



Muslim Personal Law Case

For Prelims: Supreme Court, National Human Rights Commission (NHRC), the National Commission of Women (NCW), National Commission of Minorities

For Mains: Personal Laws in India and related issues, Issues Related to Women

Why in News?

Several petitions have been listed in the [Supreme Court](#) challenging the constitutional validity of the practice of polygamy and Nikah Halala allowed by Muslim Personal Law.

- A five-judge Constitution Bench has issued notices to the [National Human Rights Commission \(NHRC\)](#), the [National Commission of Women \(NCW\)](#) and the [National Commission of Minorities](#).
- Earlier, the SC had **stated the practice of divorce in Muslims through 'Talaq-e-Hasan' is not similar to [triple talaq](#)** and the women also have an option of 'Khula'.

What are the Arguments of the Petitioners?

- **Demand and Ground:**
 - The petitioners have **demand a ban on Polygamy and Nikah-Halala** saying it renders Muslim wives extremely insecure, vulnerable and infringes their fundamental rights.
 - They have also urged to declare **Section 2 of the Muslim Personal Law (Shariat) Application Act** unconstitutional on grounds of violation of **Articles 14 (right to equality), 15 (discrimination on ground of religion) and 21 (right to life)**.
- **Arguments against the Petition:**
 - The **Constitution does not touch upon the personal laws** and therefore the SC cannot examine the question of constitutional validity of the practices.
 - They contend that even the apex court and various High Courts have on earlier occasions refused to interfere with practices sanctioned by personal law, an argument they advanced even in the [triple talaq](#) challenge matter too which the SC has already rejected.

What do we Know about Muslim Personal Law on Marriage?

- According to Sharia or the Muslim personal law, **men are allowed to practice polygamy** that is, they can have more than one wife at the same time, up to a total of four.
- **'Nikah halala' is a process in which a Muslim woman has to marry another person** and get divorced from him before being allowed to marry her divorcee husband again.
- A Muslim man can divorce his wife by uttering Talaq once for three months. This practice is called **Talaq-e-Hasan**.
 - **"Triple talaq"** allows a husband to divorce his wife by repeating the word "talaq" (divorce) three times in any form, including email or text message.
- In Islam, talaq and khula are two terms for divorce for men and women respectively. A man can

part ways through 'talaq' while a woman can separate with her husband through 'Khula'.

In what ways was Muslim Law Applied in India?

- The **Muslim Personal Law (Shariat) Application Act was passed in 1937** with the aim to formulate an Islamic law code for Indian Muslims.
- The British who were at this point in time governing India, were trying to ensure that Indians were ruled according to their own cultural norms.
- **When it came to distinguishing between laws made for the Hindus** and those for the Muslims, they laid out the statement that **“clear proof of usage will outweigh the written text of the law”** in the case of Hindus. For the Muslims on the other hand, the writings in the Quran would be of foremost importance.
- Since 1937 therefore, the **Shariat Application Act mandates aspects of Muslim social life** such as marriage, divorce, inheritance and family relations. The Act lays out that in matters of personal dispute the state shall not interfere.

What are the Personal Laws of Other Religions?

- The [Hindu Succession Act of 1956](#) which lays out guidelines for property inheritance among Hindus, Buddhists, Jains and Sikhs.
- The Parsi Marriage and Divorce Act of 1936 lays out rules to be followed by the Parsis according to their religious traditions.
- The [Hindu Marriage Act of 1955](#) had codified laws related to marriage among Hindus.

Is the Shariat Application Act in India Unchangeable?

- The **applicability of the Shariat Act has been controversial** over the years. There have been previous instances when the issue of protection of women's rights as part of the broader fundamental rights came into conflict with religious rights.
- The most well-known among these is the [Shah Bano case](#).
 - In 1985, 62-year-old Shah Bano, filed a lawsuit seeking alimony from her former husband.
- The Supreme Court, in this case, had **held up her right to alimony, but the judgment was vehemently opposed by the Islamic community** who considered it to be going against the written rules in the Quran. The case triggered a controversy regarding the extent to which courts can interfere with personal/religious laws.
- The **Shariat Application Act in India protects the application of Islamic laws** in personal legal relationships, but the Act does not define the laws.
 - It clearly **states that in matters of personal disputes**, the State shall not interfere and a religious authority would pass a declaration based on his interpretations of the Quran and the Hadith.
- Personal law **does not fall within the definition of 'laws' under Article 13** of the Constitution. The validity of a personal law cannot be challenged on the basis of [fundamental rights](#) enshrined in the Constitution.

Way Forward

- The government and society will have to work hard to build trust, but more importantly, make common cause with social reformers rather than religious conservatives.
- Rather than an omnibus approach, the government could bring separate aspects such as marriage, adoption, succession and maintenance into a [Uniform Civil Code \(UCC\)](#) in stages.
- Need of the hour is the codification of all personal laws so that prejudices and stereotypes in every one of them would come to light and can be tested on the anvil of fundamental rights of the Constitution.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Prelims

Q. Which Article of the Constitution of India safeguards one's right to marry the person of one's choice? (2019)

- (a) Article 19
- (b) Article 21
- (c) Article 25
- (d) Article 29

Ans: (b)

Exp:

- The right to marry is a component of the right to life under Article 21 of the Constitution of India which states that "No person shall be deprived of his life and personal liberty except according to the procedure established by law".
- In *Lata Singh v. State of Uttar Pradesh* 2006, the Supreme Court viewed the right to marry as a component of the right to life under Article 21 of Indian Constitution.
- **Therefore, option (b) is the correct answer.**

Mains

Q. Customs and traditions suppress reason leading to obscurantism. Do you agree? (2020)

[Source: TH](#)

PDF Refernece URL: <https://www.drishtias.com/printpdf/muslim-personal-law-case>