



Issues Related to Muslim Personal Law

For Prelims: [Special Marriage Act, 1954](#), Assam Muslim Marriage and Divorce Registration Act of 1935, [Uniform Civil Code \(UCC\)](#), [Triple Talaq case](#).

For Mains: Issues Related to Muslim Personal Law, Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

[Source: IE](#)

Why in News?

Recently, the Assam Government approved Assam Repealing Ordinance 2024, repealing the **Assam Muslim Marriage and Divorce Registration Act of 1935**.

- Following the decision, Muslim marriage or divorce registration can happen only through the [Special Marriage Act, 1954](#).

What is the Assam Muslim Marriage and Divorce Registration Act, 1935?

- The Act is in line with the [Muslim Personal Law](#), enacted in 1935. The Act lays down the **process for registration of Muslim marriages** and divorces.
- A 2010 amendment replaced the word **'voluntary' in the original Act with 'compulsory'**, making registration of Muslim marriages and **divorces compulsory in the state of Assam**.
- The Act authorises the state to grant **licences to "any person, being a Muslim" to register marriages and divorces**, with Muslim registrars deemed to be public servants.
- It lays down the process through which marriage and divorce applications can be made to the registrar, and the process for their registration.

What are the Reasons Behind the Repealing of Assam Muslim Marriage and Divorce Registration Act of 1935?

- **Alignment with Contemporary Norms:**
 - The Act was viewed as **outdated and not in line with modern societal norms**. It allowed for the registration of marriages if the bride and groom had not reached the legal marriageable age of 18 and 21, respectively, which contradicted current legal standards regarding marriageable age.
- **Crackdown on Child Marriage:**
 - The government-linked this decision to its ongoing efforts to combat child marriage. By repealing the Act, which contained provisions allowing underage marriages to be registered, the government aims to **eradicate child marriage in Assam**.
- **Informal and Misuse of Authority:**
 - The act provided an informal mechanism for marriage registration, which led to **potential misuse by kazis** (government-registered officials responsible for conducting marriages).

- There were allegations of underage marriages and divorces being facilitated **without proper grounds, highlighting the need for reform.**
- **Move towards Uniform Civil Code (UCC):**
 - The decision to repeal the Act is also seen as a step towards implementing a [Uniform Civil Code \(UCC\)](#) in Assam, similar to the recent move by Uttarakhand.
 - The government aims to streamline marriage laws across different communities and bring them under a common legal framework.

What are the Arguments Against the Repeal of the Act?

- The Act provided a simple and decentralised process for marriage registration (**with 94 kazis spread across the state**), whereas, there are complexities of the [Special Marriage Act](#), which may deter some individuals, particularly the poor and illiterate, from registering their marriages.
- The Act faced criticism and legal challenges from various quarters, including advocates and political parties.
- Concerns were raised about the implications of complete repeal, **including the likelihood of increased instances of unregistered marriages.**

Why has the Muslim Personal Law been in the Public Eye in Recent Years?

- **Legal Reform and Judicial Intervention:**
 - There have been significant legal reforms and judicial interventions in matters related to Muslim personal law.
 - Landmark cases such as the [Triple Talaq case \(Shayara Bano v. Union of India\) in 2017](#) and subsequent cases have brought issues like instant divorce, polygamy, and women's rights in Muslim marriages into the spotlight.
 - These cases have prompted debates on the **need for reform within Muslim personal law** to align with constitutional principles of equality and justice.
- **Gender Justice and Women's Rights:**
 - Concerns about gender justice and women's rights within Muslim personal law have gained prominence.
 - Debates focus on issues such as triple talaq, which allows husbands to instantly divorce their wives without legal proceedings, and the practice of **nikah halala**, where a woman must marry and divorce another man before remarrying her former husband.
 - These practices have faced criticism for being discriminatory and unjust towards women.
- **Societal Change and Activism:**
 - Changing **societal attitudes and increased activism** around gender equality have contributed to greater scrutiny of Muslim personal law.
 - Women's rights activists, scholars, and [civil society organizations](#) have **advocated for reforms within Muslim personal law** to ensure gender equality and protection of women's rights in matters of marriage, divorce, maintenance, and inheritance.
- **Political Dynamics:**
 - Muslim personal law has also become a political issue, with various political parties and interest groups taking positions on matters such as triple talaq and uniform civil code.
 - Debates around these issues often intersect with broader political agendas, leading to **heightened public attention and discourse.**
- **Constitutional Principles:**
 - There is a growing recognition of the need to uphold constitutional principles of **equality, justice, and non-discrimination** in matters of personal law.
 - Calls for reform within Muslim personal law are often framed within the context of constitutional rights and the need to ensure equal treatment for all citizens, regardless of their religious affiliation.

What is Muslim Personal Law?

- **About:**
 - Muslim Personal Law refers to the body of **laws that govern the personal matters** of

individuals who **adhere to the Islamic faith.**

- These laws cover various aspects of personal life, including **marriage, divorce, inheritance, and family relationships**, among others.
- Muslim Personal Law is derived primarily from the **Quran, the Hadith (sayings and actions of the Prophet Muhammad), and Islamic jurisprudence.**

▪ **Issues with Muslim Personal Laws:**

- 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 divorced 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'.

▪ **Application 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.

▪ **Personal Laws in Other Religions:**

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

Way Forward

- A gradual approach to reforming personal laws, including Muslim personal law, is vital for aligning them with modern societal outlooks. This entails **comprehensive review, consultations with stakeholders**, and public awareness initiatives.
- Legislative reforms should **uphold constitutional values** while respecting religious diversity.
- Empowering women and enhancing their agency, along with promoting alternative dispute resolution **mechanisms, are key priorities.**
- Strengthening institutional capacity and monitoring implementation ensure effective reforms.

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)**

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