

1937 SHARIAT ACT PROVISIONS

UCC effective answer, we leave it to wisdom of legislature, says SC

CJI bench flags 'unnecessary void' if it strikes down provisions that are discriminatory to Muslim women

Ananthakrishnan G
New Delhi, March 10

BACKING THE case for a Uniform Civil Code (UCC) in the country, the Supreme Court said Tuesday it is the "most effective answer" to address provisions in the Shariat law of 1937 that allegedly discriminate against Muslim women, including in matters of inheritance.

The bench of Chief Justice of India Surya Kant and Justices Joymalya Bagchi and R Mahadevan said securing a UCC

should be left to "the wisdom of the legislature" rather than the court stepping in to declare the provisions unlawful and creating an "unnecessary void".

"The most effective answer... is the Uniform Civil Code," the CJI said as the bench heard a plea challenging provisions of the Muslim Personal Law (Shariat) Application Act, 1937, which the petitioners said discriminated against Muslim women in matters of succession, etc.

Justice Bagchi said, "Until and unless we can create,

E. EXPLAINED

SC's calls for UCC

Ever since the mid-1980s, the SC has backed the UCC idea, urging Parliament to act under Article 44. Notables include its observations in the Shah Bano (1985), Sarla Mudgal (1995), John Vallamattom (2003) rulings. Directive Principles of State Policy, including Article 44 (UCC), are not directly enforceable by any court.

through our judicial fiat, an equal strata in respect of these asymmetric property rights,

»CONTINUED ON PAGE 2

Top court on UCC

including inheritance rights, to strike and declare the personal law as ultra vires will create unnecessary void. And in such a situation it may be better to defer to the wisdom of the legislature to bring in one of the fundamental Directive Principles of State Policy, that's a Uniform Civil Code. And this court has already recommended a UCC for the country."

Appearing for petitioners Poulomi Pavini Shukla and Nyaya Naari Foundation, Advocate Prashant Bhushan said the provisions discriminate against Muslim women by denying them equal property rights like their male co-religionists.

At the very outset, the CJI asked whether the court striking it down would not create a vacuum. "What is the vacuum created then? What is the solution?" he asked.

Bhushan said the Indian Succession Act can apply in such a situation and referred to the Supreme Court striking down instant triple talaq as unconstitutional in the case of Shayara Bano v Union of India (2017).

To the CJI's query whether it will not create a "complete vacuum," Bhushan said it will not.

Justice Bagchi said that even in Shayara Bano, the judges had taken different approaches. Justice R F Nariman's view was that the 1937 Act "is statutory recognition of the pre-existing personal law". Chief Justice of India J S Khehar, however, "did not agree with that" and held that "even if it is Muslim personal law protected in terms of Narasu Appa Mali – State of Bombay v. Narasu Appa Mali (1951) – case, it will be violative (of Article 14), not being an essential religious practice".

"If we apply that ratio either way, suppose we apply the test of Justice Nariman and hold that the 1937 Act is violative of Article 14, it is underlined by the personal law which continues to

survive under Article 372," Justice Bagchi said.

Bhushan said his argument is that the only protection the Shariat law enjoys is by virtue of the 1937 Act, and if it is struck down, the protection goes.

Justice Bagchi asked, "Let's for argument say the 1937 law does not exist. Will the Muslim inheritance not be guided by the personal law which is acknowledged under Article 372?"

The CJI said, "In our anxiety of over anxiety, we may ultimately land in a situation where we deprive them of whatever they are getting."

To this, Bhushan said, "Therefore, we are seeking a declaration that Muslim women will be entitled to equal rights of inheritance as Muslim men."

"So you are wanting us to first strike down the 1937 Act and then re-legislate?" asked the CJI.

Bhushan said he was not seeking legislation but only a pronouncement like in Shayara Bano. He said it is an important question that needs to be examined from all angles and there may be contrary viewpoints.

The CJI said, "It is an interesting question. The only thing we found lacking in the petition is, if it goes, then what? That ought to have been effectively responded to in the petition."

Bhushan said the way out was to say inheritance rights of Muslim women will henceforth be as per the Indian Succession Act, or to declare that they are entitled to equal rights as men in the community.

Responding to a query from the bench, Bhushan also pointed out that inheritance is not an essential religious practice but a civil right, and the court can intervene.

"In any case, we cannot have a situation in this country today after Shayara Bano and various other judgments, which say that Muslim women will not get the same rights as Muslim men.

This is a much more secular issue than the issue of talaq, which was a somewhat more religious issue. This is a totally civil rights issue and needs to be settled once and all by a Constitution Bench of this court," he said.

Justice Mahadevan then referred to the UCC brought in by the Uttarakhand government in 2024.

Justice Bagchi said the issue "may have multifarious and manifold impact not just with regard to Muslims, but share in Hindu undivided properties under the Hindu Succession Act, on coparcenary rights" and hence a UCC will be a prudent solution.

He said that while the petitioners are making a strong case of discrimination, striking down a legislation does not take away the underlying principal law.

"Today, triple talaq has been declared ultra vires, but grounds of divorce in Muslim marriage remain asymmetrical. The right to dissolution of marriage by Muslim women is under the 1937 Act. But for a Muslim man, there is no reason to fall within any categories to declare a marriage void. It can be done unilaterally, however, following certain procedures."

As the CJI said that "the most effective answer...as also stated by my brother is the UCC," Bhushan said the question is what if it does not come.

Justice Bagchi said, "You are talking of inheritance. The basic equality of one woman and one man in a monogamous existence, has it been achieved throughout the country? No. Then, can we declare all bigamous relationships founded on personal law ultra vires Article 14?... All have to defer to the wisdom of the legislature to bring the Directive Principle into reality."

The bench adjourned the matter with Bhushan agreeing to amend the petition to also include what can be the alternative in case the court strikes down the provisions under challenge.