Muslim Women (Protection of Rights on Marriage) Bill, 2017

What is the issue?

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- Lok Sabha has passed the Muslim Women (Protection of Rights on Marriage) Bill, 2017.
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- The Bill is abound with a number of internal contradictions raising questions on the very purpose and intent.
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Every punishment which does not arise from absolute necessity is tyrannical.

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What are the highlight provisions?

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- **Definition**- The Bill defines talaq as talaq-e-biddat (instant triple talaq) or any other similar form of talaq pronounced by a Muslim man resulting in instant and irrevocable divorce.
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- It makes all forms of declaration of talaq to be void i.e. not enforceable in law.
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- **Offence and penalty** - The Bill makes declaration of talaq a cognizable and non-bailable offence.
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- A husband declaring talaq can be imprisoned for up to 3 years along with a fine.
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- **Allowance** - A Muslim woman against whom talaq has been declared is entitled to seek subsistence allowance from her husband.
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- This applies to the woman and her dependent children.
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- The amount of the allowance will be decided by the Magistrate.
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- **Custody** - A Muslim woman against whom such talaq has been declared, is entitled to seek custody of her minor children.
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- The determination of custody will be made by the Magistrate.
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What are the anomalies?

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- **SC judgement** - The Supreme Court, earlier, invalidated the triple talaq practice by calling it arbitrary and unconstitutional.
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- Logically, the pronouncement of talaq-e-biddat does not dissolve the marriage, and this is the law of the land under Article 141.
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- Contradictorily, the Bill presumes that the “pronouncement” of talaq can instantaneously and irrevocably dissolve the marriage.
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- The bill thus seems to be misreading the SC’s judgment on talaq.
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- **Offence** - After rendering talaq-e-biddat inoperative, considering it a cognisable and non-bailable offence seems illogical.
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- It raises questions on the validity of the law that criminalises an act after conceding that it does not result in a crime.
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- **Post-divorce issues** - Making provisions on post-divorce matters like subsistence allowance and the custody, when the pronouncement (instant talaq) itself does not dissolve the marriage appear baseless.
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Why is this a case of over-criminalisation?

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- **Necessity** - Criminal law is not necessarily a choice but a necessity.
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- It should be used only as a “last resort” and only for the “most reprehensible wrongs”.
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- Excessive use of criminal law for purposes it is ill-suited to tackle is the harsh reality of a modern state.
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- **Morality** - The realm of private morality and immorality falls more within the individual and social sphere.
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- Regulating it should largely come from the deliberations of the society and, making it the law’s business may not bring in the desired effect.
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- In this context, criminalising triple talaq would hardly help in building the moral commitments of Muslim husbands.
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- It is not the function of a civilised legal system.
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Source: PRS India, The Indian Express

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