

IMPACT OF RELIGION CONVERSION ON HINDU LAW, PARTICULARLY IN RELATION TO BIGAMY

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ABSTRACT

The act of conversion can lead to an automatic dissolution of the marriage, give the non-convert spouse grounds for starting a divorce, and provide the convert spouse with legal options for pursuing a divorce. The Law Commission Report of 1961 and the Hindu Adoptions and Maintenance Act of 1956 have also been examined, providing insight into the complex legal ramifications of religious conversion on marriages. According to Section 13 (1) (ii) of the Hindu Marriage Act, a post-marriage religious change by either party may be grounds for divorce for the non-converting spouse. The non-converting spouse is prohibited from getting remarried without receiving this relief.

Bigamy has been outlawed for Hindus, Buddhists, Jains, and Sikhs without any special reason, which has caused a major issue for married males in these religions who wish to remarry for legitimate or illegitimate reasons. According to the new law, they must first get their current marriage officially dissolved. It's not simple to do this. Although the Hindu Marriage Act allows for divorce, the difficult legal procedure in the regular civil courts assigned jurisdiction under the Act has made divorce processes acrimonious and protracted battles.

But bigamists require a 'device' in order to evade the penalties that the new law threatens to impose on them. And, several 'technologies' are recommended by people who are always willing to assist lawbreakers; the most prominent of these being the phony conversion to Islam. The Hindu Marriage Act's monogamy law does, in fact, have many significant flaws and gaps in it. When coupled with the Act's rules on marital rites, it offers built-in safeguards against any consequences arising from its breach.

KEYWORDS: *Bigamy, Marital, Hindu Marriage, Dissolution, Spouse*

1. INTRODUCTION

In India, spirituality reflects the heterogeneous terrain, with adherents of multiple faiths living in harmony. This includes the harmonious coexistence of individuals belonging to distinct castes and subsects within the same faith. Even though the nation has a well-established legal system, the personal laws are particularly complex, with different laws and regulations for every faith group. Religious minorities such as Hindus, Sikhs, Jains, Buddhists, Christians, Muslims, and others are governed by distinct personal laws, which might lead to legal complications in cases when one spouse converts. The legal complexities surrounding religious conversion are causing worry for minority communities, including Muslims and Christians, as well as the majority Hindu society. It is reasonable to be concerned about the possibility of using religious conversions to obtain secular rights against someone else or to violate the rights of others, especially in light of the intercommunal conflicts that are prevalent in India.

The Indian Penal Code expressly addresses bigamy and hiding a previous marriage in sections 494 and 495. Due to the presence of a previous valid marriage, bigamy is forbidden. Muslim polygamous marriages, however, are recognized as valid. With time, a common custom developed in which a married man who was previously bound by a monogamous law—for example, a husband who was Christian or Hindu after monogamy was imposed in 1955—could convert to Islam without divorcing his current spouse. He could then lawfully wed another woman, getting beyond the restrictions placed by monogamy conventions. On the other hand, the legal situation changed when a lady who had converted to Islam married a different guy. These unions were seen as invalid since polyandry is likewise deemed invalid in Islam.

As per the Hindu Marriage Act, "neither party should have a living spouse at the time of marriage" is an essential prerequisite for a legitimate Hindu marriage. A Hindu Marriage Act section 17 declares such a marriage null and void. In order to effectively address the crime of bigamy, the lawmakers merged the provisions of Sections 494 and 495 into Section 17. A single spouse's conversion act may have different legal ramifications for the marriage. First of all, it can cause the marriage to automatically dissolve. Second, there can be a reason for the non-convert spouse to file for divorce. Thirdly, there may be legal grounds for the converted spouse to file for divorce. Following, a thorough discussion of each of these situations was held in relation to Hindu marriages.

1.1 POSITION OF MARRIAGE AFTER 19TH CENTURY

Prior to 1955, most Hindus and Muslims in India were accepted as practicing polygamy. The only community that maintained monogamy from the start was the Christian community. The only groups that do not engage in polygamy are Jews, Christians, and Parses. They carry out monogamous unions. The early 19th century saw a rise in the criticism of polygamy due to changes in global situations and intellectual advancements.

The prohibition of polygamous marriages has led to the evolution of a progressive legal system throughout the world, particularly in the west. A number of temporary legislatures enacted local legislation mandating monogamy for individuals under Hindu law. The Madras Marmakkethayam Act, which was passed in 1932, rendered marriages between Nairs and other groups who adhered to Kerala's Marumakkethayam law absolutely monogamous. The Bombay Prevention of Hindu Bigamous Marriage Act 10 of 1946 defined marriages between Hindus—including Sikhs, Jains, Buddhists, Arya and Brahma samajists, and those who converted to Hinduism—to be void. According to Section 4 of the Act, if one or both of the parties to the marriage are residents of Bombay State, the marriage is null and void both inside and outside of Bombay. According to Section 5, bigamy included a seven-year jail sentence as well as a fine. Furthermore, it stipulated in Section 6 that anyone who organizes, performs, or helps arrange a bigamous marriage in this State will equally face consequences. Even parents or guardians who allowed, encouraged, or carelessly failed to stop such marriages might face prosecution under Section 7.

Although it was argued that the Bombay Prevention of Hindu Bigamous Marriage Act went beyond the bounds of the Constitution, the Apex Court upheld the Act's validity. Before the Bombay Act of 1946, Hindus were allowed to get married twice, and in particular, provided the first wife gave her approval beforehand, there would be no objections and the marriage would be recognized.

The Provinces of Madras and Saurashtra, respectively, passed the Madras Hindu Bigamy Prevention and Divorce Act, 1949, and the Saurashtra Prevention of Bigamy Act, 1950, to prohibit bigamy in their respective states in accordance with Bombay's legislation. Similarly, the Madhya Pradesh Prevention of Bigamous Marriage Act, 1955, established monogamy in Hindu marriages inside the State.

Following India's independence, the time was right to enact a universally applicable rule that would enforce Hindu law, so instituting a social reform of monogamy throughout the country. There was a lot of support for it in the public sphere, and several states had already passed local legislation. Thus, the groundwork for the 1955 Hindu Marriage Act was laid. The Hindu Marriage Act, passed in 1955, superseded all Provisional Statutes in order to codify and alter the regulations governing marriage. Section 17 of the Hindu Marriage Act 1955 states, "Any marriage between two Hindus solemnized after the commencement of this Act, is void if at the date of such marriage either party had a husband or wife living; and the provisions of Section 494 and 495 of Indian Penal Code shall apply accordingly." This law has revolutionized the institution of marriage and introduced the concept of monogamy throughout all of India (apart from the State of J&K).

1.2 DISSOLUTION OF MARITAL BOND

None of the personal laws contain any statutory provisions that specifically address this issue. But in the seminal 1995 Supreme Court ruling *Sarla Mudgal v. Union of India*, the court declared that it is unlawful to convert to a different faith in order to permit a second marriage without annulling the first. Notably, the court clarified that a husband's conversion to a different religion did not end the original marriage. The ruling offered a novel viewpoint regarding the meaning of "void" in relation to Section 494 of the Indian Penal Code. In this decision, the court stressed that the Hindu convert was still bound by the Hindu Marriage Act's provisions regarding marriage, which applied to both his previous Hindu marriage and his ability to enter into new unions while that previous Hindu marriage was still in effect. This suggests that as long as his Hindu marriage is valid, the convert follows the monogamy requirement. As a result, he is still bound by a pre-conversion monogamous marriage and cannot use his newly adopted personal law to form a polygamous marriage. As long as his Hindu marriage hasn't been officially dissolved, any marriage he enters into as a Muslim will be considered void for bigamy and subject to the criminal penalties specified under the Indian Penal Code. According to the ruling of the Supreme Court, it is illegal to enter into a second marriage while the first marriage is still legally binding, as stated by Section 494 and Section 17 of the Hindu Marriage Act of 1955. Even if someone converts to a different religion, they could still be prosecuted for the bigamy charge.

The Madhya Pradesh High Court ruled that "the conversion of a Hindu wife to Islam does not automatically annul her marriage with her Hindu husband" prior to the Hindu Marriage Act's passage. The wife cannot enter into a legally binding marriage while her ex-husband is still alive, according to additional rules made by the court. As a result, the accused was found guilty of adultery in accordance with Section 497 of the IPC. The Supreme Court reiterated in 2005 that a party's conversion to a different religion does not automatically end a marriage. Instead, it is a basis for divorce, requiring the other party to prove that they have suffered mental cruelty as a result of the conversion.

2. OBJECTIVES OF THE STUDY

1. To study the Impact of Religion Conversion on Hindu Law
2. To examine the emerging legal trends regarding maintenance of wives in India

3. RESEARCH METHODOLOGY

Adopting doctrinal methodologies has been done to examine the issues related to the Juvenile Justice system and explore genuine possibilities for its change. A descriptive and analytical study design has been developed to draw the necessary inferences and conclusions, keeping the core problem in focus. The objective of this research is to perform a thorough and qualitative examination of the Statutes, Regulations, case laws, and other legal documents in order to identify and define the fundamental theme and the connection between different laws pertaining to the subject matter. Given the doctrinal character of this research, primary data has been utilized. For the purpose, relevant articles, books, journals, and other sources have been consulted.

4. RESULTS AND DISCUSSION

In layman's words, religion is a belief system and practice of worshiping a supernatural force that determines, orders, and governs the fate of humankind.

Religion is defined by the Merriam Webster Dictionary as an orderly system of religion and worship, an individual's set of religious beliefs and practices, or a cause, idea, or belief upheld with faith and order.

Religion is defined by the Oxford Dictionary as "the belief in a superhuman controlling power, especially in a personal God or gods deserving of worship and obedience."

According to Swami Vivekananda, religion is founded on faith and belief and, for the most part, is made up of only many sects of theories, which is why we see conflicts amongst all religions.

4.1 WHAT IS MEANT BY RELIGIOUS CONVERSION?

According to its etymology, religious conversion is the process by which a convert adopts new religious views that diverge from their preexisting beliefs. It entails adopting a new religious identity or switching between different religious identities. Internalization of the new belief system is necessary for conversion. It also implies embracing a set of beliefs associated with a specific religious denomination at the expense of other religious denominations. Therefore, the term "religious conversion" would refer to the process of leaving one denomination and joining another. It is a question of religion and social structure, of both faith and affiliation, and suggests a new point of reference for one's self identity¹.

Adopting a new faith that differs from one's natal religion or previous religion is known as religious conversion. People change their faith for a variety of reasons, including:

1. Free will or free choice conversion
2. Conversion as a result of a shift in beliefs
3. Conversion for ease of use
4. Conversion brought on by marriage
5. Conversion via coercion

4.2 JUDICIAL APPROACH

The way people live has changed as a result of the progress of society; laws must reflect the prevailing sociological and constitutional principles. The Indian judiciary is actively involved in advancing societal interests these days. The ultimate objective of the legal system is to avoid injustices while upholding the principles of the Constitution and the social and cultural norms.

1. Local laws in the then-states of Bombay, Madras, and Saurashtra, respectively, forbade bigamy for Hindus, Buddhists, Jains, and Sikhs in 1946, 1949, and 1950. The Bombay law's constitutionality was contested in the local High Court following the 1950 Constitution's ratification, but the challenge was dismissed. In *Sant Ram v. Labh Singh*², the Bombay High Court and the Supreme Court concurred. The Bombay High Court concluded in *State of*

¹ The Wikipedia explanation.

² AIR 1965 SC 314.

Bombay v. Narasu Appa Mali³ that although use and conventions would come under the meaning of "laws in force," there was always a distinction between custom and personal laws, and that personal laws would not be protected by Article 13.

2. Section 5(1) of the Hindu Marriage Act 1955 sets forth the law of monogamy and forbids any deviations from it. Hindus who have already been married are prohibited from being married again as long as their first marriage is still legally binding, according to laws passed in 1955 and 1956. The Allahabad High Court confirmed the constitutional legitimacy of the restriction in *Ram Prasad v. State of UP*²⁰, despite challenges to its constitutionality. Here, both the appellant and his father hold that, in accordance with Hindu Dharma Shastras, salvation was impossible without a son and that, in the event that the family did not have a male child, certain religious duties would go unfulfilled. In an attempt to have a son with her, the appellant made the decision to wed a second time. His first wife accepted the idea at first, but later had second thoughts. The learned Judge noted that adoption was allowed by the Hindu religion and that an adopted son was equivalent to a natural born son in all respects. As a result, the petition submitted by the appellant was denied, upholding the legality of Section 5(1) of the Hindu Marriage Act of 1955.

3. The Supreme Court ruled in the **Saygobai v. Cheeru Bajrangi**⁴ case that a wife's long-term abandonment of the marital home would not be grounds for her husband to get remarried, and the second marriage would remain invalid and illegal.

4. In the **Santosh Kumari v. Surjit Singh**⁵ case, the court decided that bigamy cannot be justified by the first wife's agreement, even if it was free and sincere; in such a scenario, the second marriage would also be null and void.

5. The Supreme Court ruled in **Ban Singh v. Devi Ram**⁶, citing **Partap Singh v. Guman Singh**⁷, that the "joridari" custom of two or more brothers marrying the same woman, or two or more women, is repugnant to the enacted law and, therefore, any such marriage will be void under its provisions unless custom permits. This custom is prevalent in some regions of North India.

³ AIR 1952 Bom. 84.

⁴ AIR 1935 Bom. 5.

⁵ AIR 1990 H.P. 77.

⁶ AIR 2012 H.P. 97.

⁷ AIR 2010 H.P. 857.

4.3 CONFLICT OF MATRIMONIAL LAWS

It is relevant to concentrate on a contentious matter: which legislation will apply to a married couple if one of the partners converts to a different religion? Which spouse's law applies: the non-convert spouse's or the converted spouse's? The converted spouse frequently asserts that the rules of his new religion will control their marriage or divorce.

In the case of Jessie Grant Khambatta vs. Maccherji C. Khambatta⁸, a Muslim man from India wed a Christian woman from Scotland. They eventually arrived in India, where the woman converted to Islam. Then, in accordance with Muslim law, the husband filed for his wife's divorce. Following that, the wife wed someone by the name of Khambatta because her Scottish marriage had not been dissolved by any legal decree. The court must determine whether the first marriage was lawfully dissolved and under what circumstances. Whichever legislation is in effect at the time of marriage or after conversion. The court decided that since the marriage would be governed by law following conversion, the divorce is lawful.

In the case of Nurjahan vs. Tisanco⁹, two Russians got married in Berlin. At the time, both parties identified as Christians. They shared homes throughout numerous European nations. Then, in 1938, the husband left for Scotland and the wife traveled to India. The wife became an Islamic convert in 1940 and changed her name to Nurjahan. She presented her spouse with Islam three times, but he turned it down. According to Islamic law, a marriage is dissolved if a Muslim spouse proposes Islam to their non-Muslim spouse three times and the latter declines. The wife petitioned an Indian court for the dissolution of their marriage. The court noted that no spouse can force their new religion on their partner after they have converted to a different one, although it did dismiss the petition for lack of jurisdiction.

The parties in Aiyasabibi v. Subodh Chandra¹⁰ were Hindu residents of India at the time of their marriage. Hindu rituals and ceremonies were used to formally seal the marriage. After a while, the woman converted to Islam and presented her husband with the faith three times. She started the divorce process because he refused to accept her. The judge noted that after conversion and the dissolution of the marriage, the wife's law would apply.

In Seeda Khatun vs. Ovedia¹¹, two Jews living in India married in a Jewish ceremony in India in 1943. The wife converted to Islam in 1945 and presented her husband with the faith

⁸ AIR 1935 Bom. 5.

⁹ 45 C.W.N 1047.

¹⁰ (1945) 2 Cal, 405.

¹¹ (1945) 49 C.W.N. 745.

three times. She started the divorce process because he refused to accept her. The petition was denied by the court. It was noted that merely because one of the parties had changed to a different religion, a marriage consummated under one personal law could not be dissolved under another personal law. The same stance was adopted by the Calcutta High Court in Rakeya Bibi v. Anil Kumar¹². In Rabav Khanan v. Khodadad Jomanji Irani, the Bombay High Court likewise adopted the same stance¹³.

At the time of their marriage, both parties in Vilayat Raj, also known as Vilayat Khan vs. Smt. Sunila¹⁴ were Hindus. The husband eventually converted to Islam. The husband then used the Hindu Marriage Act of 1955 to sue for divorce from his wife. The spouse objected, claiming he was no longer a Hindu and that he was no longer eligible to file a petition under the Act. The court decided that pre-nuptial law, or the Hindu Marriage Act, applied even after a couple converted to Islam if both of them were Hindus at the time of marriage.

The Supreme Court was asked to decide in Sarla Mudgal v. Union of India¹⁵ whether a Hindu spouse who was married under Hindu law might formally enter into a second marriage by converting to Islam. Would such a marriage be deemed lawful if the prior marriage had not been legally dissolved? Whether the Indian Penal Code's Section 494 would find the apostate husband guilty of the crime?

The court ruled that a Hindu guy who got married and then converted to Islam would be guilty of bigamy and his marriage would be null and void. Later, in the case of Lily Thomas v. Union of India¹⁶, the court adopted the same stance.

The aforementioned issue of interpersonal conflicts of law arises only from the absence of a single set of laws applicable to all Indian residents. The concepts of justice, equity, and good conscience are applied by the courts to decide situations where there is no clear standard to address these concerns. This allows the Indian judiciary the freedom to make decisions based on its discretion. It also leads to ambiguity in the law, which makes speculating on the law challenging¹⁷.

¹² Rakeya bibi v. Anil Kumar, (1948) 2 Cal. 119

¹³ Rabav Khanan v. Khodadad Jomanji Irani, (1948) 48 Bom, I.R. 864- 1947 Bom. 272.

¹⁴ AIR 1983 Delhi 351.

¹⁵ AIR 1995 SC 1531.

¹⁶ AIR 2000 SC 1650.

¹⁷ P.Lakshmi, "Religious Conversions and Conflict of Matrimonial Laws" D.U.Law Journal, Vol. 1, No. 1, 2913, p. 189.

5. CONCLUSION

Regarding the aforementioned topic, it is imperative that India's personal laws be changed and that a unified civil code be implemented for all of the country's residents. A person's religion can be derived from his or her faith and beliefs, but the laws that govern an individual cannot be derived from the same sources. Since it is claimed that people's ability to follow their religion is restricted and that they are not permitted to convert, any protest against religious conversion is automatically labeled as persecution. The reality is wholly distinct. The other individual is equally free to follow their religion without hindrance. That's what they were born with. Religious freedom does not include the ability to participate in an organized conversion program. A program like this should be seen as an attack on other people's right to freedom of religion. Therefore, it is imperative that a thorough law be enacted in this area. Despite the Hindu Marriage Act of 1955 having enough anti-polygamy measures, the legal system is still lagging behind and posing obstacles to the law's enforcement. Creative ways to get around the legislation are found. The Act's rites for solemnizing marriage are not deemed required by the majority of Indian groups, allowing spouses to engage in bigamous relationships. The only way to eliminate this social threat is through social reform. Investigating the legal ramifications of the bigamy crime is imperative right now. The impact of their choices and rulings regarding technicalities to support a second marriage should be understood by the courts.

REFERENCES

1. Agarwala, R.K., Hindu Law, Published by, Central Law Agency, Motilal Nehru Road, Allahabad, Twenty-third Ed., 2011.
2. Agnes, Flavia. (1995), "Hindu men, monogamy and uniform civil code." Economic and Political Weekly: 3238-3244.
3. Agnes, Flavia. (2006), "The Supreme Court, the Media, and the Uniform Civil Code Debate in India." The Crisis of Secularism in India, pp. 294–315.
4. Ahmad, Aqil, Mohammadan Law, Published by Central Law Agency, 1995 Ed. Chandra, U, Human Rights, Published by Allahabad Law Agency Publications, Allahabad, Fourth Ed., 2002.
5. Ahmad, Tufail. (2016), "My blueprint for the Uniform Civil Code". Retrieved 30 November.

6. Ahmed Imtiaz: Adoption in India: A Study of Attitudes in the USW Vol. XXXVI, No.2 (July 1975).
7. Alberta Civil Liberties Research Centre and Children's Legal and Educational Resource Centre, The Adoption Handbook, ISBN: 1-896225-41-1, 2006
8. Alston, Philip & Robinson, Marry, Human Rights and Development-Towards Mutual Reinforcement, ISBN: 13: 978-0-19-568411-7; 10: 0-19-568411-7, Prepared in collaboration with the center for Human Rights and Global Justice New York University School of Law, Published by Oxford University Press, Indian Ed., 2006.
9. Ambedkar B.R., (2014), The Annihilation of Cast: The Annotated Edition, 11 (Navayana Publication, New Delhi,).
10. Ambedkar, B.R., The Rise and Fall of Hind Women, Published by Bheem Patricia Publications, Jalandhar, 1st Ed., 1980.
11. Anand, A.S., Chief Justice of India, Justice for Women-concerns and expressions, ISBN: 81-7534-356-7, Published by Universal Law Publishing Co. Pvt. Ltd., Second Ed., 2003.
12. Anand, Utkarsh (13 October 2015), Uniform Civil Code: There's total confusion, why can't it be done, SC asks govt, New Delhi: The Indian Express
13. Anderson J.N.D.: Muslim Personal Law in India in Tahir Mahmood (ed.) Islamic Law in Modern India (1972).
14. Annual Report: Ministry of Home Affairs (2003-04)
15. Atteka, A.S., Elite Women in Indian Politics, Published by Vikas Publishing