

The Muslim Personal Law (Shariat) Application Act, 1937

UNION OF INDIA

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Act 26 of 1937

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The Muslim Personal Law (Shariat) Application Act, 1937(ACT NO. XXVI OF 1937)[7th. October, 1937]An Act to make provision for the application of the Muslim Personal Law (Shariat) to MuslimsWHEREAS it is expedient to make provision for the application of the Muslim Personal Law (Shariat) to Muslims;

1. Short title and extent.—

(1)This Act may be called the Muslim Personal Law (Shariat) Application Act, 1937.(2)It extends to the whole of India except the State of Jammu and Kashmir.

2. Application of Personal law to Muslims.—

Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat).[Triple Talaq - Shayara Bano v Union of India. The Supreme Court held that the practice of talaq-e-biddat or instantaneous triple talaq is unconstitutional. On March 30th, 2017, the SC created a 5-Judge Constitution Bench to hear the matter. The Bench comprised Chief Justice J.S. Khehar and Justices Kurian Joseph, R.F. Nariman, U.U. Lalit and Abdul Nazeer. In a 3:2 split, the majority held that the practice of talaq-e-biddat was 'manifestly arbitrary' and unconstitutional. Chief Justice Khehar and Justice Nazeer dissented, stating that talaq-e-biddat was protected by the Right to Religion and that it was

the job of Parliament to frame a law to govern the practice. This form of Talaq must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution of India. In our opinion, therefore, the 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression “laws in force” in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq. The court has declared Section 2 of The Muslim Personal Law (Shariat) Application Act, 1937 to be void to the extent indicated above on the narrower ground of it being manifestly arbitrary. Parliament enacted the Muslim Women (Protection of Rights on Marriage) Act, 2019 which made the practice of talaq-e-biddat a criminal act, punishable with up to three years imprisonment. The Jamiat Ulama-I-Hind, Samastha Kerala Jamiathul Ulema, and the President of the Rashtriya Ulema Council challenged this Act in separate petitions at the Supreme Court in August 2019. However, the Court is yet to begin hearing arguments in the matter. (<https://indiankanoon.org/doc/115701246/>, <https://legalserviceindia.com/legal/article-8548-case-analysis-of-shayara-bano-v-s-union-of-india.html>)]

3. Power to make a declaration.—

(1)Any person who satisfies the prescribed authority—(a)that he is a Muslim; and(b)that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872 (9 of 1872); and(c)that he is a resident of the territories to which this Act extends,may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of the provisions of this section, and thereafter the provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to the matters enumerated therein adoption, wills and legacies were also specified.(2)Where the prescribed authority refuses to accept a declaration under sub- section (1), the person desiring to make the same may appeal to such officer as the State Government may, by general or special order, appoint in this behalf, and such officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.

4. Rule-making power.—

(1)The State Government may make rules to carry into effect the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—(a)for prescribing the authority before whom and the form in which declarations under this Act shall be made;(b)for prescribing the fees to be paid for the filing of declarations and for the attendance at private residences of any person in the discharge of his duties under this Act; and for prescribing the times at which such fees shall be payable and the manner in which they shall be levied.(3)Rules made under the provisions of this section shall be published, in the Official Gazette and shall thereupon have effect as if enacted in this Act.(4)Every rule made by the State Government under this Act shall be laid, as soon as it is made, before the State Legislature.

5. Dissolution of marriage by Court in certain circumstances.—

Rep. by the Dissolution of Muslim Marriages Act, 1939 (8 of 1939), sec. 6 (17-3-1939).

6. Repeals.—

The undermentioned provisions of the Acts and Regulations mentioned below shall be repealed in so far as they are inconsistent with the provisions of this Act, namely:—(1)Section 26 of the Bombay Regulation IV of 1827;(2)Section 16 of the Madras Civil Courts Act, 1873 (3 of 1873);(4)Section 3 of the Oudh Laws Act, 1876 (18 of 1876);(5)Section 5 of the Punjab Laws Act, 1872 (4 of 1872);(6)Section 5 of the Central Provinces Laws Act, 1875 (20 of 1875); and(7)Section 4 of the Ajmer Laws Regulation, 1877 (Reg. 3 of 1877).