



Indian Muslims for Secular Democracy
Equality Justice Compassion Peace

December 5, 2017

Press Statement

Don't criminalise, make instant triple talaq an offence under Domestic Violence Act

Indian Muslims for Secular Democracy (IMSD) supports legislation to declare instant triple talaq as an illegal act with serious consequences for the husband who defies the Supreme Court's verdict and the law of the land. However, it strongly opposes the reported move of the Union government to criminalise the practice, punishable with 3 years in jail plus fine.

In this connection IMSD has today written to the Union Minister of Law and Justice, Sri Ravi Shankar Prasad with copies marked to the Secretary, Law Ministry; Law Commission of India, National Commission for Women, National Commission for Minorities, National Human Rights Commission.

Why IMSD supports legislation:

- To declare instant triple talaq as illegal. SC verdict has only declared it invalid.
- To answer the question: what does the aggrieved wife do if a husband resorts to triple talaq despite the Supreme Court's verdict and the new law?
- To specify the legally valid and Quran-sanctioned form of talaq and spell out procedure for the same.
- To banish the ulema-endorsed, shameful halala practice as a must for the couple to reunite.

Why IMSD favours the Domestic Violence Act option:

- It is a secular law applicable to women irrespective of caste and creed, enacted especially with a view to deliver speedy reliefs to an aggrieved woman – right to residence in marital home, maintenance, protection order against violence etc --.
- Ideally, the magistrate is required to deliver his judgment within 3 months.
- The aggrieved woman does not need to spend money on lawyers.

- It gives the husband an opportunity to retrace his steps, save the marriage and fulfill his marital obligations.
- Only if he fails to comply with the court order does he face punishment: up to 1 year in jail and/or fine of up to Rs 20,000.

Why IMSD opposes single-step criminalization (3 years jail plus fine):

- It is too drastic a measure which leaves no opportunity for the errant husband to retrace his steps, leaves no opportunity for attempts at reconciliation.
- It amounts to an indirect punishment of the already aggrieved wife and children. How will a husband in jail raise income to pay for the wife's legitimate claim for maintenance for her children and herself?
- The proposed draconian measure will add to the insecurity and alienation of the Indian Muslim community as whole, women included.
- Will provide one more weapon for use against Muslim men to a bias-infected police force.

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Sri Ravi Shankar Prasad
Union Minister of Law and Justice
Cabinet Secretariat, Raisina Hill, New Delhi
New Delhi

Sir,

Subject: Proposed law should not criminalize but make triple talaq an offence under Protection of Women from Domestic Violence Act, 2005; non-compliance with court orders will automatically invoke its imprisonment and penalty clauses.

We are writing to you on behalf of our organization, Indian Muslims for Secular Democracy (IMSD).

We are a forum of Indian Muslims committed to the values of democracy, secularism, equality and justice as enshrined in the Constitution of India and the UN's 'Universal Declaration of Human Rights'. We believe that these values are fully in consonance with the core teachings of Islam.

The primary aims of IMSD are:

- **To combat within the community tendencies of religious supremacism, exceptionalism, bigotry, intolerance, extremism and terrorism;**
- **To promote gender justice in all spheres of life;**
- **To rejuvenate Islam's tolerant tradition and celebrate diversity.**

Consistent with its stand on gender parity, IMSD was amongst the Muslim organizations and individuals which had supported the demand for and welcomed the August 22, 2017 order of a constitutional bench of the Supreme Court declaring the practice of instant *triple talaq* as invalid.

The apex court's verdict has left open the question of what is to be done if, the judicial pronouncement notwithstanding, a Muslim husband goes ahead and utters talaq-talaq-talaq in quick succession. To whom is an aggrieved woman to turn to for justice, and what legal remedies are available to her? What procedure must be followed for a legally valid talaq? The answers to these questions clearly lie in the enactment of a comprehensive new law on the issue.

Indian Muslims for Secular Democracy (IMSD) supports the proposed legislation, in principle, for the following additional reasons:

- Stray reports and anecdotal accounts from activists suggest that while the Supreme Court's judgment has had a sobering effect in some parts of the country in other areas its "business as usual".
- The All India Muslim Personal Law Board and the ignorant clergy continue to preach to Muslims that never mind the Supreme Court's directive, from the moment a husband pronounces the word talaq three times his wife becomes haraam (prohibited) to him as per Sharia law. Even if the husband has uttered the words in a certain frame of mind, regrets the same and is keen to keep the marital relationship intact, according to the ulema the wife has no option but to go through the shameful, degrading and blatantly anti-woman practice of halala: a one-night marriage wherein she must have sexual relations with another man, then get divorced to remarry her former husband.
- Halala is nothing but sex trade in the name of Islam in which some molvis and muftis have no qualms in offering their "services" in consummating the halala marriage for a hefty "fee". The shameful halala practice is bound to continue unless effective legal measures are put in place to bring the triple talaq practice to an end.

For all these reasons IMSD fully supports the need for a legislation dealing with abolition of Triple Talaq. It also recognizes the need for penal provisions in the Act so that Muslim men realise that committing the illegality of triple talaq will henceforth have serious consequences. However, IMSD is not convinced that the solution lies in a straight-forward, single-step criminalization of the instant divorce practice. Moreover, we are seriously concerned with the fact that the draft Bill -- Muslim Women (Protection of Rights on Marriage) Act - circulated by the Union government among state governments makes triple talaq a non-bailable offence punishable with a jail term of 3 years and fine.

IMSD is concerned with the serious implications of a single-step criminalization of triple talaq for several reasons. Firstly, as amply established in the Sachar Committee Report, on socio-economic standards Indian Muslims as a community are way behind other socio-religious communities. Faced with arrest, prosecution and jail in a very large number of cases the lawyers' fees alone will impose a major financial burden on the husband who

pronounces triple talaq. A subsequent 3-year jail term will leave the man without any source of income and cripple him financially. Meanwhile the woman victim of triple talaq too must find money to hire a lawyer to press for her claims of maintenance, child custody etc. It appears that the only ones to benefit from such a single-step criminalization would be lawyers and possibly policemen who will make money from both sides. Where will a husband in jail for three years find money to pay for the maintenance of his wife and children? In other words, putting an errant husband in prison for three years will mean nothing less than an indirect punishment of his wife and children too. In any case, the nature of offence in case of triple talaq is such that it does not mandate direct police action but, in fact, calls for judicial intervention.

Secondly, the sense of insecurity and alienation that grips Indian Muslims as a community, women included, is beyond doubt. Various acts of commission and omission on the part of administrations at the Centre and in the states in the face of repeated targeting of Muslims in the name of the 'gau raksha', 'love jihad' and 'ghar wapsi' etc. have heightened the insecurity and the alienation among Muslims.

Thirdly, irrespective of the government in power, communal bias in the Indian police is another undeniable fact of life. The National Crimes Records Bureau's prison figures for 2016 reported that Muslims, Dalits and adivasis who together constitute 39 per cent of the total population make up for 55 per cent of all under-trials. A common finding that emerges from report after report of various Judicial Commissions of Enquiry -- appointed by governments to probe into causes of communal riots -- is anti-Muslim, anti-minority bias in the police force. Given this grim ground reality it goes without saying that irrespective of the government in power, criminalization of triple talaq could become yet another weapon in the hands of a partisan police.

For these reasons IMSD is of the view that all things considered, the proposed new law may simply provide that triple talaq which is illegal will be treated as "domestic violence" as defined under the secular Protection of Women from Domestic Violence Act 2005. Once the DV Act kicks into place, it immediately opens up the possibility of various reliefs provided under the Act for a victim of triple talaq. These include protection against violence, right to residence in the marital home, maintenance, medical facility, compensation.

The provisions of the DV Act are civil in nature but the procedure followed is the one prescribed by the Code of Criminal Procedure (CrPC). This seeks to ensure speedy justice (ideally, the magistrate's order should come within 3 months of the case being placed before him/her) and is in sharp contrast to criminal prosecution or resort to family courts both of which are expensive and take years.

The beauty of the DV Act is this: violation of a protection order issued by the court is an offence (Section 31) punishable with imprisonment for a term which may extend to a year or a fine which may extend to 20,000 rupees or both. What's more while framing charges

under the DV Act the magistrate may also frame charges under section 498A of the Indian Penal Code or the Dowry Prohibition Act, 1961 if applicable.

Under the DV Act the magistrate's "protection order" order makes it clear to an errant Muslim husband that by resorting to triple talaq he has committed an illegal act, that the marital relation remains intact, that the wife remains entitled to stay in the marital home, receive maintenance from her husband, in addition to monetary compensation where applicable. In cases where there is violence, the husband is given a strict warning against such conduct in future. The husband then has the choice of honouring the court's order or facing the prospect of a year in jail and or fine. Thus, the DV Act gives an opportunity to the errant husband to correct himself and it's only his failure to comply with the court's order that invites the penal provisions.

Finally, to state the obvious, all modern laws recognize marriage as a contract between two consenting adults and allow for divorce if the marital relation becomes a burden for either or both partners. To its credit, Islamic law allowed for this contingency over 1,400 years ago. Clearly, in the proposed law what should be declared as illegal is triple talaq as a procedure and not talaq (divorce) per se.

We therefore would like to emphasise that any bill dealing with this subject should be a comprehensive one and should not deal only with penalization of triple talaq. It should prescribe the entire correct procedure of pronouncing talaq in accordance with Islamic law as enunciated by the Hon'ble Supreme Court and also spell out the civil consequences of pronouncing triple talaq after its having been set aside by the apex court. Questions such as these need to be answered: Will triple talaq be deemed to be a single talaq (like Badar Durrez Ahmed J holds in *Masroor Ahmed Vs State - Delhi High Court [2008(103)DRJ137]*) or will it be ineffective altogether?

The real issue facing women today across religions and communities is the issue of desertion. This is a gender issue and not a religious one. A comprehensive approach should consider explicitly bringing in this issue also within the purview of the DV Act.

Some lawyers working with women point to a few existing court orders holding that Muslim women are very much within the ambit of the DV Act, that triple talaq does constitute "domestic violence" and so no fresh law is needed. However, a new law wherein triple talaq is explicitly included within the meaning of domestic violence under the DV Act will remove any ambiguity on the issue. The proposed Bill should, therefore, seek to amend the existing DV Act to incorporate the aforesaid concerns rather than straightaway creating a fresh offence which, as explained above, will be most undesirable.

We have not yet examined the draft Bill. The aforesaid submissions are some preliminary thoughts based on what has appeared about the draft Bill in the press. IMSD would like to

see the draft Bill and make more meaningful and comprehensive suggestions after going through it. It is, therefore, requested that a copy of the draft Bill may kindly be shared with us to enable us to render assistance in the finalization of the draft.

Yours sincerely,

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