-year prison term and a fine. In the face of Opposition concerns, the government proposed significant changes to water down the provisions relating to the treatment of talaq-e-biddat as a criminal offence. Despite a notice for these amendments being given, the matter was not taken up in the Rajya Sabha in the last session due to a lack of consensus. When the Bill has been deferred to the next session of Parliament, it is not clear what exigency impelled the government to take recourse to the extraordinary power of promulgating an ordinance. Could it be the elections to some State Assemblies this year? Clearly, the Centre wants to demonstrate that it is espousing the cause of Muslim women. But the mere lack of consensus in the House is not a good enough reason to promulgate an ordinance. It could even amount to subversion of the parliamentary process, as the Bill has been passed in one House and the other is likely to consider it in an amended form.

Instant triple talaq Bill: Cabinet approves inclusion of provision of bail

However, the changes to be introduced through the ordinance do address some of the reservations about the original Bill. The first makes the offence cognisable only if the woman, or one related to her by blood or marriage, against whom triple talaq has been pronounced, files a police complaint. Second, the offence has been made compoundable, that is, the parties can settle the matter between themselves. And third, it provides that a magistrate may grant bail to the husband after hearing the wife. These amendments will not only restrict the scope for misuse by preventing third parties from setting the criminal law in motion against a man pronouncing instant triple talaq against his wife; they will also leave open the possibility of the marriage continuing by allowing bail and settlement. But the core issue that arises from the proposed law remains: whether a marital wrong, essentially a civil matter, should lead to prosecutions and jail terms. Also, when the law declares instant triple talaq to be invalid, it only means the marriage continues to subsist, and it is somewhat self-contradictory for a law to both allow a marriage to continue and propose a jail term for the offending husband.

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