Triple Talaq Ordinance

Why in news?

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The central government recently passed an Ordinance making instant triple talaq a criminal offence.

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What are the purposes of a criminal law?

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- Civil law deals with private wrongs or personal rights wherein compensation is considered sufficient.
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- But the criminal law is concerned with situations in which not just an individual is injured, but also the well-being of society.
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- Mere compensation is considered inadequate in that scenario and punishment is inflicted.
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- The state prosecutes the accused on behalf of society.
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- Criminal sanction is the most coercive method available to the state to regulate the behaviour of an individual.
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- The purpose of criminal law is to forbid and prevent conduct that threatens substantial harm to individual or public interests.
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Why it is not desirable for triple talaq?

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- A punishment should have only the degree of severity which is sufficient to deter others.
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- The Supreme Court has already set aside instant triple talaq in **Shayara Bano case** (2017).
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- Under this, a Muslim man can no longer use it to cause ‘harm’ to his wife.
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- It also no longer threatens the security and well-being of society as a whole.
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- Criminalising triple talaq equates it with other severe cases like rioting, promoting enmity between people etc., that attract 3 years in jail and/or fine, as this case.
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- These crimes are more serious than the act of an individual who, instead of taking 3 months to divorce his wife (which is permissible), pronounced talaq thrice instantly.
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- Thus, imprisonment of 3 years for triple talaq is excessive, arbitrary, irrational and thus violative of **Article 14** of the Constitution.
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- Also the debate on dealing a civil matter under criminal prosecution still remains.
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What should be done?

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- In criminalising any act, the state must demonstrate “compelling state interest”.
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- Triple talaq can no longer break the marital tie, following shayara bano judgement, and hence there is no evil in the act that ordinance endeavours to prevent.
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- Hence, the ordinance itself may be struck down as unconstitutional on the grounds of arbitrary and excessive punishment.
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Source: Indian Express

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