

## **Ahmedabad Women's Action Group v. Union of India (AIR 1997, 3 SCC 573)**

### **1) Reference Details**

Jurisdiction: India, Supreme Court

Date of Decision: 24 February 1997

Link to full case: <http://www.judis.nic.in/supremecourt/qrydisp.aspx?filename=14318>

### **2) Facts**

Ahmedabad Womens' Action Group (AWAG) placed three petitions before the Supreme Court (the Court), all filed as Public Interest Litigation. The petitioners sought to challenge several aspects of Law:

In Writ Petition CO No. 494/96, the petitioners asked for the following aspects of Sharia Law to be declared void under the Constitution of India:

- The existence of polygamy
- The existence of Talaq (summary divorce)
- Polygamy as an act of cruelty vis-à-vis s. 2 of Dissolution of Muslim Marriages Act 1939
- The Women (Protection of Rights on Divorce Act 1986
- Shia laws of inheritance, which discriminate against females on the ground of sex

In Writ Petition CO No. 196/96, the petitioners asked:

- For repeal of certain sections of the Hindu Succession Act 1956
- For repeal of s. (2) of the Hindu Marriage Act 1955
- For repeal of ss. 3, 6 and 9 of the Hindu Minority and Guardianship Act;
- For repeal of s. 6 of the Guardians and Wards Act;
- The Court to declare void the discretion allowed to a Hindu spouse to make testamentary disposition without providing for a spouse and dependants.

In Writ Petition (C) No. 721/96, the petitioners asked the Court to declare ss. 10 and 34 of the Indian Divorce Act void and ss. 43 to 48 of the Indian Succession Act void.

### **3) Law**

#### *National Legislation*

- The Constitution of India (the Constitution)
- Sharia Law
- The Hindu Succession Act
- The Hindu Marriage Act
- The Hindu Bigamous Marriage Act
- The Hindu Divorce Act
- The Hindu Minority and Guardianship Act
- The Guardians and Wards Act

#### 4) Legal Arguments

None noted

#### 5) Decision

For the Court, the presiding judge, Venkataswami J. first commented that:

*"... these Writ Petitions do not deserve disposal on merits inasmuch as the arguments advanced before us wholly involve issues of State policies which the Court will not ordinarily have any concern. Further, we find that when similar attempts were made, of course by others, on earlier occasions this Court (Maharishi Avadhesh v. Union of India, 1994) held that the remedy lies somewhere else and not by knocking at the doors of the courts."*

In relation to the range of laws attacked by the petitions, he felt that it would be incorrect to think that all laws have to be made uniformly applicable to all people in one go, as opposed to developing gradually over time to meet the demands of the Constitution. This was particularly so in the situation where a wide range of laws had been in operation for many years prior to the Constitution being implemented.

The Court felt that different religions with long historical backgrounds could be seen as different classes under the law and the Constitution allows, to a degree, for their differing legal system:

*"It is an historic fact that both Muslims and the Hindus in this country have their respective religious texts and which embody their own distinctive evolution and which are coloured by their own distinctive backgrounds. Article 44 recognises separate and distinctive personal laws because it lays down as a directive to be achieved that within a measurable time India should enjoy the privilege of a common uniform Civil Code applicable to all its citizens irrespective of race or religion."*

He quoted Gajendragadkar J. in an earlier case (*State of Bombay v. Narasu Appa Mali*, AIR 1952 Bombay 84) who set out that:

*"The Constitution of India itself recognises the existence of these personal laws in terms when it deals with the topic falling under personal law in item 5 in the Concurrent List. This item deals with matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law ... because, in my opinion, the framers of the Constitution wanted to leave the personal laws outside the ambit of Part III of the Constitution. They must have been aware that these personal laws needed to be reformed in many material particulars and in fact they wanted to abolish these different personal laws and to evolve one common code. Yet they did not wish that the provisions of the personal laws should be challenged by reason of the fundamental rights guaranteed in Part III of the constitution."*

He then went on to quote and analyse a range of precedents, summarising their findings and noting that:

*"... custom ... varies from people to people and region to region. In the fact of these divisions and visible barricades put up by the sensitive tribal people valuing their own customs, traditions and usages, judicially enforcing on them the principles of personal laws applicable*

*to others, on an elitist approach or on equality principle, by judicial activism, is a difficult and mind-boggling effort.”*

Finally the Court felt that having regard to earlier decisions, the petitions could not be entertained and were therefore dismissed.