Criminalising Talaq

What is the issue?

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The proposed law on instant triple talaq misreads the SC's talaq judgment.

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Why is the move illogical?

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- The Centre's has proposed a legislation to criminalise triple talaq (talaq-e-bidat), which is a way to instantly dissolve a marriage.
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- This appears to be ill-conceived as it completely ignores the Supreme Court judgment that declared "triple talaq" futile and not integral part of Islam.
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- Consequently, no Muslim marriage can be dissolved through instant triple talaq at present – thereby criminalizing it holds no ground.
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- Notably, criminal jurisprudence states that no person shall be punished for an act that is not harmful to anyone.
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- Hence, unless the husband physically/mentally harasses his wife by insisting that his talaq pronouncements have broken the marriage, there is no case.
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What are the usual cases in talaq pronouncements?

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- Most men have resorted to talaq-e-bidat, either in a fit of emotional rage, or out of a misunderstanding of Muslim law.
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- **1st case -** When the pronouncement is in a fit of rage, men usually express regret within a short time as irrevocable divorce was never the intention.
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- While the SC order helped in keeping marriages intact despite a pronouncement in such cases, the draft law seeks to stigmatise such mistakes.
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- This might lead to eventual breakup of a marriage that wasn't headed there.
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- **2nd case -** In the second case, men think that instant talaq irrevocably breaks the marriage due to their reliance on sectarian fatwas.
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- Here, the fatwas derive the validity of talaq-e-bidat from the disputed legacy of Caliph Umar's rulings and its proponents oppose the SC ruling on talaq.
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- Notably, instead of verifying the actuality of the Caliph's ruling, most Muslim theologians had held a blind faith in it for long.
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How has the draft law been perceived?

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- **Islamic View -** Islam while recognizing Talaq-e-bidat (triple Talaq), believes that its use is the commission of a sin.
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- Notably, even before the SC judgment, All India Muslim Personal Law Board (AIMPLB) had proposed social boycott as punishment for resorting to it.
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- This probably explains why most Muslim religious organisations have not opposed the current draft criminalising triple talaq.
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- **The Confusion -** But the SC has already declared instant triple talaq illegal and hence triple talaq is being ineffective.
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- While instant triple talaq as such holds no significance currently, making its pronouncement an offence would mean recognizing it as a marriage breaker.
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- This would be contrary to the SC judgement and also in alignment with the AIMPLB's view of recognising it while seeing it as a sin.
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What is the way ahead?

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- The right approach would be to launch a massive campaign to publicise the Supreme Court judgment on triple talaq.
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- Also, stopping Muslim theologians from issuing misleading fatwas on talaq is needed.
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Source: Indian Express

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