

Will SC end personal laws' immunity?

The Supreme Court's judgment on the constitutionality of triple *talaq* may also decide the age-old debate whether personal laws can be brought under the ambit of Article 13 (laws inconsistent with or in derogation of the fundamental rights) of the Constitution.

While the All India Muslim Personal Law Board (AIMPLB) has argued that the Supreme Court does not have jurisdiction to strike down provisions of personal law, organisations calling for reform and Muslim women from various walks of life across the country have urged the court to declare triple *talaq* and polygamy as "un-Islamic".

This is the first time that aggrieved persons — individual Muslim women — themselves have approached the apex court in person to settle the law on whether religious law is immune from constitutional standards enshrined under fundamental rights.

Article 13 includes in its ambit any "ordinance, order, by-law, rule, regulation, notification and even customs and usages" passed or made by the Legislature or any other "competent authority". It mandates that any law in force in the country before or after the commencement of Constitution should not violate the fundamental rights of citizens enshrined in Part III.

A judicial declaration from a Constitution Bench under Article 13 that personal laws are liable to comply with the fundamental rights guaranteed by Constitution would bring religious law, even uncodified practices, under judicial review.

Discordant notes

In the past, courts have made discordant notes about the immunity enjoyed by personal laws.

In 1951, the Bombay High Court in *State of Bombay versus Narasu Appa Mali* held that personal law is not 'law' under Article 13. The judgment was never challenged in the Supreme Court.

In *Ahmedabad Women Action Group versus Union of India*, the Supreme Court was asked to consider that unilateral divorce by *talaq* and polygamy violated Articles 14 and 15. The court rejected the claim, saying it was for the legislature to determine. Whether this Constitution Bench will resolve the age-old dispute or leave it to the legislature to decide is to be seen.

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