

# CRIMINALISING TALAQ-E-BIDDAT

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The Muslim Women (Protection of Rights on Marriage) Ordinance of 2018 makes the declaration of *talaq-e-biddat* a crime. The objective of the ordinance is to protect the rights of married Muslim women. It intends to prohibit the pronouncement of instant triple talaq by “Muslim husbands”. A petition has been filed in the Supreme Court challenging the ordinance, asking why “Muslim husbands” alone have been singled out for the offence.

The promulgation of the ordinance follows the declaration of instant triple talaq as unconstitutional and invalid by the Supreme Court in 2017. The court had held that instant triple talaq given by a Muslim man “capriciously and whimsically”, without an attempt at reconciliation, was “manifestly arbitrary” and “violative of Article 14” of the Constitution.

However, the government explained that the pressing need for an ordinance was the continued practice of this form of talaq despite the Supreme Court judgment. The Muslim Women (Protection of Rights on Marriage) Bill, 2017 was passed by the Lok Sabha, but was pending in the Rajya Sabha.

The ordinance reiterates the Supreme Court verdict that “any pronouncement” of talaq by “a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal.” According to Section 4, any Muslim husband who pronounces instant talaq will be punished with imprisonment of up to three years and will be liable to a fine. Section 5 entitles a married Muslim woman upon whom talaq is pronounced to receive a “subsistence allowance”, to be determined by a First Class Judicial Magistrate, from her husband for herself and their dependent children.

The ordinance allows a married Muslim woman to retain the custody of her minor children in the event of pronouncement of instant triple talaq. The conditions of custody will be decided by the Magistrate. The ordinance makes the pronouncement of triple talaq cognisable. It says criminal action will be taken against the offending husband as soon as his wife or her relative by blood or marriage informs the police. The offence is compoundable at the instance of the woman with the permission of the Magistrate.

Most importantly, the accused husband can be released on bail only after the wife is given an opportunity to be heard by the Magistrate. The court should be satisfied that there are reasonable grounds for granting bail to him.

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Last week Ram Kadam, a BJP MLA from Maharashtra, told the men in an audience that if they were interested in women who didn't reciprocate the feeling,

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