



A case of unprincipled criminalisation

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The triple talaq Bill is a classic case of an unfair legislative move with a populist agenda

- The content of the Muslim Women (Protection of Rights on Marriage) Bill, 2018 (Triple Talaq Bill) clearly reflects a sectarian overtone that even attempted to mislead the public by distorting the Supreme Court judgment in Shayara Bano's case (2017).
- In the 'statement of objects and reasons' attached to the Bill, Union Law Minister Ravi Shankar Prasad said that in spite of the Supreme Court setting aside the practice of talaq-e-biddat in Shayara Bano, there have been reports of divorce by way of such means.
- Law Minister described the Bill as an instance of "state action to give effect to the order of the Supreme Court and to redress the grievances of victims of illegal divorce".
- Law Minister also lamented that the Supreme Court verdict "has not worked as any deterrent in bringing down the number of divorces by this practice among certain Muslims".

Disproportionate punishment

- The Bill is a classic case of an unfair and deceptive legislative move with a populist agenda, which in a country like India should call for a novel and effective judicial scrutiny.
- First of all, in the emblematic judgment in Shayara Bano the majority on the Bench had invalidated the practice by terming it as unconstitutional.
- Second, the majority verdict in Shayara Bano did not direct the government or Parliament to criminalise triple talaq or "to give effect to the order", as implied in the Bill.
- An analogy between criminalisation of dowry and triple talaq does not make sense.
- In the case of dowry, transaction is a reality, whereas in triple talaq, after the top court holding that it is a nullity, there is no act at all in the legal sense to constitute an offence.

- The Bill thus assumes validity for an action which the court invalidated, and as such the very thematic premise for the Bill is artificial, erroneous and even contemptuous.
- The settled legal principle in India that no ill motive could be attributed to legislation would require a revisit, when politics overweighs constitutionalism.
- Third, criminalisation of triple talaq, can only motivate a “clever” husband to resort to other methods of divorce which do not fall within the ambit of the Bill or to simply desert his wife.
- Thus the Bill does not serve the Muslim woman’s interest.

Blow against tenets

- By trying to segregate a particular mode of divorce in a particular community and to punish the men of that community alone, the Centre is trying to shatter two fundamental tenets of the Indian Constitution — equality in the eye of the law and secularism.

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