

Talaq bill against gender justice, minority rights

[Audrey D'Mello](#)

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What happens to a woman when her husband says, "Talaq, talaq, talaq" over phone, email, SMS, fax or any other means? Well, the marriage is still intact and she continues to be his wife. Talaq-e-biddat, or uttering talaq three times, is not a part of the Quran. Before a talaq is pronounced the Quran recommends arbitration, mediation and reconciliation.

This has been upheld by various high courts and the Supreme Court in the past 50 years. In 1971, Justice V.R. Krishna Iyer ruled in the Kerala high court that "it is a popular fallacy that a Muslim male enjoys unbridled authority to liquidate the marriage... the husband must satisfy the court about the reasons for divorce". In 1981, Justice Baharul Islam in Jiauddin Ahmed vs Anwara Begum opined: "The correct law of talaq must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and wife and by two arbiters".

In 2002, in the Shamim Ara vs State of UP case, the Supreme Court declared instant triple talaq invalid and laid down the procedure for pronouncing talaq. And finally, in August 2017, in the Shayara Bano vs Union of India case, a five-judge Constitution Bench set aside talaq-e-biddat.

So what should a Muslim woman do if her husband says talaq three times? The utterance of the word would easily amount to domestic violence and would invariably be accompanied by other acts of mental or physical violence, including desertion, deprivation of maintenance, etc. Like all other women, Muslim women can take recourse to two laws. A criminal law under Section 498A IPC (passed in 1983), which provides for punishment for mental or physical cruelty to wives, and a civil law, under the Protection of Women Domestic Violence Act (PWDVA) 2005, which secures her right to maintenance, residence, protection from violence and custody of her children.

Incidentally, all the petitioners to the recent Supreme Court case — Shayara Bano, Ishrat Jahan, Gulshan Parveen, Aafreen Rehman, Atiya Sabri and organisations like the Bharatiya Muslim Mahila Andolan (BMMA) — could have taken recourse to these two laws. When asked why it did not use these laws to protect the rights of women, BMMA representatives said: "Poor women lack resources to access the judicial system, and hence we need a ban as a permanent solution!" The visual media presented images of burqa-clad Muslim women as suffering victims of the draconian laws of the community and everyone wanted to save her.

Working at the intersectionality of communalism, marginalisation and Muslim women's rights, Majlis, an NGO that represents Muslim women in legal cases of domestic violence, has been the sole voice opposing the campaign against triple talaq since it broke out in 2015. The Supreme Court cannot ban or make anything illegal and this was definitely not the "mahol" to rake up this issue. They shouted hoarse that instant triple talaq was invalid and Muslim women had legal recourse. The need of the hour was to create awareness and ensure trained and sensitive lawyers help women access their rights. But they were shouted down as being anti-feminist for opposing grassroots Muslim women from demanding their rights in the Supreme Court.

At the same time, the All India Muslim Personal Board had gathered 4.5 crore signatures from Muslim women against the campaign on triple talaq to say what was more urgently needed was empowerment and education. However, their voices did not receive the same media attention. Why is it that Muslim women who have given up the hijab or challenge the community gain wider recognition than Muslim women who remain part of the community and observe its practices? Articulate, practising, Muslim women who challenge "progressive voices" have been written off as "motivated by patriarchal forces" or "indoctrinated".

The one-line verdict of the Constitution Bench, that once again invalidated triple talaq, was euphorically welcomed and everyone claimed victory — the Left, the Right, the Centre, Muslim women, the women's movement, the Muslim Personal Law Board and even the government! Flavia Agnes, a prominent legal scholar, was the lone voice who wrote that the judgment was hardly "historic" as it only echoes previously held views.

Four months later, as the government received 66 complaints of triple talaq, it dawned on everyone that this judgment wasn't going to address the issue on the ground. So even as the lynching of Muslim men in the name of cow protection and "love jihad" continues, our Prime Minister rushed in to save his Muslim sisters. On December 28, the Muslim Women (Protection of Rights on Marriage) Bill 2017, criminalising triple talaq with many contradictions and anomalies, was hurriedly introduced and passed in the Lok Sabha. A pink herring (a red herring in the name of gender)!

While outwardly the bill aims to protect the rights of Muslim women, it is dangerous and will cause more harm if it is passed by the Rajya Sabha and comes into effect in its present form. It is a shortsighted approach which may look good on paper but has very little practical use for women. Beyond the rhetoric, how will the case play out on the ground? The police will have to register a criminal complaint and the case will proceed as per the rules of the criminal justice system. How will a poor Muslim woman endure the rigours of a criminal trial to prove her case? The bill does not specify the time period for the case to be concluded, and who will provide sustenance to the woman when her husband is in jail. But, most important, this bill pushes Muslim women into incarcerating their husbands. What is frightening is that it gives power to a third person to file a criminal charge. How will this sword of criminalisation be used in the current atmosphere where anti-minority feelings are heightened?

A petition, by citizens concerned over gender justice and minority rights, has appealed to the Rajya Sabha to stop the criminalisation of triple talaq and urged them send

the bill to a select committee to discuss its pros and cons in the true spirit of democracy. One can only hope that better sense prevails.

We will soon reach over 7500 signatures.

Please support the petition

<http://chn.ge/2DI6hZn>

The writer is the director of Majlis, an NGO that aims to protect the legal rights of women.