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Uniform Civil Code: Its Enforcement in India

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ABSTRACT

At the time of the origination of constitutionalism in India, the framers of the Indian Constitution were of the view to have a Uniform civil code for their citizens as represented in Article 44 of the Indian Constitution which lays down that “The state shall work towards administering the same set of civil laws to govern the people belonging to different regions and religions.” This article is about the study of much debated topic of suitable legislation on Uniform civil code for all the citizens of India. The Supreme Court of India through a number of judgements have taken a forward step towards the establishment of Uniform civil code ,but still no concrete step has been taken so far in this regard. It is due to the unresolved debate on the Freedom of Religion which is granted by Article 25 and Article 26 of the Indian Constitution. Moreover, the Supreme Court of India in its observations has made it very clear that Uniform civil code does not invade upon the “Right to Religion”. Through this article the idea of the Uniform civil code is proposed by keeping in mind the history of the country, its complex culture and as well as its current political and social scenario.

Keywords: *Uniform civil code, secularism, Equality, Rule of law, Right to religion.*

I. INTRODUCTION

Uniform civil code is a rule that says “One law for all”. A uniform civil code is a code that provides the same set of secular civil laws to govern all the people of a nation irrespective of their different regions and religions. This form of law supplements the rights of the citizens to be governed under the different personal laws based upon the religion, customs and traditional practices. It is the entire body of laws governing the rights relating to the property and the other personal matters like marriage, divorce, maintenance, adoption and inheritance.

Article 44 in the part IV of the Indian constitution quotes the concept of Uniform civil code, laying down that: “*The state shall endeavour to secure for all the citizens a uniform civil code throughout the territory of India*”.

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Uniform civil code is a term which envisages administrating the same set of secular civil laws to govern different people belonging to different religions and regions.

The Uniform civil code controversy rises from the tension between the traditional political idea to leave communities alone to manage their own social life, the modernistic political values of 'Rule of Law' which requires that one law apply to everyone and everyone should be benefitted equally from the laws of the state and lastly the political imperative of pleasing every constituency possible. Seventy two years after the independence, the Uniform civil code vested in Article 44 of the Indian constitution is still under the Directive Principle.³

We all are governed by the Rule of Law and the most fundamental of the rights conferred upon is 'Equality before law' and 'Equal protection of law'. But still the Uniform civil code is only available in the constitution, as Religion has been one of the major players in enslaving the women and pegging them down as a second class citizen and maintaining the inequalities.⁴

The demand for the uniform civil code has acquired a communal flavour which have overshadowed the natural merits of the proposal. Article 44 of the constitution os by no means the only Directive principle to have not been implemented from more than half a century of independence and most of the directive principles remain only as mere doctrines rather than the 'Law of Land'.

II. NEED FOR ITS IMMINENT NECESSITY

The British India has witnessed many of her laws getting codified by the British such as the Criminal laws, The law of Contract, Transfer of property Act, etc. These laws were made by the Britishers while depriving away with all religious and cultural factors. As observed that the law of contract is purely along the laws existed in Britain around that time. The only sphere which was left behind was the personal laws which governed the various aspects of the lifestyle of the people such as marriage, family, succession, etc. The transfer of sovereignty from Britishers to The Indi itself was marked by the high communal tension. Restoration of such communal harmony was in the minds of our constitution makers so Article 35 of The Draft Constitution was added as a part of the Directive Principles of The State Policy in Part IV of the constitution of India as Article 44. It was incorporated in the Constitution as an aspect which would be fulfilled when the nation would be ready to accept it and the social acceptance

³ News, I. and family, A., 2021. *Another tragedy in Vadra family | India News - Times of India*. [online] The Times of India. Available at: <<https://timesofindia.indiatimes.com/articleshow/msid-191362,prtpage-1.cms>> [Accessed 21 July 2021].

⁴ India, I., 2021. *Defending the Constitution & The Rule Of Law*. [online] Legalservicesindia.com. Available at: <<http://www.legalservicesindia.com/article/248/Defending-the-Constitution-&-The-Rule-Of-Law.html>> [Accessed 21 July 2021].

to the uniform civil code could be made. However after so many years of adoption of Constitution the uniform civil code remains a constitutional dream. Judiciary somehow by the time has reminded the Legislature about the need to have a uniform civil code through its various judgements.⁵

A uniform civil code relating to personal law does not mean the extension of Hindu personal law to other communities or the suppression of Hindu personal law by the personal law of any other community. It includes says Prof. G.C.V Subba Rao⁶ “The evolution of a rational system removing the injustice, particularly to women and children inherent in those ancient systems and the replacement of all existing personal laws by such rational system”.

The changed attitude of Supreme Court has stipulated the Legislature to activities that will lead to goal of Uniform Civil code. In the landmark case of Mohd. Ahmed v. Shah Bano⁷ the Supreme Court held that section 125 of The Criminal Procedure Code,1973 applies to all Indians generally and overrides the personal law, if any; and the historic judgement in case of Shayara Bano v. Union of India and ors.⁸ The Supreme Court has declared the Triple Talaq unconstitutional which led the parliament to pass the Muslim Women(Protection of Rights on Marriage) Bill,2017.⁹

The other reasons which imitates its necessity are :¹⁰

1. It Protects Secularism –

A Uniform civil code means that all the citizens of India have to follow the same laws whether they are Hindus, Sikhs, Muslims, Christians etc. T Uniform Civil Code does not mean that it will limit the freedom of people to follow their religion, it just means that every person will be treated the same.

2. More Rights to Women

A Uniform civil code will also help in improving the condition of the women in India. Our society is extremely a Patriarchal society condemning all Indian women to mistreatment. A Uniform civil code will help in changing these old traditions that have no place in today's

⁵ Mohd. Ahmed Khan v. Shah Bano, AIR 1985 SC 945, Ms. Jorden Diengdeh v. S.S. Chopra,(1985)2 SCC 556, Sarla Mudgal v. Union of India, (1995)3 SCC 635

⁶ G. C. V. Subbarao, Uniform Civil Code: Reality or a Tantalizing Illusion (1987)11 M. L. J, p, 1

⁷ (1985) 2 SCC156

⁸ (2017/8/22)

⁹ (2017/12/28)

¹⁰ Thakur, A. and Thakur, A., 2021. *Top 7 Reasons Why India Needs a Uniform Civil Code – Hill Post*. [online] Hillpost.in. <<http://hillpost.in/2013/08/top-7-reasons-why-india-needs-a-uniform-civil-code/95038/>> [Accessed 21 July 2021].

society where we do understand that women should be treated fairly and given equal rights.

3. Reduce Vote Bank Politics

A Uniform civil code will also help in reducing the Vote bank politics that most political parties indulge in during every elections. If all religions are covered under the same laws, the politicians will have less to offer to certain minorities in exchange of their vote. Not having a uniform civil code is detrimental to true democracy and that has to change.

The Law commission of India¹¹ has also proposed for the consolidation of Indian Divorce Act and Indian Christian Marriage Act for the purpose of National Integration.

III. CONCEPT OF SECULARISM

At the core of the entire controversy revolving the Uniform Civil Code and its implementation are the provisions of the Constitution of India, especially the preamble and freedom of religion. India is a sovereign, socialist, secular, democratic, republic. What this means is that the State does not have a religion of its own. The Uniform Civil Code therefore has been interpreted by its opponents to mean a common state religion, and thus it goes against the soul of the preamble and the freedom of religion as mentioned above. They are mistaken in that the state though is irreligious is not anti religious. The Uniform Civil Code will not hinder man's belief. It will not interfere in the mundane activities of day-to-day life.

This distinction was understood in *S.R. Bommai v. Union of India*¹², as per Justice **Jeevan Reddy**, it was held that "religion is the matter of individual faith and cannot be mixed with secular activities. But secular activities can be regulated by the State by enacting a law."

The doctrine of secularism as accepted in other country states like America and Europe is one of complete non-interference in matters of religion. It has to be understood that these countries have undergone a completely different evolutionary process consisting of renaissance, reformation and enlightenment. On the contrary, India has not gone through these stages and thus the responsibility lies on the State to interfere in the matters of religion so as to remove the impediments in the governance of the State. In India, there exists a concept of "*positive secularism*". The onus lies with the state to ensure that religion is not an impediment to the overall progress of the nation.

¹¹ XV Report (1966) and XXII Report (1961).

¹² (1994) 3 SCC 1

Article 25¹³ and 26¹⁴ guarantee right to freedom of religion. Article 25 guarantees to every person the freedom of conscience and the right to profess practice and propagate religion. But this right is subject to public order, morality and health and to the other provisions of Part III of the Constitution. Article 25 also empowers the State to regulate or restrict any economic, financial, political or other secular activity, which may be associated with religious practice and also to provide for social welfare and reforms.

The protection given under articles 25 and 26 not only pertains to matters of pure religion. It also extends to the acts done in pursuance of the same. Thus a Uniform Civil Code that brings uniformity of rituals, ceremonies and modes of worship in order to uphold the larger interests of public order, morality, health etc. is not violative of Constitutional provisions. On the other hand it furthers the interests of the State.¹⁵ Thus the Uniform Civil Code is not opposed to secularism and will not violate Article 25 and 26. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Marriage, succession and like matters are of secular nature and, therefore, law can regulate them. No religion permits deliberate distortion¹⁶. The Uniform Civil Code will only result in the codification of the laws pertaining to marriage, succession and divorce. It will not compel a Hindu man to perform Nikah, or force a Muslim woman to observe any Hindu ritual.

Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilized society. The Uniform Civil Code will only result in the codification of these laws, with a view to classify marriage succession and like matters as secular.

The conclusive remark regarding secularism v. the UCC can be seen in the observations of Justice R.M. Sahai in the *Sarla Mudgal* case:

"Ours is a secular democratic republic. Freedom of religion is the core of our culture. Even the slightest of deviation shakes the social fibre. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression. Therefore, a unified code is imperative, both, for protection of the

¹³ "(1) Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law - a) regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice; b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

¹⁴ "Subject to public order, morality and health, every religious denomination or any section thereof shall have a right- a) to establish and maintain institutions for religious and charitable purposes; b) to manage its own affairs in matters of religion; c) to own and acquire movable and immovable property; and d) to administer such property in accordance with law."

¹⁵ *Acharya Jagdishwaranand Avadhut v. Commissioner of Police, Calcutta* (1984) 4 SCC 522

¹⁶ *Sarla Mudgal v. Union of India* AIR 1995 SC 1531

oppressed and for promotion of national unity and solidarity."¹⁷

IV. IMPLEMENTATION OF UNIFORM CIVIL CODE

Dr. Ambedkar, speaking about Article 44 and its call for a uniform code, observed "It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary."¹⁸

The Uniform Civil Code is a component of Rule of Law and for the two, arguments can be:

1. **The code creates equality:** - While other personal laws have undergone reform, the Muslim law has not much. The Hindu Nationalists contend that it makes little sense to allow Muslims, for example, to marry more than once, but prosecute Hindus or Christians for doing the same. They demand a uniform civil code for all religions.

2. **Gender equality:** - Several liberals and women's groups have argued that the uniform civil code gives women more rights.

The NCRWC¹⁹ in its periodic recommendations to the government doesn't seem to be advocating the dire urgency to implement the Constitutional provision of a uniform civil code for the country that is increasingly witnessing a dangerously widening schism between the majority Hindus and the minority communities, mostly Muslims. A divide promoted solely on the basis of political agendas of various parties.

Way back at the time of the framing of the Constitution, it was observed by the constituent assembly:

*"When you want to consolidate a community, you have to take into consideration the benefits which may accrue to the whole community and not to the customs of a part of it. If you look at the countries in Europe, which have a Civil Code, everyone who goes there forms a part of the world and every minority has to submit to that Civil Code. It is not felt to be tyrannical to the minorities."*²⁰

Other legal experts argue that though the Uniform Civil Code is needed, a favourable atmosphere needs to be created before it is implemented. It should be brought to their notice that even at the time of codification of Hindu law, which brought Hindus, Jains, Buddhists,

¹⁷ *Sarla Mudgal v. Union of India* AIR 1995 SC 1531

¹⁸ Constituent Assembly Debates (Proceedings), Volume VII, Tuesday 23rd November, 1948

¹⁹ National Commission to Review the Working of the Constitution

²⁰ Constitutional Assembly Debates Volume VII pg. 547

Sikhs and other denominations of the Hindus under the same umbrella, there was a lot of protest. This ultimately died down as the masses realized that it was beneficial to them in the long run. The then Law Minister, Dr. Ambedkar himself displayed his foresight when he said that for India's unity, the country needs a codified law.

Goa as an example-

There exists a common civil code in Goa for all communities. The Portuguese colonists framed this code²¹ way back in 19th and 20th century through various legislations. After the liberation of Goa in 1961, the nation scrapped all the colonial laws in the country. However it allowed the aforesaid law to continue. The main provision of this law related to the issue of divorce. In case of dissolution of marriage the property is to be divided equally between the sons and daughters. In order to prove the above, it necessitated the compulsory registration of marriages. Thus it had the effect of killing two birds with one stone, as registration also brought down bigamous and polygamous marriages.

V. JUDICIAL PRONOUNCEMENTS

The judiciary played a important role in suggesting enacting the uniform civil code. Article 44 is in the part 4 of the constitution of india and clearly states that the provisions contained in this Part shall not be enforceable by any court, but the principles laid down are nevertheless basic in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Mr. Justice Gajendra Gadkar, former Chief Justice of India has observed that in any event the non implementation of the Introduction provision contained in Article 44 amounts to a great failure of democracy and the sooner we take suitable actions in that behalf, the better and that "In the process of evolving a new Secular Social order a uniform Civil Code is a must"²².

Mohd. Ahmad Khan v. Shah Bano Begum,²³ the Hon'ble Justice Y V Chandrachud, the then Chief Justice of India has stated that "It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India". There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A uniform Civil Code will help the cause of national integration by

²¹ The Goan Civil Code, collectively called '*Family Laws*'

²² Gajendra Gadkar, *Secularism and the Constitution of India*, p. 126(1971).

²³ AIR 1985 SC 945

removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the india and, unquestionably; it has the legislative competence to do so.”

Sarla Mudgal v. Union of India,²⁴ In this case the Supreme Court held that conversion of a Hindu male to Islam only for the purpose Of contracting bigamous circumvents Section 494 of IPC. Such marriages have been declared as bigamous and void by the Supreme court. The court after referring to various judgements on the point, categorically held that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter in to the second marriage while the first marriage is subsisting to become a Muslim. Here the Court was also pointing out the injustice done to the first wife, legally wedded. The Judges of various High Courts and Supreme Court became the main instrument for bringing important gradual legal developments which also put its impact on the question of uniform civil code. Justice Kuldeep singh suggested the central government to take step towards s Uniform civil code. The Hon'ble Supreme Court has observed that "the legislation not religion being the authority under which personal laws were permitted to operate and is continuing to operate, the same can be supplemented by introducing the Uniform Civil Code. In this view of the matter, no community can opposed the introduction of Uniform Civil Code for all the citizens in the India. Justice Hedge, a former judge of the Supreme Court has also observed that "Religion oriented personal laws were a concept of medieval times alien to modern societies which are secular as well as cosmopolitan" and that "so long as our laws are religion oriented we can hardly build up a homogenous nation²⁵.

The Supreme Court of India in its judgment in **John Vallamottom v. Union of India**²⁶ delivered by three judge Bench comprising of Mr. Justice V.N. Khare the Chief Justice of India and S.B. Sinha and A.R. Lakshmann J.J. which is highlighted in the national press where in the court has emphasized the need to enactment of Uniform Civil Code as envisaged under Article 44 of the Constitution of indian. This evoked a public debate in the country. In this case the Constitutionality of the Section 118 of Indian Succession Act 1925 was in question. It was contended that the said Section was discriminatory to the Christian community because it prevented a Christian from bequeathing his property for religious and charitable purpose. While delivering the judgment justice V.N. Khare, the Chief justice of India with both judges has

²⁴ (1995) 3 SCC 635

²⁵ K.S. Hegde, *Islamic Law in Modern India* edited by Taliir Mahmood, Indian Law Institute, 1972, p. 3

²⁶ AIR 2003 SC 2903

made reference to Uniform Civil Code.

In **Lily Thomas and Others v. Union of India**²⁷ the question raised that whether a Hindu who is already married and having wife living gets converted into Islam and marries again commits bigamy or not under Section 494 of the Indian Penal Code, 1860. The apex court held that till the time of marriage of a Hindu is dissolved under the Act none of the spouses can contract second marriage. Further, the Supreme Court has emphasized that in order to curb the tendency on the part of Hindu males to resort to conversion to Islam whenever they want to have second wife, the legislature must enact Uniform Civil Code as directed under Article 44 of the Constitution. But the court added that the desirability of Uniform Civil Code can hardly be doubted. But it can concretize only when social climate is properly built up by the elite of the society, statesman amongst leaders who instead of gaining personal mileage rise above and awakes the masses to accept the change. The issue should be entrusted to the law commission which may examine the same in consultation with the Minorities Commission. That is why the court the court clarified that its direction was only an obiter dictum and not legally binding on the Government.

VI. UNIFORM CIVIL CODE AND GOVERNMENT

Personal laws were first framed during the period of British Raj, mainly for Hindu and Muslim people. The British feared opposition from community leaders and refrained from further interfering within this domestic sphere. The demand for a uniform civil code was first time put forwarded by women activists in the beginning of the 20th century, with the purpose of women rights, equality and concept of secularism. Till Independence in 1947, a few law reforms were passed to improve the condition of women in Indian society especially Hindu widows. In 1956, the Indian Parliament passed Hindu Code Bill. Though a demand for a uniform civil code was made by PM Pandit Jawaharlal Nehru, his supporters and women activists, they had to finally accept the compromise of it being added to the Directive Principles of state policy because of heavy opposition. The debate for a uniform civil code dates back to the colonial period in India.²⁸

Apart from the constitutional directives to the state for enacting a Uniform civil code, there are compelling reasons why all right thinking people in the society should come together for evolving a common civil code at least on an optional basis to begin with. The unity and integrity of the nation is the primary concern to every Indian citizen. Legislation is a major instrument

²⁷ AIR 2000 SC 1650.

²⁸ [National Crime Investigation Bureau](http://www.ncib.in/pdf/uniform-civil-code.pdf), <http://www.ncib.in/pdf/uniform-civil-code.pdf> visited on 3rd April 2019

for preserving and promoting national unity. The legal system cannot afford to protect divisive tendencies and force inimical to the secular creed of our constitutional policy. By and large the basic principles of family relations have great deal of similarity in different system of personal law. The constitution of India provides a frame work for unifying them. All that is required now is to give proper leadership whereby a blue print of code could be developed for discussion by leaders of public opinion and through them by the people at large.²⁹

In the Constituent Assembly debate, when Article 44 was being put forth for debate the Chairman of the Drafting Committee Dr. B.R. Ambedkar said: "The Muslims unnecessarily read too much in Article 44." He also declared that "No government can exercise the legislative power in such a manner as to provoke Muslim community to rise in rebellion, to think, it would be a mad government if it did so."³⁰ The reason for including Article 44 in the Directive Principles of state policy, during the Constituent Assembly debate it was observed that "when you want to consolidate a community, you have to take into consideration the benefits which may accrue to the whole community and not to the customs of a part of it. If you look at the countries in the Europe, which have a civil code, everyone who goes there forms a part of the world and every minority has to submit to the civil code. It is not felt to be tyrannical to the minorities"³¹

The third national convention on uniform civil code sponsored by the Bar council of India Trust was attended by over 250 judges, lawyers, jurists, law ministers, legislators and law teachers from all over the country. The convention discussed the proposals submitted by extensive notes on existing laws and practice in different communities. The following are the major propositions which found support in the convention are as :³¹

- The Uniform civil code when adopted has to be mandatory in its application to all Indians. However, appropriate strategies may be adopted to minimize hardship on the part of any section of Indian citizens. Accordingly the government may exempt some section of the people from the application of part or full of the code for particular period, or may bring into force the provision of the code in instalments. Sufficient time may also be allowed to pass before the code is brought into force after its enactment.

²⁹ V.C. Mishra former chairman Bar council of India, Inaugral address on Uniform civil code, special issue on uniform civil code, Indian bar review vol.xviii(3&4)1991,Journal of The bar council of India trust New Delhi,p.no.04

³⁰ Constituent Assembly Debates, Vol. VII, p. 781-82

³¹ V.C. Mishra (Former chairman bar council of India) and N.N. Mathur, A report and a plan of action on Uniform civil code, a which was presented to Rajiv Gandhi Former P.M. of India, Indian Bar review Vol.XXI(2-3)1994 page no. 219 & 220

- It is necessary to include a chapter on interpretation of the code so that it is comprehensive and self contained in all respects. External aids for interpretations are to be avoided as far as possible.

- The Uniform civil should contains the following topics: Marriage, divorce, maintenance, Custody and guardianship of children, adoption, inheritance and succession, implementation machinery and procedure.

- As far as possible principles and practices in the existing laws of various communities would be incorporated in the Uniform civil code with suitable modifications if it conforms to the constitutional values of equality, social justice and secularism.

- Equality between the sex, respect for the women and improvement in the condition of children in the society would not be possible without the adoption of a the Uniform civil code .the personal laws as they exists today are discriminatory against women in several respects and are indifferent toward the welfare of the children particularly when marriages fail. Hence, the progress of society depends on radical reforms in personal laws.

Government always played a non supporting role over uniform civil code but the Law Commission of India has sought for a public vote on the implementation of the Uniform Civil Code in the country for its betterment. It has released a questionnaire on the 7th of October 2016. The questionnaire could be filled out by any person or organisation within 45 days. the law commission chairman retired Justice BS Chauhan has said, “The Commission hopes to begin a healthy conversation about the viability of a uniform civil code and will focus on family laws of all religions and the diversity of customary practices, to address social injustice rather than plurality of laws.”

VII. CONCLUSION

After conducting an analysis it can be seen that the Uniform Civil Code has been agreed to be the need of an hour in India. As a Uniform Civil Code not only promotes national integration but also prohibits the evils of discrimination against the minorities. For many years since the time of the commencement of the Constitution, the Uniform Civil Code has remained in cold storage. The government has been overpowered by the illusion of appeasing the minorities. Little do they know that by not implementing the Uniform Civil Code, they are actually promoting the violation and gender discrimination?

The new civil code formulated should be step forward in converting the goals of our constitutions into reality and also forwarding the directive principles of state policy. S Krishna

Iyer has aptly stated:

"It will be Indian, not Hindu. Nor will any Islamic group be allowed to be a law unto itself. Some of the finest principles of Islamic jurisprudence may find their way into the Uniform Civil Code, even as some of the noblest conceptions of the Hindu in the area of Family Law will become the common estate for all Indians³².

While enacting a Uniform Civil Code it should be kept in a view that only modern and progressive laws are to be incorporated in it by taking into serious consideration the fact that the problems of the minority group should be properly addressed like insecurity, complete loss of identity and marginalization within Indian society. It is because a common civil law cannot be successful until and unless it gets supports and acceptance from different communities.

“Let us forget I am hindu and you are muslim let us think I and mine in a common indian nationality”- Mahatma gandhi

³² VR Krishna Iyer, "The Shah Bano Case, The Constitutional and the Court" (1986) vol.13 JBCI1 at 2.s