EFFECTS OF CONVERSION ON FAMILY AND SUCCESSION RIGHTS

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ABSTRACT

The term "religion" has not been given a proper definition and thus it is difficult to understand what exactly religion is. The Supreme Court has made endeavors to define religion as a faith with individuals or communities and not theistic. Religion has derived its basis in "a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual wellbeing." however it incorrect to say that religion is nothing else part from a doctrine of belief. Generally, a religion lays down a code of ethical rules to be followed by its followers, or maybe some rituals, observances, ceremonies or modes of worshipping which are considered to be the integral part of any religion. Some religions may also prescribe the kind of food to be eaten or the sort of dresses to be worn. Religion is just a matter of belief and personal faith. Each and every person has a right to enjoy his or her own religion and also its beliefs and ideas as approved by his judgment or conscience.[i]

As per the 2011 census, the nation has a region of 1.3 million square miles and a populace of 1.15 billion. Hindus constitute 79.8 percent of the populace and Muslims 14.23 percent, Christians were 2.30 percent of the population, Sikhism constituted 1.72 percent, Buddhism were 0.70 percent of the total population. A category of no religion was added this year and this constituted 0.9 percent of the total population. Bunches that constitute under 1.1 percent of the populace incorporate Buddhists, Jains, Parsis (Zoroastrians), Jews, and Bahais. Marginally more than 85 percent of Muslims are Sunni; the rest are Shia. Tribal gatherings (indigenous gatherings truly outside the standing framework), for the most part included among

Hindus in government insights, frequently hone customary indigenous religious convictions (animism).[ii]

There are extensive Muslim populaces in of Uttar Pradesh (UP), Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, and Kerala; Muslims are the greater part in Jammu and Kashmir. Despite the fact that Muslims are a minority, the nation has the world's second-biggest Muslim populace. Christian populaces are found the nation over however in more noteworthy fixations in the upper east, and in the southern conditions of Kerala, Tamil Nadu, and Goa. Three little northeastern states (Nagaland, Mizoram, and Meghalaya) have expansive Christian larger parts. Sikhs are a majority in Punjab.

Two hundred and fifty million people, or 24 percent of the populace, have a place with the Scheduled Castes (SC), otherwise called Dalits and Scheduled Tribes (ST). Some changed over from Hinduism to different religions, apparently to escape separation since numerous SC and ST individuals kept on confronting hindrances to social headway. Separation in view of standing was formally unlawful however occurrences of segregation happened, particularly in provincial territories. Some who changed over from a longing to escape separation and savagery experienced antagonistic vibe and reaction from conservative areas of Hindu society.

As per the 1992 National Commission for Minorities Act, six religious communities – Muslims, Sikhs, Jains, Christians, Parsis, and Buddhists – were considered minority communities.

INTRODUCTION

What is Conversion?

Where a person adopts another religion by formally converting to another religion in accordance with the procedure and formalities prescribed by the other religion for which conversion is sought and the said person ceases to be the follower of his or her former faith and becomes the follower of new faith, it is known as conversion. Generally, conversion to another religion is effected by undergoing the formalities and ceremonies of the religion. All religions have different modes of conversion.

Religion is a very sensitive and personal aspect of individual's life and the Constitution of India guarantees the freedom of conscience and religion to people of all denominations. Thus, a person is free to profess any faith or relinquish his faith or birth and convert to another religion. However, in view of the diversity of personal laws in our country, upon apostasy the personal law of the convert would change too with legal consequences o affecting his matrimonial life. The basic idea underlying for granting the relief in case of conversion is that after getting converted into another religion the apostate is governed by other personal laws and also could mean a radical change occurring in the personality of the convert. [iii]

Conversion – nature of and essentials to be proved: Conversion is a solemn act just like marriage. Conversion, in India has a lot of impact on both social and legal rights of the person. Conversion affects many rights such as succession, marital rights, adoption rights and others. Under Hindu Law, divorce can be granted solely on the ground of conversion to another religion as per Section 13(1)(ii) of Hindu Marriage Act, 1955. Not only the family rights are affected, but also the right to contest the elections from the constituency reserved for Schedule caste or Schedule tribes is lost if the person changed his or her religion. Therefore, the act of conversion is of utmost importance from the point of view of rights and disabilities of a convert. Conversion is not required to be treated as any event which can be attained by mere declaration whether oral or writing. For conversion, no particular formality or ceremony is required under any personal or secular laws, and this has been reiterated by the Supreme Court in numerous cases. There are no ceremonies prescribed under the personal laws to convert, but some rely upon 'Suddhi' in Arya Samajists, baptism is recognized by the Christians. A clear intention to convert should be present along with overt acts to show that there was an intention to convert without any force, fraud or allurement, and evidence should be given to prove this. The conduct of the person after conversion subsequently is also vital to reach at a conclusion that conversion has taken place and such conversion was genuine and there was no malafide intention behind it. It has been held by the Supreme Court that no particular ceremony or ritual is required to prove conversion. Satisfactory evidence of conversion which has always been insisted upon by the Courts is necessary especially when we hear plethora of complaints of manipulated conversions for extraneous reasons or as a result of undue pressures. There have been many complaints where people have stated that they have gone through conversion by manipulation and due to undue pressure from either the society, influential people in politics or the government itself. The Courts including Supreme Court have consistently held that the law

does not require any particular ceremony or ritual for conversion, but what is necessary is a bona fide intention to convert to another religious faith accompanied by conduct unequivocally expressing that intention. The satisfaction of the Court on this aspect should necessarily be present and the filing of declaration of conversion before a prescribed authority is one of the important aspects that aids the Court in reaching such satisfaction, but that should not be the sole criterion.[iv]

Right to Change Religion

When the Constitution of India was being drafted, the first draft sought to restrain conversion from one to another religion except in cases where a person wished to change his or her religion through their free will. The second draft proposed a guarantee of "right to preach and convert within the limits compatible with public order and morality". Finally under Article 25 of the Constitution, a provision was incorporated that every individual is entitled to "freedom of conscience and the right to freely profess, practice, and propagate religion". The expressions "freedom of conscience" and "right to freely profess religion if read together, includes freedom to renounce one's religion and embrace any other faith. This article clearly implies that a person, no matter in which religion he is born, has a right to convert to any other religion as per his wishes. This right has been restricted only as regards to not to affect public order, morality or health.[v]

The British rulers never imposed any restrictions on one's right to propagate religion. They encouraged evangelists and facilitated conversion to Christianity by introducing new measures in the domain of private law so as to remove hurdles in the way of conversion of others to Christian religion and other attractive legal relief to the converts to Christianity.[vi]

In the Bengal Presidency of British India a regulation of 1832 laid down a new rule in Section 9:

"Whenever in any civil suit the parties are of different persuasions, e.g. when one party if of the Hindu and other of the Mohammedan persuasion, or where one or more of the parties to such suit is or are not either of Mohammedan or of permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled".

This provision nullified the effect of provisions under Hindu and Muslim laws of succession under which conversion to another religion would be a ground for exclusion from inheritance of property.

After this, Caste Disabilities Removal Act, 1850 was passed. This Act remains in force till now and it provide protection to all the converts from forfeiture of right to property on conversion.

Caste Disabilities Removal Act, 1850[vii]

The present Act is one from the British India under the East India Company ruling and the same was named and short titled as 'the Caste Disabilities Removal Act, 1850' (Act no. 21 of 1850) by the Indian Short titles Act, 1897 (Act no. 14 of 1897). What's more, extreme question and reason for this Act is to broaden certain standards of the Bengal Code, all through India. Prior such expansion was looked for all through the regions which were subjected to the Legislature of the East India company, as there was English control in India, however the same was brought off and supplanted with the India by the Act no. 3 of 1951, which was instituted by the lawmaking body of Autonomous India. The present Act was instituted by the Governor General of India in Board on eleventh day of April, 1850 and on a similar date it was consented as well. Furthermore, for its expansion, the Amending Act of 1951 included the same, saying that the said provisions of the Act ought to be stretched out to the whole regions of India, nonetheless, the Condition of Jammu and Kashmir was exempted from such augmentation. Also there were enacted several laws, under which the mentioned areas and territories were to be extended with the provisions of this Act, including the Act of Berar Laws Act, 1941, which was enacted to extend the provisions of the present Act of 1850 to the Berar; by the Laws Local Extent Act, 1874, in all the Provinces of India, except the Scheduled Districts; by the Sanathal Pargnas Settlement Regulation, 1872, in the Sonthal Parganas; by Regulation of 1963, in the Dadra and Nagar Haveli; by the Act of 1968, in the Union territory of Pondicherry and by other laws the provisions of this present Act were extended to the Districts. The contemplation which was enacted by the Section 9, Regulation VII, 1832, being Bengal's regulation of the Bengal Code was sought to be extended by this Act to the territories throughout India. Said provided was enacted to provide for operation of the religious laws for entitling the party or parties as to any property. The reference of the party or parties as aforesaid, is in relation to the civil suit, wherein the parties belonging to the different persuasions like one is of Hindu persuasion and another is of Mohammaden persuasion or some of the parities are not of any such persuasion.

In so far as the arrangements of the present Act are concerned, there are two segments in the sanctioning, and the first in which was taking effect as to the then Laws or Usages which were having power in India such that any rights or properties which a man was proprietor of, were to be relinquished under those laws or uses as on his change of his religion or even on his being expelled or avoided from the Fellowship of such religion. Such laws or usages were additionally tried to be made affectless, which are weakening or influencing any privilege of legacy, by reason of such people revoking the religion or his being prohibited from the fellowship of such religion, or regardless of the possibility that his being denied of rank.[viii]

The Caste Disabilities Removal Act (XXI of 1850) states as under-

"An Act for extending the principle of section 9, Regulation VII, 1832 of the Bengal Code throughout India. WHEREAS it is enacted by section 9, Regulation VII, 1832, of the Bengal Code, that "whenever in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindu and the other of the Muhammad an persuasion, or where one or more of the parties to the suit shall not be either of the Muhammad an or Hindu persuasions the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled "; and whereas it will be beneficial to extend the principle of that enactment throughout India; It is enacted as follows :--

"So much of any law or usage now -in force within the territories subject to the Government of the East India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance by reason of his or her renouncing or having been excluded from the communion of any religion, or being deprived of caste shall cease to be enforced as law in the Courts of the East India Company and in the Court established by Royal Charter within the said territories".

In *Gulab v. Mst. Ishar Kaur,* it was observed-

"The High Court of the N. W. P. has held in a judgment published as I. L. R. XI All. 100, that Act XXI of 1850 does not apply only to a person who has him- self or herself renounced his or her religion or been excluded from caste. The latter part of Section 1 protects any person from having any right of inheritance affected by reason of any person having renounced his religion

or having been excluded from caste. This applies to a case where a person born a Mohammedan, his father having renounced the Hindu religion, claims by right of inheritance under the Hindu Law a share in his- father's family. This ruling has been approved by a Bench of this Court in an unpublished judgment in C. A. 1413 of 1890. Some doubts were expressed regarding its correctness in a judgment published as P. R. 82 of 1890, the plaintiffs in which case were the same as in C. A. 1413 of 1890, but it was not necessary to decide the point as it was held that for various reasons, among which was the fact of diversity of religion, the burden of proving that they were entitled to contest an alienation made by a childless proprietor was on the plaintiffs, and they had failed to sustain it."

Similarly, it has been held in *Mahna v. Chand*, that Act XXI of 1850 was not intended to be restricted only to the convert himself and that there is nothing in the language of S. 1 to debar the extension of its beneficial provisions to the heir of the convert, no less to the convert himself.

Where a Hindu by birth became a convert to Christianity and it was found that the family had severed all connection with Hindu society and in matters relating to social intercourse, marriage and the similar usages abandoned all caste distinction and had thoroughly identified themselves with the members of the religion of their adoption, held, that no custom or usage in conformity with Hindu Law was applicable and that the Indian Succession Act afforded the rule of succession applicable to the case. The object of Act XXI of 1850 is not to confer On any party the benefit of the provisions of Hindu or Mohammedan Law, but to repeal and abrogate so much of the provisions of these laws as by reason of change of religion deprives any party from continuing to hold property held before conversion or from succeeding to property as an heir after conversion. Act XXI of 1850 is therefore not applicable in such cases.

The Caste Disabilities Removal Act of 1850 secures to individuals the same right in property after apostasy as they enjoyed before apostasy. Therefore, the right of a minor son to sue for a declaration that a certain mortgage deed executed by his father should not affect his rights as member of the joint Hindu family after the death of his father is not taken away by the fact of the son having embraced Islam.

In *Budhu Ram v. Muhammad Din,* a case relating to Aroras of Dera Ghazi Khan District, it was held that the fact that some of the sons had adopted Islam did not affect their right of succession. The conversion of a Khatri to Islam separates him from the joint, family, but he is nevertheless entitled to his share in the co-parcenary ancestral property, if claimed in time.

The Act XXI of 1850 has the effect of abrogating the rule of Mohammedan Law by which a non-Muslim is debarred from inheriting the property of a Muslim. The conversion of a Hindu co-parcener to an alien faith such as Mohammedanism has the effect of separating the convert ipso facto from the coparcenary. Conversion of a Christian to Islam does not deprive his Christian Heirs of a right of succession. Conversion to Islam does not deprive a man of the right to collateral succession.

EFFECTS OF CONVERSION UNDER HINDU LAW

HINDU LAW

Who is a Hindu*?*[ix]

As per Section 2 of Hindu Succession Act, 1956:

"Any person is a Hindu by religion if it includes:

I. (a) A "Virashaiva"

(b) A "Lingayat"

(c) A follower of the "Brahmo", "Prathana" or "Arya Samaj".

II. (a) A Buddhist by religion

(b) A Jain by religion

(c) A Sikh by religion

The Hindu laws also applies to any person who is not a Muslim, Christian, Parsi or Jew by religion. Such persons should not have been governed by the Hindu Law or any custom or usage with respect to any matters mentioned under the Hindu laws."

The Hindu Law applies to persons who are Hindu by birth and also to those who convert their religion into Hinduism.

Under Hindu law, mere renunciation or practice or professing of another religion does not amount to losing his faith and conversion. Thus, if a person is Christian by faith, and later on becomes an admirer of Hinduism to an extent where he starts to practicing and preaching Hinduism, that would not imply that he has become a Hindu.

Even in the "Dharamshastras", no ceremony or procedure of conversion is provided and it makes it quite evident that ancient Hindu Law did not provide for conversion into another religion. Only the "Arya Samajist" provide a ceremony for conversion i.e "Sudhi". If a person undergoes the ceremony of "Sudhi" and converts to Hinduism, he would be called an "Arya Samajist Hindu".

It has been held in *Peerumal v. Poonuswami,*[x]. by the Supreme Court that-

"a person may also become Hindu if after expressing an intention whether expressly or impliedly, he lives like a Hindu and the community or caste into which he has been ushered has also accepted him as a member of their community or caste. In such cases, the intention and conduct of the convert has to be looked into, and if such intention is clearly indicative of his conversion, then lack of some formalities will not negate the accomplished fact.[xi] It is also immaterial to which class of Hindus convert belongs. Also, it is not essential to show that he is practicing or following tenets of any sect or sub sect of Hindus."

It is to be noted that a person who is a reconvert to Hinduism, Jainism, Buddhism or Sikhism is also a Hindu under codified and uncodified Hindu Law. For instance, if a person ceased to be a Hindu and converts himself into any non-Hindu religion, he becomes a Hindu if he reconverts to any of the four religions i.e. if he is a Jain and he converted himself into Islam, and he reconverts himself into Sikhism, he will be considered as a Hindu.

There are two well established propositions under Modern Hindu law. A non-Hindu becomes Hindu by conversion-

1. In case he undergoes a formal ceremony of conversion and reconversion which is prescribed under the caste or community to which he is converting or reconverting and;

2. If he expresses a bona fide intention to become a Hindu accompanied by conduct clearly expressing his intention and acceptance of him as a member of the community in which he converts.

It is a well settled principle of law that where a person has accepted a religion, then he cannot rely on a custom opposed to that religion and in the same manner where a Hindu has converted to Mohammedan, he will be governed by Muslim laws only. [xii]

All the Hindu-Law Acts which have been enacted by the Parliament till date dealing with maintenance, adoption, marriage and guardianship impose loss of all family rights on those who "cease to be Hindu".

CONVERSION AS A GROUND OF DIVORCE UNDER HINDU MARRIAGE ACT, 1955

Section 13(1) (ii) in The Hindu Marriage Act, 1955

Divorce:

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

(ii) has ceased to be a Hindu by conversion to another religion."

As given under Section 13(ii) of sub section (1) of Hindu Marriage Act, 1955, divorce can be obtained by either of the parties if one of the parties converts himself to another religion. The concept consists of three main expressions i.e.

(a) who is a Hindu;
(b) ceased to be a Hindu;
(c) By conversion to another religion.

A Hindu has been defined under section 2 Hindu Marriage Act, 1955 which includes any person who is a Hindu, Buddhist, Jain or Sikh by religion.

It is to be noted that this ground is available as a ground for judicial separation also. Before the amendment in 1976, the grounds for divorce and judicial separation were different and

conversion into another religion was not a ground for judicial separation. After the amendment in 1976, the grounds for divorce and judicial separation are the same and hence conversion is now a ground for judicial separation as well.[xiii]

A person would not cease to be a Hindu only for the reason that he has declared that he has no faith in his religion. He would also would not cease to be a Hindu merely because of the fact that he does not practice his religion or eats beef, insults Hindu Goddess and Gods or even if he leads an unorthodox life. Even if he starts expressing his faith in any other religion and also starts practicing it, he would not cease to be a Hindu.

It is of utmost importance that the respondent in this case has converted himself into a non Hindu faith such as Islam, Christianity or Zoroastrianism by observance of formalities required under their laws. It is not mandatory for the convert to practice his faith genuinely.

Another very important aspect under this clause is that conversion of the respondent would not lead to automatic dissolution of marriage. The petitioner only has an option to file a petition for divorce. Also, if the petitioner continues to live with the converted spouse, then nothing would abstain him or her to do so. Thus if a Hindu husband converted himself into Mohammedan then also none of his obligations would come to an end[xiv]. It has also been held in a case that Hindu marriage is a "Sanskara" and thus can't be put to an end by converting into another faith.[xv]

The issue whether a marriage performed under the Hindu Law can be dissolved under the Hindu Marriage Act, 1955 by a spouse who ceases to be a Hindu by conversion to another religion was considered by the Delhi High Court in *Vilayat Raj v. Sunita,*[xvi] The parties were Hindus at the time of the marriage in 1978. In 1980 they started living separately and in 1981 the husband filed a petition for divorce under section 13(1)(ia) under the ground of cruelty. In the petition, he clearly mentioned his religion as Muslim at the time of filing such suit. The plea was accepted by the lower court but this decision was upturned by the High Court. It held that the relevant date on which both the parties are required to be a Hindu so as to enable to file a petition under Hindu Marriage Act, 1955, is the date of marriage and not the date of filing of the petition. The court observed in this case:

"Conversion per se does not operate to deprive the party, of rights which may be otherwise available to him under the Act. A party is not entitled to take advantage of his own wrong or

disability and gain from a situation which he has brought about resulting in detriment to the spouse…But if the aggrieved party does not seek dissolution on this ground does it debar the other party from approaching the court on the grounds, which are available to him under the Act? It would appear not."

In this case, reference was also made to the Dissolution of Muslim Marriage Act, 1939 which provides under Section 4 that renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not, by itself, operate to dissolve her marriage. The court also stated that even though the Hindu Marriage Act does not make any provision to effect this, but the converted spouse would nonetheless be entitled to file a suit under it because he is not seeking any relief on the ground of conversion nor is his case based on it in any manner.

It is also noteworthy that the convert spouse can't file a petition for divorce under this section as this would lead to taking advantage of one's wrong. Only the innocent spouse can file a petition under this.

The leading case on this issue is *Sarla Mudgal v. Union of India*[xvii]. In this case it was held that Hindu Marriage Act enforces monogamy in a strict sense and when a person is married already under Hindu law, he by embracing Islam cannot solemnize a second marriage under Muslim Law, which permits polygamy. The facts of the case are that there are two main petitioners to the case. Petitioner one is a registered society by the name Kalyani who helps distressed women where Sarla Mudgal is the head of the organization. The other petitioner is Meena Mathur who got married to Jitendra Mathur on February 27, 1978 and as a result three children (two sons and a daughter) were born out of the wedlock. In 1988, the petitioner got to know that her husband had solemnized another marriage with a lady named Sunita Narula also known as Fathima which took place after their conversion to Islam and adoption of Muslim religion, despite having first marriage subsisting. The petitioner contended that the conversion by her husband was solely for the purpose of marrying the second lady which is not allowed under Hindu law and thus he is liable for punishment under section 494 of Indian Penal Code ie. Bigamy. It was contended n behalf of the respondent Jitender Mathur that having embraced Islam, he can have four wives despite the fact that his first wife continues to be Hindu. Another fact which was noted here in this case was that Sunita (Fathima) is the petitioner. She contended "that she along with Jitender Mathur who was earlier married to Meena Mathur had embraced

Islam and then got married and subsequently a son was born to her." She further clearly laid down that "after marrying her, Jitender Prasad, under the influence of her first Hindu-wife, gave an undertaking on April 28, 1988 that he had reverted back to Hinduism and had agreed to maintain his first wife and three children". Her complaint is that she continues to be Muslim, and is not maintained by her husband and also she has no protection under either of the personal laws in India. The Supreme Court reiterated that -"the second marriage is invalid because until and unless the first marriage is dissolved by a decree under Hindu Marriage Act, the second marriage during the subsistence of the first one would be in violation of Hindu Marriage Act which clearly and strictly enforces monogamy and such marriage would lead to hold the respondent liable under section 494 of IPC, 1860." The necessary ingredients of Section 494 were also discussed by the court which are:

1. "having a husband and wife living"
2. "marries in any case"
3. "where such marriage is void"
4. "by reason of it taking place during the lifetime of such husband or wife."

Section 494 of IPC states:

"Marrying during lifetime of husband or wife- whoever, having a husband or wife living, marries in any case in which such marriage in any case is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

Exception- this section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the life of the former husband or wife, if such husband or wife, at the time of subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge."

It was thus observed by the court that all the conditions were meted out in case a person converts his or her religion in order to get married to another person. It was also stated by the

Court that although the marriage solemnized by a Hindu husband after adoption of Islam as his religion may not come within the purview of void marriage under the Hindu Marriage Act, 1955 because of the fact that the apostate is no more a Hindu, but between the apostate and his Hindu wife the second marriage is in violation of the provisions of the Act and as such would be non est.

In *Lily Thomas v. Union of India*[xviii], the question arose again where the petition was filed to seek review of the judgment given in Sarla Mudgal's case. The foremost contention was that the decision resulted in the deprivation of the fundamental right to freedom of religion. It was contended that the impugned case is contrary to the fundamental rights to life and liberty as well as freedoms enriched under Article 20, 21, 25 and 26 of the Indian Constitution. The court refused to depart from its earlier view and clearly held that the review is without any substance and thus, is liable to be dismissed. The contention of the petitioner that the judgment in the case of Sarla Mudgal violates the freedom of conscience, free profession, practice and propagation of religion which has been guaranteed under Article 25 and 26 was regarded as farfetched and artificially carved out by people who were trying to violate the law and get protection under Article 25.

The Court rightly said-

"the second marriage solemnized by a Hindu during the subsistence of the first marriage is an offence under Indian penal Code. Freedom under article 25 is not required to be encroached upon a similar freedom of other persons under the constitutional scheme every person has a right to entertan his or her religious belief and also to exhibit his belief or ideas in a rightful manner which does not infringe religious rights and freedom of the others."

Another contention raised by the petitioner was that if a convert is held liable for bigamy under section 494 of IPC, it would be against Islam which permits polygamy. The Apex Court clearly mentioned that this is the ignorance of the petitioners towards the religion of Islam and its teachings. The Court said-

"the word Islam means peace and submission. It its religious connotation it is understood as "submission to the will of God", Muslim law as traditionally interpreted in India does permit polygamy with the condition that co wives will be treated equally in all manners. Even under the Muslim law, purity of marriage is not unconditionally conferred upon the husband. Thus,

even under Muslim law, it would mount to injustice is a person gets converted to another religion only in order to permit polygamy. The Islam which is pious, progressive and a respected religion cannot be given such a narrow concept as has been done by the violators."

It was observed by the apex court:

1. "it is under Hindu Marriage Act, 1955 that it has to be seen whether the husband who gets married again has committed the offence of bigamy or not.
2. Where a Hindu wife files a complaint for the offence under section 494 of IPC, the offence of bigamy pleaded by her would have to be investigated and tried in accordance with the provisions of HMA.
3. Conversion or apostasy does not automatically dissolve a marriage which has been solemnized under the Hindu Marriage Act as they continue to be Husband and wife and conversion only provides a ground of divorce under section 13 of the HMA.
4. Religion is a matter of faith stemming from the depth of the heart and mind. Religion, faith and devotion are not easily interchangeable. If the person adopts another religion only in order to obtain some wordly gain or benefit, it would amount to religious bigotry. And if it is looked from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted in order to renounce the first marriage and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited."
5. The grievance that the judgment in *Sarla Mudgal v. Union of India* amounts to violation of the freedom of conscience and free profession, practice and propagation of religion is far-fetched. Under the constitutional scheme every person has a fundamental right not merely to entertain the religious belief of his choice but also to exhibit his beliefs and ideas in a manner which does not infringe the religious right and personal freedom of others."

EFFECTS OF CONVERSION ON SUCCESSION

Section 26 of Hindu Succession Act states-

"Convert's descendants disqualified"

Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens."

The law applicable to converts before passing of the Succession Act 10 of 1865 was not in a settled position. The question came before in the case of *Abraham v. Abraham (1863) 9 MIA 199,* in which the Privy Council expressed the following opinion:

"That upon the conversion of a Hindu into Christianity, the Hindu Law ceases to have any binding or obligating force upon the convert. He may renounce the old law by which he was bound as he has renounced his old religion, or if he thinks fit, he may abide by the old law, notwithstanding he has renounced the old religion. The profession of Christianity releases the convert from the trammels of the Hindu law but it does not of necessity involve any change of the rights or relations of the convert in matters with which Christianity has no concern, such as his right and interest in and his power over property."

Thus, native Christians and such other native tribes, as are not governed either by the Hindu or the Mohammedan Law, would be governed by the law which they have adopted by the course of their conduct or by the customary law which they had observed from time immemorial.

Since the enactment of the Act of 1865 the decision in Abraham's case has lost its force in *Dagree v. Pacotti*. It was held that this Act and the rules of inheritance prescribed by it applied to Hindus who became Christians and the evidence to show that they and the community to which they belonged retained the Hindu custom was inadmissible. The decision was allowed in *Napel Bala v. Sita Kanta.*

In a recent decision by the Madras High Court it was held that normally Christian are not governed by Hindu Law. If a Hindu gets converted as a Christian he automatically gets severed from the Hindu family. Conversion in religion as far Hindu law is concerned, not only affects his religion, but also his right. In that case the court held that in spite of conversion he continued as a Hindu and was entitled to partition.

Rights of converts in the Joint Family Property

According to Hindu law, every coparcener takes by birth a vested interest in the joint family property. This Act does not affect the right of coparcenership as between as those to whom it applies. The Act does not take away any vested right of coparcener. It was held in *Tellis v. Saldanha*[xix] that the right of survivorship of a coparcener was a contingent right. For instance, if A and B are brothers in coparcenery own property jointly and if A becomes a Christian and if B dies after passing of the Succession Act, the right of A to succeed to whole property by survivorship is gone. This decision however has been disapproved in *Francis Ghosal v. Gabri Ghosal*[xx] where it was held that the Succession Act did not affect the rights of coparcenery. In *Kulada Prasasd v. Haripada Chatterjee*[xxi] was held that upon the conversion a member of a joint Hindu Family to Christianity the member continued to hold the ancestral property as joint owner and he was entitled to recover the possession of his share on the basis that there was a dissolution of the family at the date of his conversion, that he was liable to satisfy the debts of his father incurred and charged upon ancestral property subsequent to the date of his conversion but was liable for debts incurred prior to conversion.

After passing of the Succession Act, intention on the part of a Christian convert be governed by the Hindu law would be of use in determining the succession to his property and the rule of survivorship cannot be applied in consequence of any such intestate imputable to heirs. No provision in the Succession Act in terms to put an end to the survivorship but the conversion of a member of a Hindu family to a different religion destroys coparcenary just as much partition does. But as the rights of the convert are preserved by statutory in enactment the result is that they become co-owners in other words, they remain co-owners and became tenants-in-common.

EFFECTS OF CONVERSION ON MAINTENANCE[xxii]

Section 18 of Hindu Adoption and Maintenance Act, 1956-

"Maintenance of wife.-

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or willfully neglecting her.

(b) if has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injuries to live with her husband.

(c) if he is suffering from a virulent form of leprosy.

(d) if he has any other wife living.

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere.

(f) if he has ceased to be a Hindu by conversion to another religion.

(g) if there is any other cause justifying living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion."

Under the Hindu Law conversion from Hinduism operates as a forfeiture of the right of the convert to claim maintenance and thus if a wife converts to another religion she cannot claim separate maintenance from him. A person inheriting property from his father is required to provide maintenance to the legal dependants of the deceased father, but this does not apply to any dependant who has ceased to be a Hindu, no matter how old or infirm he or she is.[xxiii] It has been clearly laid down under Section 18(2)(f) of Hindu Adoption and Maintenance Act that Where the husband renounces Hinduism, his Hindu wife becomes entitled to claim a right to separate residence as well as maintenance from him.

EFFECT OF CONVERSION ON RIGHT TO GUARDIANSHIP

Section 6 in the Hindu Minority and Guardianship Act, 1956-

"Natural guardians of a Hindu minor. — The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section, the expression "father" and "mother" do not include a step-father and a step-mother."

Section 6 of Hindu Minority and Guardianship Act, 1956 clearly lays states that a convert father or mother cannot act as his or her minor child's guardian in respect to its person or property. Mere denunciation or repudiation of Hindu faith is not enough. At the same time, a Hindu declaring his liking for another faith is not enough. He needs to accept that particular faith by converting to it, and then only he would cease to be a Hindu. If a person stops practicing his religion, or doesn't have faith in it or renounces it or leads an unorthodox life, such person would still continue to be a Hindu. If a Hindu converts to any one of the four religions of Hindus, he will still continue to be a Hindu .Only if a person converts to non-Hindu faith, such as Christianity, Islam or Zoroastrianism, he will cease to be a Hindu. It is further specified that when one of the parents is non-Hindu, from the beginning or from the time of marriage, then this clause is not applicable. Thus, if a Hindu gets married to a Muslim female and the couple wants to make an adoption, he cannot dispense with the consent of his non- Hindu wife on the ground that she is a non-Hindu and also "ceasing to be a Hindu" is not similar to "being a non-Hindu".[xxiv]

A parent who has ceased to be a Hindu is not entitled to guardianship.[xxv]

It was held in *Helen Kinner v. Sophia,* [xxvi]by the Privy Council that the paramount consideration with regard to guardianship is the welfare of the minor. Thus, if the parent or guardian changes his or her religion, it is a factor to be taken into consideration as to the fitness of the parent in order to continue as a guardian.

It has also been held by the Honorable Supreme Court in *Gita Hariharan v. R.B.I. JT*[xxvii]that mother's right to guardianship stays even after she has converted her religion.

EFFECT OF CONVERSION ON RIGHT TO ADOPTION

Section 7 and 8 of Hindu Minority and Guardianship Act, 1956-

"7. Capacity of male Hindu to take in adoption.-

Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Explanation. - If a person has more than one wife living at the time of adoption, the consent of all the wives in necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.

"8. Capacity of a female Hindu to take in adoption.-

Any female Hindu-

(a) Who is sound mind?

(b) Who is not a minor, and

(c) Who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind

Has the capacity to take a son or daughter in adoption."

Hindu Adoption and Maintenance Act, 1956 lays down that a person who has a natural son cannot adopt a son, but he can do so if the natural son converts; and one having a natural daughter cannot adopt a daughter except in cases where she has converted to another religion. Also it has been mentioned that a married man must obtain his wife's consent for adoption of a child and he may ignore to do so in case she has converted to another religion; and in the same manner if the man is guilty of conversion then the consent of the husband may be dispensed with in cases of adoption.[xxviii]

CONVERSION UNDER MUSLIM LAW

Muslim law applies to:

1. Mohemmedans by birth
2. Mohemmedans by conversion.

In Islamic writing, apostasy is called "irtidād" or "ridda" and an apostate is called "murtadd", which actually signifies 'one who turns back' from Islam. Someone destined to a Muslim parent, or who has beforehand changed over to Islam, turns into a "murtadd" on the off chance that he or she verbally prevents any rule from claiming conviction recommended by Qur'an or a "Hadith", goes astray from endorsed Islamic conviction, or in the event that he or she confers an activity, for example, treating a duplicate of the Qurʾan with disrespect. A man destined to a Muslim parent who later rejects Islam is known as a "murtad fitri", and a man who changed over to Islam and later rejects the religion is known as a "murtad milli". There are different verses in Qur'an that censure apostasy, however none which recommend any disciplines for disaffection and numerous "Hadiths" incorporate explanations that bolster capital punishment for apostasy. The dominant part of current "Ulama" have arrived at the conclusion that regardless of the Qur'an proposing that a renegade can't be rebuffed for apostasy, that the select "Hadith" which do bolster the demise for renunciation abrogate the Qur'anic verses which propose something else. The idea and discipline of Apostasy has been widely canvassed in Islamic writing since the seventh century. A man is viewed as defector in the event that he or she changes over from Islam to another religion. A man is a backslider regardless of the possibility that he or she puts stock in a large portion of Islam, however verbally or in composing prevents from claiming at least one standards or statutes of Islam. For instance, if a Muslim pronounces that the universe has dependably existed, he or she is a defector;

correspondingly, a Muslim who questions the presence of Allah, enters a congregation or sanctuary, makes offerings to and reveres a symbol or "stupa" or any picture of God, commends celebrations of non-Muslim religion, manufactures a congregation or sanctuary, admits a faith in resurrection or incarnation of God, affronts Qur'an or Islam's Prophet are all independently adequate confirmation of apostasy. Numerous Muslims consider the Islamic law on heresy and the discipline one of the permanent laws under Islam. It is a hudud crime, which implies it is a wrongdoing against God, and the discipline has been settled by God. The discipline for abandonment includes state authorized invalidation of his or her marriage, seizure of the individual's youngsters and property with programmed task to gatekeepers and beneficiaries, and passing for the apostate. As indicated by a few researchers, if a Muslim deliberately and without intimidation pronounces their dismissal of Islam and does not alter their opinion after the time distributed by a judge for research, then the punishment for male renegades is passing, and for females life imprisonment. As indicated by the "Ahmadiyya" Muslim faction, there is no discipline for abandonment, neither in the Qur'an nor as instructed by the author of Islam, Muhammad. This position of the "Ahmadiyya" Muslim organization is not broadly acknowledged by ministers in different groups of Islam, and the "Ahmadiyya" order of Islam recognizes that real orders have an alternate elucidation and meaning of disaffection in Islam. "Ulama" of real orders of Islam consider the "Ahmadi" Muslim group as "kafirs" (infidels) and apostates.[xxix]

Today, renunciation is a wrongdoing in 16 out 49 Muslim dominant part nations; in other Muslim countries, for example, Morocco, abandonment is not legitimate but rather converting towards Muslims is illegal. It is subject in a few nations, for example, Iran and Saudi Arabia, to capital punishment, in spite of the fact that executions for dereliction are uncommon. Abandonment is legitimate in mainstream Muslim nations, for example, Turkey. In various Islamic dominant part nations, numerous people have been captured and rebuffed for the wrongdoing of disaffection with no related capital crimes. In a 2013 report in light of a global study of religious states of mind, over half of the Muslim populace in 6 Islamic nations bolstered capital punishment for any Muslim who leaves Islam (apostasy). A comparable study of the Muslim populace in the United Kingdom, in 2007, discovered about 33% of 16 to 24-year-old faithful trusted that Muslims who change over to another religion ought to be executed, while not as much as a fifth of those more than 55 trusted the same.

Muslim students of history perceive 632 AD as the year when the principal territorial disaffection from Islam rose, instantly after the passing of Muhammed. The common wars that took after are presently called Riddah (Wars of Islamic Apostasy), with the slaughter at Battle of Karbala holding an extraordinary place for Shia Muslims.

In India, the position of apostasy and an apostate is as follows:

A non-Muslim who has attained majority and is of sound mind can embrace Islam by the following mentioned modes:

1. Such person can declare that he believes in oneness of God and the Prophetic character of Mohammad;
2. He can also go to mosque to a person who is well versed with the Islamic theology, where he utters "Kalma" before Imam, whereupon he is given a Muslim name by the Imam. In such a case, the person who is willing to convert should formally profess to be a Mohemmedan. The essential pre requisite for getting converted into this religion is that it should be bona fide as the Court will not allow anybody to commit a fraud upon the law by merely pretending to be a convert to Islam only to escape his or her personal laws.[xxx]

Under Muslim law, the following are the effects of conversion are:

1. The religion of Islam is substituted for the previous religion of the convert to Islam, with so much of the personal law as necessarily follows from that religion;
2. The rights and the status of the apostate then becomes subject to the Mohemmaden law;
3. The apostasy has prospective effect thereon, and is not retrospective;
4. Succession to the estate of a convert is then governed by Muslim law.
5. Conversion of both the spouses without an intention to commit fraud upon the law will have the effect of altering the rights incidental to marriage.[xxxi]

The leading case under this head is *Skinner v. Orde*[xxxii] wherein Helen Skinner was already married to George Skinner as per the Christian rites. Her husband died after some time. Then she started cohabiting with a man named John Thomas who was already married to a Christian Wife, who was still alive. Helen and John converted into Islam only in order to escape the legal consequences of bigamy. It was held by the Lordship of Privy Council that this conversion was

merely a pretended one, in order to legalize their illicit union, which is not permitted under the law.

Mere renunciation of Islam by a Muslim amounts to apostasy under Muslim law. So does conversion of Muslim to any other religion amounts to apostasy. Apostasy may be express or implied. In a case where a Muslim says, "I renounce Islam" or "I do not believe in God and the Prophet Mohammad", the apostasy is expressed, when a Muslim uses horribly disrespectful words towards the prophet or the Koran, the apostasy is implied. Formal conversion to another religion also amounts to apostasy. A mere declaration, for example "I renounce Islam" is sufficient for conversion under Muslim law. Formal conversion need not to be resorted. A non Muslim may turn into a Muslim by professing Islam, i.e., by acknowledging that there is only one god and Mohammad is his prophet, or by under-going the ceremonies of conversion to Islam. A convert to Islam is ordinarily governed by Muslim law.

"Profession with or without conversion is necessary and sufficient to remove the disability of having another religion" thus observed Lord McNaughton in *Abdul Razak v. Aga Mohammed*[xxxiii]. In this case a wealthy Muslim, Abdul by name, has died, apparently without any heir. But one Abdul Razak, made a claim to his estate on the plea that he was the son of the pre-deceased brother of Abdul. The brother of Abdul had married Burmese women, Mah Thai, a Buddhist by religion, but it was not established that she had been converted to Islam either before, or after the marriage. It was established that she used to recite the Muslim prayers. The Court came to the conclusion that, since the marriage of Abdul's brother with the Buddhist women was void under Muslim law, Abdul Razak, though a Muslim could not succeed to Abdul's estate, being an illegitimate child. Before the Dissolution of Muslim Marriage Act, 1939, apostasy from Islam of either party to a marriage operated as a complete and immediate dissolution of the marriage so the wife was not required to seek judicial divorce as the marriage ipso facto gets dissolved on apostasy from Islam.[xxxiv]

The converse situation also arose in *Mst. Resham Bibi v. Khuda Baksha*[xxxv], wherein a Muslim wife, with a view to ending a troubled marriage, renounced Islam, and prayed to the court that Muslim law of apostasy should be applied to her and her marriage ought to be regarded to have been automatically dissolved from the date to her apostasy. After hearing this, the district judge ordered a plate of pork to be brought in the court room, and the wife was asked to eat out of it. On her refusal to do so, the court concluded that her apostasy was insincere, accepting the

appeal, the appellant court, observed. "One may relinquish the faith which is an easy thing to do, but one may not acquire liking for those things which one has been taught to detest throughout one's life." The Court accepted the wife's statement that she no longer believed in Allah, in Mohammed as her prophet and in the Koran, and in this manner stopped to profess Islam. The Court then said: "a person's religious beliefs are not a tangible thing which can be seen or touched. it is mental condition of one's believing in certain articles of faith that constitutes one's religion and if one ceases to believe in them, which again is mere mental condition, one automatically ceases to profess that religion.[xxxvi] In this case, Din Mohammad, J., remarked that the motive of the declarer was immaterial; a person might renounce his faith for love or avarice; one might do so to get rid of his present commitments or truly to seek salvation elsewhere, but that would not affect the factum of charge of faith. And, in matters like these, it was the factum alone that matters and not the latent spring of action which resulted therefrom.[xxxvii]

Whether mere profession of Islam sufficient to make a non-Muslim, a Muslim, is not entirely free from doubt. It is true, as Lord Macnaughten had stated, no court of law can teach or gauge the sincerity of religious belief. In all cases where, according to Muslim law, unbelief, or difference of creed, is a bar to marriage with a true believer, it is enough if the alien in religion embraces Islam.[xxxviii] It is submitted that a non-Muslim will become a Muslim by professing Islam, provided it is no colourable or *mala fide* or made with a view to perpetrating fraud upon law.[xxxix]

It appeared to be well established proposition of law that a non-Muslim, on doing the ceremonies of conversion prescribed under Islam, becomes a Muslim. In Islam, the ceremonies of conversion are very straightforward and easy. A person looking forward to conversion to Islam may go to a Muslim mosque. On the Imam asking him, "are you voluntarily embracing Islam," if he answers affirmatively, he is given the Kalma to recite. On the completion of the recitation of the Kalma, the conversion ceremony is over, and the non-Muslim turns into a Muslim. The Imam then gives a Muslim name on the convert. In many mosques, a register is kept in which the name of the person wants to grasp Islam is entered and the convert puts his signature thereto.[xl] Conversion of a Muslim from one sect to another does not amount to apostasy, and a person changing from one sect to another continues to be a Muslim.[xli]

The genuineness of belief in the new faith is immaterial, and even when convert does not practice the new faith, he will continue to be a Muslim but it is vital that the conversion should be *bona fide*, legitimate and should not be colourable, pretended or untrue. In a case, *Skinner v. Orde*[xlii], a Christian lady was living with a married Christian man, with a view to legalizing their living together as husband and wife, both of them underwent a ceremony of conversion to Islam. After the conversion process they got married. Later on, when the question of validity of this marriage emerged, the Privy Council held that the marriage was null and void on the ground that conversion was not *bona fide.* In addition, it was a fraud upon the law, since the husband and wife underwent the ceremony of conversion with a view to evading their own law.[xliii]

The question of colourable, fraudulent and dishonest conversion has come up before the Indian High Courts in a number of cases, where non-Muslim has embraced Islam, either to claim divorce on the ground of apostasy, or, to enter into a polygamous marriage. Thus, *in the matter of Ram Kumari*xliv , a Hindu married woman adopted Islam, and assuming that this meant automatic dissolution of her marriage, took second husband. She was prosecuted and convicted for bigamy. In *Rokeya Bibi v. Anil Kumar*xlv , this aspect of the matter has been very cogently and brilliantly discussed by Chakravati, J. In this case, a married Hindu woman, with a view to getting rid of her impotent husband, embraced Islam, and sought a declaration that on her conversion to Islam her Hindu marriage stood dissolved. Observing that the question whether conversion was *bona fide* or merely a device for terminating the marriage was very important, the learned judge said: "it may be that a court of law cannot test or gauge the sincerity of religious belief, or that, where here is no question of genuineness of a person's belief in a certain religion, a court cannot measure its depth or determine whether it is an intelligent conversion or an ignorant superficial fancy. But a court can and does find the true intention of man lying behind their acts and certainly find out from the circumstances of as case whether pretended conversion was really a means to some further end. Indeed, it seems to us to be elementary that if a conversion is not inspired by religious feeling and undergone for its own sake, but is resorted to merely with the object of creating a ground for some claim of right, court of law cannot recognize it as a good basis for such claim, but held that no lawful foundation of the claim has been proved. When conversion gives a legal right through a mock conversion and set up as basis of that right is to commit fraud upon the law. we are clearly of opinion that where party puts forward his conversion to new faith as creating a right in his favor

to the prejudice of another, it is proper and necessary for a court of law to enquire and find out whether the conversion was a *bona fide* one. The court found that conversion was not bona fide, since in the mind of the convert, the unhappiness caused by her Husband's impotence and conversion to Islam as a means to escape from that unhappiness, were interconnected."

Asfaq Qureshi vs Aysha Qureshi[xlvi]

The facts of the case are that the respondent is a Hindu woman who contends that she never converted into Islam. The appellant is a Muslim. The respondent was working at Village Badepurda as a Shiksha Karmi and she travelled from Durg to Lita Chowk by a mini bus belonging to Zia Travels. The appellant was a checker in the same bus and thus both the parites came in contact. It was contended by the respondent that the appellant had offered a Dairy Milk chocolate which was accepted by her and she ate it, but soon after she became unconscious. The respondent came back to her house. After almost three months. She learned that she had been married to the appellant on the day she ate that chocolate. They got married at a madarsa and also obtained certificate of nikah to its effect. Photographs were also shown as an evidence. After then, the appellant started forcing and threatened her to get their marriage registered. He then, detained her one day in order to obtain her signatures at the Office of Collector. After this, she narrated the entire incident to her parents. She claimed that she never converted into Islam and never contracted the marriage with the appellant. The petition of husband for restitution of conjugal rights was rejected by the Court and it held such marriage to be void ab initio despite having the certificate of marriage the court held that-

"Her suit for declaration of marriage void and declaration of her marital status was maintainable under Explanation (b) to sub-section (1) of Section 7 of the Family Courts Act, 1984. (b) the appellant & the respondent are not legally wedded spouses under the Muslim law and no valid nikah was solemnized between the parties;

(c) the respondent has never converted her to Islam; and

(d) the Family Court is competent to declare the marital status of the parties."

It was seen by the Court that a valid marriage between the parties was nonexistent, and thus the Family Court did not commit any illegality if it declared the marital status of the parties and dismissed the petition filed by the petitioner for restitution of conjugal rights.

EFFECTS OF CONVERSION ON INHERITANCE OF PROPERTY

A number of rights, duties, and rules are mentioned in Quran regarding the inheritance and there have been mentioned certain restrictions on inheritance also. There have been some modifications relating to position as well as treatment of women of compared to the pre-Islamic conditions in the societies. Quran has put restrictions on the testamentary powers of a Muslim in context of dividing his/her property and he/she cannot give beyond one-third of his property. Like the rest of the Islamic personal custom and the rules introduced by the Prophet the law of inheritance also rests on the personal Islamic law. The law includes two elements the customs of ancient Arabia and the rules laid down by the Quran and the founder of Islam. Under Mohammedan law, a convert from Islam to some other religion has been excluded from inheritance but this rule has been abrogated by the Caste Disabilities Removal Act, 1850 as this act has abolished the customary law which entails forfeiture of rights, inheritance consequent upon conversion and deprivation of caste.

EFFECTS OF CONVERSION ON MAINTENANCE RIGHTS

Conversion from Islam affects a forfeiture of the pre-existing maintenance rights. When the husband renounces Islam, the marriage is at an end and so maintenance can be claimed by the wife during the period of iddat.

Apostasy as a ground of divorce

Section 4 of Dissolution of Muslim Marriage Act, 1939

"*Effect of conversion to another faith.-*

The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not be itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned, in section 2:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith."

Effect of conversion to another faith- The renunciation of Islam by a married Muslim woman or her conversion to faith other than Islam shall not by itself operate to dissolve her marriage:

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith."

In Islam, apostasy leads to dissolution of marriage. Under classical Islam apostasy was considered to be a criminal offence. If a male converted to another religion, he was sentenced to death and a female apostate was sentenced to life imprisonment but this is not the case in India. The rule established under Indian Muslim law that apostasy of either of the spouse would operate as immediate dissolution of marriage. If a Muslim wife converts to a Kitabia faith, it does not lead to dissolution of marriage because of the following three reasons-

1. marriage between a Muslim and a Kitabia woman is lawful under Muslim law;
2. if a Muslim wife adopts Kitabia faith, it does not affect the status of marriage;
3. if this becomes operational, then more wives will find apostasy as a mode of dissolution of marriage.[xlvii]

In India, the High courts have taken a view that apostasy of either spouse leads to the dissolution of marriage. Now, the position has changed due to Dissolution of Muslim Marriage Act, 1939 coming into force. According to this Act-

1. the apostasy of the husband results in instant dissolution of marriage. It was held in *Abdul Ghani v. Azizul* [xlviii]that even if the husband changed his religion and after expiry of iddat the wife married another man, it would not lead to bigamy.
2. If a Muslim wife who belonged to another faith before her marriage reconverts to her original faith or some other faith, it would lead to instant dissolution of marriage.
3. If a Muslim wife converts herself into another religion then it would not lead to automatic dissolution of marriage.

4. Apostasy of a wife would not bar in her any manner to sue for divorce under section 2 of the Act.

On the other hand, the Hanafis are of the view that the apostasy would lead to instant dissolution of marriage only if the marriage was not consummated and if the marriage was consummated the cancellation of marriage would remain suspended till the period of iddat was completed. The Shafis also agreed to this theory. As per the Shias, if the husband converts himself to another religion before the consummation of marriage, then the wife would be entitled to half of the dower amount, and if he apostates after the consummation of marriage, then she would be entitled to full amount of dower.[xlix]

Section 4 of Dissolution of Muslim Marriage Act, 1939 states that renouncing Islam or conversion to another religion by a Muslim married woman would not ipso facto dissolve her marriage. But the status was different before passing of this Act and any if any married women converted to another religion, then it led to immediate dissolution of marriage. It was observed that on application of such a principle the women started taking advantage of such rule to break their marriage instantly and this was leading to encouragement of apostasy for the women who wanted to get rid of their marriage. It is to be noted that under this section the converted woman can seek dissolution of marriage under the Act on the grounds mentioned in Section 2. There is also an exception attached with it. [l]

Effect of apostasy in Hizanat (custody)

All Muslim authorities recognize the mother's right of hizanat. As per the Rudd-ul-Muktar, "the right of the mother to custody of her child is recognized whether she is a Mosalman, or a kitabia or a majoosa, even if she has separated from her husband. But it does not belong to one who is an apostate. Since Muslim law considers the right of hizanat as no more than the right of rearing up the children; it terminates at an early age of the child. In this regard Muslim law makes a distinction between the son and the daughter.[li]

All the schools of Muslim Law agree that a hazina will forfeit her right of hizanat in case she changes her religion i.e. apostasy.

A non-Muslim mother is entitled to the custody of her minor children, and she cannot be denied this right based on the ground that she belongs to another faith, provided she was a non-Muslim

at the time of her marriage. On the contrary, a Muslim mother who converts to another religion, forfeits her rights to hizanat. No other female who is non-Muslim is entitled to the custody of the child. The orthodox Muslim authorities laid down that a woman who changed her religion should be confined to prison till she returned to her faith. In its modern ramification, it means that a hazina who ceases to be a Muslim loses her right to hizanat. The Shia law is very categorical, and it lays down that a person who has ceased to be a Muslim is not entitled to the custody of the child. It is submitted that apostasy is no longer a bar to the right of hizanat after the coming into force of Caste Disabilities Removal Act, 1850. The act clearly lays down that no law or usage shall inflict on any person who renounces his religion any "forfeiture if right or property". [lii]

The orthodox Muslim authorities stated that woman changing her religion should be prisoned till she changes her faith however in its modern ramification it states that hazina who ceases to be a muslim forfeits her right of hizanat. Shia law clearly states that a person who has change her faith is not entitled to the custody of a child. It is submitted that apostasy is no longer a bar to the right of hizanat after the coming into force of the Caste Disabilties Removal Act 1850. The Act provides that no law or usage shall inflict on any person who renounces his religion any 'forfeiture of right or property'. [liii]

In *Muchoo v. Arzoon*[liv], it was held that a Hindu father is not deprived of his right to the custody of his children and to direct their education by reason of conversion to Christianity. It is submitted that the decision in Muchoo's case is correct but the court may in its discretion deal with each case on its merits.[lv]

In several cases it has been held that the change of religion by the guardian by itself is not enough to deprive him or her of the right of guardianship.[lvi]

ANTI CONVERSION LAWS

Hindustan, a gem of East Asia rose as a Hindu state yet there additionally exist a lion's share of devotees of Muslims, Christians, Jains and Sikhs. Shockingly, other unmistakably took after religions of the world rose up out of India including Jainism, Buddhism and Sikhism. As a major aspect of human rights each individual is allowed to affirm any religion of his decision without segregation. The common state in its prelude of the state's constitutions proclaims that

the state won't forgo a man calling of a religion. This reinforces the religious rights by making them their basic rights. Article 25 of state's constitution bolsters the idea of religious flexibility that, "all people are similarly qualified for opportunity of inner voice and the privilege to unreservedly maintain, hone, and proliferate religion subject to open request, profound quality and wellbeing." Article 26 permits one to manage the undertakings of his life by the alluding his religion. The possibility of religious flexibility already raised verbal confrontations, clashes and mobs among different gatherings.

Anti-Conversion Laws refers to the laws that have been enacted by the Indian States in order to prohibit Hindus converting to Christianity. The main purpose of Anti Conversion Laws is to completely prohibit conversion of religion of any person which are made by "force", fraud" or allurements.[lvii]

While the Constitution of India provides for full religious freedom, six Indian states have "Freedom of Religion" Acts which regulate religious conversions. These laws claim to merely purge the use of force, fraud and inducement from religious persuasion in the interest of public order. But the "anti-conversion" laws clearly violate some key components of religious freedom. These laws, enacted in the states of Orissa, Madhya Pradesh, Arunachal Pradesh Chhattisgarh, Gujarat and Himachal Pradesh, give the district administration wide and sweeping powers to inquire into religious conversions but carry no provisions for protection against discriminatory action on the part of the authorities.[lviii] They also require a person converting to another religion to give details of the conversion to the local district magistrate, either prior to the conversion ceremony or subsequent to it. The law in Gujarat makes prior permission from the local authorities mandatory before any conversion ceremony is performed. Besides, vague and wide definitions of terms such as "force," "fraud" and "inducement" or "allurement," potentially include even legitimate pursuits or actions of propagating one's faith. Inclusion of the terms such as "divine displeasure" in the definition of "force" restricts those propagating their religion to inform others about these laws are premised on a longtime propaganda by Right-wing Hindu groups against minority Christians and Muslims – that poor and illiterate Hindus are being converted with the use of duress, deception or coercion, which threatens public order – and not on a scientific study on religious conversions. Moreover, the laws in Arunachal Pradesh and Himachal Pradesh seek to prohibit conversions out of "original religion" or "indigenous faiths," showing that their real intent is to prevent or regulate

conversions to faiths such as Christianity and Islam. Country's prominent jurists have repeatedly stated that these Acts contradict India's international obligations under the International Covenant on Civil and Political Rights as well as the fundamental rights safeguarded in the Indian Constitution. The state governments that have enacted these laws claim they do not defy religious freedom based on a 1977 ruling by the Supreme Court of India [in the Reverend Stanislaus vs. State of Madhya Pradesh case] which upheld the Madhya Pradesh Freedom of Religion Act stating that the right to propagate did not include the right to convert another person. However, the Supreme Court in the said case considered only the arguments whether an individual has a right to convert any person or merely to propagate the religion of one's choice and whether the state legislatures are competent to enact such legislations in order to protect public order. What they believe could be the fate of non-adherents. The Acts give district authorities wide and sweeping powers to inquire into both the reasons behind a religious conversion and the procedure adopted for the same. This is a gross violation of the right to freedom of association, the right to privacy and the freedom of conscience. The Acts cast an onerous burden on the part of the covenant and the persons seeking to propagate their faith without providing the required checks and balances to ensure protection against misuse of authority. For example, Section 4 of the Himachal Pradesh Act makes it obligatory for a person to give a 30-day prior notice to the District Magistrate about his or her intention to convert. As per the Rules, the District Magistrate who then "shall get the matter enquired into by such agency as he may deem fit". No time limit is prescribed for the conduct of such an enquiry nor have its modalities been defined. The procedure is oppressive as it will deter a person from changing his religion due to unnecessary revelation of an individual's personal choice and belief to the public at large along with the stigma of having a police inquiry in matters relating to one's belief and conscience. A detailed analysis of the Acts reveals that far from promoting or protecting religious freedom, they have served to undermine the religious freedom guarantees under both Indian and international law. These laws currently limit religious freedom of as many as 175 million people who live in the states of Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh. And it may restrict the rights of 142 million more, as the legislation is yet to be implemented in some states while other states have plans to follow suit. The legislation also exists in Arunachal Pradesh state, which has a population of about 11 million, but has not been implemented. The state assembly of Rajasthan, which has 43 million people, also passed an anti-conversion bill, but the state's governor

referred it to the President's office and it remains pending. And the governments of Jharkhand, Uttarakhand and Karnataka – which have a combined population of about 88 million – have said they too may consider enacting the law. Moreover, this legislation has also been emulated by India's neighbors Nepal and Bhutan and considered by Sri Lanka. Primarily motivated by a religious ideology, the anti-conversions laws fail to achieve the very purpose for which they have been enacted. On the contrary, they provide an opportunity to divisive forces within the country to target the constitutionally protected rights of minority groups and pose a serious threat to the free practice and propagation of religious beliefs.[lix]

Before independence, anti-conversion laws were in operation in many Princely states such as Raigarh, Udaipur, Bikaner, Jodhpur etc in which conversion gone through fraud, misrepresentations, coerce, intimidation and undue influence were punishable.

The question of conversion was highly debatable even in the Constituent Assembly during the drafting of the Constitution of India. It was debated whether to include the right to propagate one's religion in the freedom of religion or not. This view was opposed by many. After independence, many attempts were made to enact central legislation to regulate religious conversions but this could not be done. However, many states have successfully enacted laws on Anti conversion known as Freedom of Religion Act.

Bhartiya Janta Party (BJP) in the year 2003 in Gujarat passed anti-conversion law in order to forbid forcible conversion. Till date, five states have enacted Anti Conversion Laws in India – Odisha, Madhya Pradesh, Gujarat, Chattisgarh and Himachal Pradesh. [lx]

Odisha was the first state to pass such a Law named as "Orissa Freedom of Religion Act, 1967" popularly known as anti-conversion law.

Madhya Pradesh in year 1968 framed such a law followed by Arunachal Pradesh in 1978,Chattisgarh in 2000,Gujrat in 2002, Madhya Pradesh in 2006, Himachal Pradesh in 2007(first Congress ruled state) and Rajasthan in 2008.

All these laws are similar in content and they seek to prohibit conversion by force, fraud, inducement or allurement. These Acts also lay down that no person shall convert or attempt to convert either directly or otherwise ,any person from one religious faith to another by use of

force or by inducement or by any fraudulent means, nor shall any person shall abet any such conversion.

The Acts also prescribe punishments varying from period of 1 year imprisonment and fine for Rs 5000 up to 5 year imprisonment and Rs 25000. If the conversion is by force, fraud or inducement among women, minors & Dalits or Tribals, the punishment is more stringent.[lxi]

These Acts also require prior permission to be taken from District Magistrate who wish to get converted. They need to apply in a prescribed manner and also should send and intimation to the DM of the District concerned about the ceremony taken place and on failure to comply these provisions, such person shall be punished and fine under these Acts are Cognizable.

The Acts will prohibit such conversions which would act as a deterrent against anti social groups who exploit innocent people and will enable to practice their religion freely. It would also help in maintaining public order.

In the leading judgment, *Rev. Stainislaus v. State of Madhya Pradesh*[lxii], it was held by the court:

"That propagation of one's religion is different from conversion. The right to propagate is not the right to convert but to transmit or spread one's religion by an exposition of its tenets. This is because conversion would impinge upon the 'freedom of choice' of the converted individual."

In this case, validity of the two Acts- Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 and Orissa Freedom of Religion Act, 1967 which were passed by the State legislatures of Madhya Pradesh and Orissa, was challenged on the ground that they are violative of the Fundamental Right of the appellant which have been guaranteed under Section 25(1) of the Indian Constitution. The appellant was prosecuted for the committing the offence under the Madhya Pradesh Act. His contention was that the right to propagate one's religion includes the right of conversion. Next, he argued that the State Legislatures have no competence to enact such laws. These contentions were rejected by the Supreme Court and laid down that the Acts fall within the purview of Entry 1 of List II because they are meant to avoid any kind of disturbance in the public order where "public order" means to be a thing that disturbs the life of the community. Where any sort of attempts are made to evoke communal passions on the

ground that someone has been forcibily converted to another religion, it clearly raises an apprehension of breach of public order.[lxiii]

In *Yulitha Hyde v. State of Orissa*[lxiv], the rationale was that the Orissa Act did not relate to the pith and substance' rule and also 'law and order' and also it did not amount to any new criminal offence as forcible conversion was already covered under the limitations of Article 25(1).

Reports from the different minority groups and human rights organizations uncover that these laws cultivate threatening vibe against religious minority groups. In a few states, indictments have been propelled under the Flexibility of Religion Acts against individuals from the minority Christian people group. There have additionally been visit assaults against the group by individuals from conservative Hindu gatherings on the appearance of "coercive" changes. Observing this pattern, in its 2011 report, the USCIRF noticed that: 'The provocation and viciousness against religious minorities seems, by all accounts, to be more articulated in states that have received "Opportunity of Religion" Acts or are thinking about such laws.' The report additionally expressed that: 'These laws have prompted few captures and allegedly no feelings.' As indicated by the US State Office, between June 2009 and December 2010, roughly 27 captures were made in Madhya Pradesh and Chhattisgarh, yet brought about no feelings.[lxv]

In the decades that have taken after Stainislaus case, the Madhya Pradesh and Orissa laws — and comparative enactment sanctioned in Gujarat, Rajasthan and Himachal Pradesh — have been utilized by State governments to target changes to minority religions, specifically, disquieting, consequently even the most fundamental duty to secularism.

The choice in Stainislaus is however off base not only because of its substantial outcomes. The case identifies with an essential, and more nuanced, issue of mediation by the state and its courts in religious issues. Against transformation laws permit the express the specialist to figure out what constitutes an ill-conceived incitement, and, in doing as such, they make a dangerous slant. They advance expanded legislative association in matters that include immaculate moral decisions, and they imbue a profound and risky type of paternalism: the state is continually watching you, and it has only your best advantages as a main priority. This should involve grave concern.[lxvi]

LANDMARK CASES ON CONVERSION

1. E. Ramesh v. P. Rajini and others[lxvii]

An appeal was filed against the judgment and a decree was passed by the single Judge. The respondent 1 and 2 filed the suit claiming a partition and the allotment of two- fifth share on the ground that the property belonged belonged to Ethirajulu and Andal that is, the parents of the appellants and the respondents. The appellants 1 and 2 in the suit had no objection for the share of the first respondent. So far as the second respondent is concerned the appellants objected on the ground that she married a Muslim by converting herself to Islam so she is not entitled for the share. The other objection of the appellant that the property being a residential house and the appellant is the male member of the Hindu Joint Family till they opt for partition is not open to respondents to seek partition. Only two were contended by the learned counsel for the appellants stating that the second respondent was married to a Muslim and converted to Islam so she is not entitled for any share as she has to forego the share due to the conversion to other religion. As far as the property is concerned, it was contended that the property cannot be divided since it is a residential house the findings of the learned Judge are liable to be set aside. The learned counsel for the respondent 1 and 2 contended that the conversion to other religion will not disentitle the second respondent will inherit the property of her parents. As far as the property is concerned apart from the residential will inherit the property of her parents.

From the above mentioned case the question that arise for consideration are

1) Whether the Hindu by conversion can claim the right of inheritance?
2) Whether the residential house is divisible by metres and bounds cannot be divided at the instance of the female heirs?

For the first question the judge referred to section 26 of Hindu Succession Act and clearly laid down that the bar of inheritance is only in respect of legal heirs o the convert and if an individual converts to another religion he/she shall not forgo the right of inheritance. Section 26 of the act prohibits the children from inheriting the property unless such children or descendants are Hindu at the time when the succession opens. The section does not disqualify a convert it only disqualifies the descendants of the converts who are born to the convert after such conversion from inheriting the property of any of their Hindu relatives.

2. Munavvar-Ul-Islam v. Rishu Arora [lxviii]

The judgment was given by Delhi High Court regarding status of marriage after renunciation of religious beliefs where the spouse converted to another religion in order to enter wedlock. This judgment focused on recognizing conversion from Islam by the wife to be a valid ground for dissolution of marriage under Muslim Law. The Division bench of High Court rejected the appeal of Munavvar-ul-Islam and held that dissolution of marriage is valid under the Dissolution of Muslim Marriage Act, 1939 where the women converted to Islam but later on reconverted to her original religion.

It was observed by The Bench that Rishu's case was governed by the pre-existing Muslim personal law which dissolves marriage ipso facto upon apostasy. The Court did not find any merit in the appeal and dismissed it.[lxix]

3. Suresh Babu v. Leela[lxx]

The question in this case arose was whether in a petition for dissolution of marriage filed by the wife under Section 13(1)(ii) of the Hindu Marriage Act, a Hindu husband who converted to Islam could put forward a valid defence that his conversion to Islam was with the consent of the wife and thereby dodge an order for dissolution of his marriage. The respondent filed a Petition under Section 13(1)(ia), (ib) and (ii) of the Hindu Marriage Act asking for the dissolution of her marriage with the appellant. The facts of the case are as follows:

The marriage took place on 1st November 1992 with two children born in the wedlock. The respondent Meera alleged that the appellant of cruelty towards her and that he deserted her. She also alleged that the appellant embraced Islam and married one Fathima and they were living together. The appellant strongly denied the allegation of cruelty and desertion but admitted that he converted to Islam and married Fathima. In his defence, the appellant stated that his conversion to Islam was with full consent of the respondent-wife and that he married Fathima since the respondent abandoned him, contrary to her promise to continue to live with him even after conversion.

The court allowed the Original Petition on the ground of desertion and on the ground that the appellant herein has ceased to be a Hindu by conversion to Islam. When this Appeal came up

for admission, it was finally heard with the consent of the counsel. Some extracts from the judgment have been stated below:

"13. Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party.

(ii) has ceased to be a Hindu by conversion to another religion.

It was held by the court that Conversion to Islam by a Hindu spouse does not per se lead to dissolution of the marriage. It only gives a right to the other spouse to file a petition under Section 13(1)(ii) of the Hindu Marriage Act for divorce. Under the pristine Hindu Law as well, conversion did not operate per se as a dissolution of marriage. A Hindu spouse who ceased to be a Hindu by conversion to another religion does not acquire any right under the Hindu Marriage Act. On the other hand, he or she exposes himself or herself to a claim for divorce by the other spouse on the ground of such conversion. The spouse who remains a Hindu gets a right under Section 13(1)(ii) of the Hindu Marriage Act to seek dissolution of the marriage with the spouse who since the marriage ceased to be a Hindu by conversion to another religion. The right of non converting spouse is indefeasible. The statute does not provide for any qualification on such right of the non converting spouse. Nor does the Hindu Marriage Act state that the conversion shall be a conversion without the consent of the other spouse in order to entitle such spouse to apply for divorce. A conversion does not cease to be a conversion within the meaning of Section 13(1)(ii) if it is with the consent of the other spouse. We cannot read into the statute something which is not intended in the context; nor can we qualify a disqualification in the matter of conversion as one with the consent of the other spouse so as to take it out of the purview of Section 13(1)(ii).

Even accepting the case of the appellant that he embraced Islam as consented to by the respondent, his marriage with Fathima would be a bigamous marriage. In *Sarla Mudgal, President, Kalyani and Ors. v. Union of India and Ors*., the Supreme Court considered the question whether a Hindu husband by embracing Islam can contract a second marriage during the subsistence of the first marriage and whether the husband would be guilty of the offence under Section 494 of the Indian Penal Code. Some extracts from the judgment are-

" 14. It is, thus, obvious from the catena of case law that a marriage celebrated under a particular personal law cannot be dissolved by the application of another personal law to which one of the spouses converts and the other refuses to do so. Where a marriage takes place under Hindu Law the parties acquire a status and certain rights by the marriage itself under the law governing the Hindu Marriage and if one of the parties is allowed to dissolve the marriage by adopting and enforcing a new personal law, it would tantamount to destroying the existing rights of the other spouse who continues to be Hindu. We, therefore, hold that under the Hindu Personal Law as it existed prior to its codification in 1955, a Hindu marriage continued to subsist even after one of the spouses converted to Islam. There was no automatic dissolution of the marriage.

21. A Hindu marriage solemnized under the Act can only be dissolved on any of the grounds specified under the Act. Till the time a Hindu marriage is dissolved under the Act none of the spouses can contract second marriage. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act. The second marriage by a convert would therefore be in violation of the Act and as such void in terms of Section 494 I.P.C., Any act which is in violation of mandatory provisions of law is per se void."[lxxi]

4. Ponnusami Nadan v. Dorasami Ayyanit[lxxii]

It was held in this case that the members of native Christian families cannot adhere to Hindu Law of succession, though such converts who were governed by Hindu law of succession cannot be deprived of their rights acquired by them under Hindu law prior to their conversion to Christianity. To the same effect is another decision of Madras High Court in Tellis v. Saldanha, Bombay High Court in Francis Ghosal v. Gabri Ghosal did not agree with the view of Madras High Court.

5. John Jiban Chandra Dutta v. Abinash Chandra Sen [lxxiii]

The appeal raises an important question. The facts of the case are as follows:

A man named Dukhiram, an Indian Christian married a lady named Sudakhina who was also a Christian. The man got converted to Mohamedanism and then contracted marriage with a Muslim girl named Alfatannesa. A daughter was born to this marriage. After the death of the her parents, she inherited 15 annas of share in the property under Muslim Law of inheritance.

She sold her share to the plaintiff. The appellant and the other contesting defendants are heirs of Sudakhina. The question which arose in this case is that whether an Indian Christian who becomes convert to Muslim can take a second wife. The contention raised on behalf of the appellant is that he cannot, and that the union between such couple is mere adultery. In the written statement, it was alleged that they did not even go through any form of marriage at all. However, the point was taken in the lower Appellate Court in support of the decree. The learned Judge refrained from deciding it and contended himself with dismissing the appeal on the ground that after Dukhiram's death the parties directly concerned as heirs. The contentions put forward in support of thos objection is that if the point had been taken directly the plaintiff might have been able to meet it by proving that Sudakhina also was converted to Mohamedanism. The question whether on such facts Dukhiram was legally married her is a pure question of law and the plaintiff was entitled to support the decree on that ground in Lower Appellate Court.

Similar question arose in *Skinner v. Orde (1870-72)* in dealing with the validity of the alleged marriage, their Lordships of the Judicial Committee think they were well warranted in entertaining. It appeared that in case there was some doubt whether the parties were really converted to Mohamedanism or merely pretended to be so in order to take advantage under Muslim Law.

In *Robert Skinner v. Charlotte Skinner*[lxxiv], the question arose whether after the conversion of the husband the wife would be entitled to succeed to the share of a Muslim widow in spite of the fact that she was altogether excluded by a will. In the course of the judgmnent, Lord Watson observed whether a change of religion made honestly after marriage with the assent of both spouses, without any intent to commit fraud upon the law, will have the effect of altering rights incidental to the marriage, such as that of divorce.

After his conversion, Dukhiram was governed by the Muslim Law and thus there can be no question raised whether he is entitled to contract a valid marriage with Alfatanessa. It was held to be a valid marriage. The second contention made in support of the appeal was that the succession of property of Dukhiram would be governed by the Succession Act, and so far as Sudakhina was concerned and that under the provisions of the Act, she is entitled to inherit. Attempts have been made to take advantage of the Caste Disabilities Removal Act, 1850.

6. Shabana Khan v. D.B. Sulochana And Ors.[lxxv]

The facts of the case were that in a suit for partition. Petition was filed for grant of interim injunction against the respondents to restrain them from dealing with the suit property. It was opposed by the petitioners that under section 26 of Hindu Succession Act, 1956, the respondent are disqualified from inheriting the property. It was not disputed that the appellant converted herself into Islam and got married to Sri. Anwarullah Khan in 1981 and her father died in 1998. The trial court gave effect to the provisions under the Act and disentitled her to succeed to the property on grounds of her conversion to another religion. The court failed to understand the language of section 26 which clearly mentions that disinheritance due to conversion into another religion is only in respect of the children born to him or her after the conversion, and it does not disqualify the heirs. The provision was misread and interpreted in a wrong manner. The decision was reversed by the Andhra Pradesh High Court and it was held that the disinheritance as a result of conversion from Hinduism to another religion would apply to the descendants of the heir, and not the convert himself or herself.

7. Vijayalakshmi v. The Inspector Of Police, Karur Police Station, Karur and ors. [lxxvi]

The spouse has documented this appeal to under Art. 226 of the Constitution for a writ of habeas corpus guiding her significant other second respondent to hand over care of her minor children aged around 5 years and 6 years to her. The principal respondent-Inspector of Police has been Impleaded since as indicated by the applicant spouse she has favored an objection against her significant other to the main respondent. The respondent and complainant got married in 1982 and the wife was currently residing with her parents due to cruel behavior of her husband towards her. She with her two children were granted maintenance under section 125 of Cr.Pc at the rate of Rs. 500 for herself and Rs. 150 each for her children. The respondent then converted to Islam and got married to another girl and thus failed to provide the complainant with the fixed amount of maintenance regularly, thus a petition for execution of such order was filed by the petitioner. In the meanwhile, the husband entered her house and took away their children. A suit was filed by the petitioner to claim the custody of children. Section 6 of Hindu Minority Act, 1956 was applied and it was held by the Madras High Court that the converted spouse could not claim the custody of children as a person who ceases to be a Hindu is disqualified to act as a natural guardian under this Act, and thus the custody of minor children would go to the mother.

CONCLUSION

Changing the religion has been n area of major concern in India. Innumerable laws have been passed in India regarding conversion into another religion. By converting to other religion, a person tends to lose many family rights. If a person converts his or her religion, then he/she is governed by the laws applicable under the newly adopted religion and in numerous instances, they are not entitled to any right. Before 1850, the people converting their faith into another were disentitled from almost all rights of their religion. However once the Caste Disability Removal Act, 1850 was passed, it protected the rights of the converts especially in case of inheritance.

Under Hindu law, the following are the consequences of conversion:

1. The descendants of the convert are disqualified from inheriting the property and they stand disqualified.
2. Conversion is a ground of divorce, but does not per se dissolve the marriage. A petition needs to be filed to the effect.
3. It also leads to forfeiture of rights of maintenance as soon as a party converts to another religion. Where the petition has been filed under section 18 of HAMA, 1956 for separate residence, the wife is also entitled to claim separate residence and maintenance on this ground solely.
4. As far as guardianship is concerned, where a guardian has converted to another faith, he or she loses the right of guardianship as it is an important factor to be taken into account, though it is not necessary in all the cases as welfare of minor is of the paramount consideration to be taken by the courts.
5. A person who has converted his or her religion has no right to adopt a child as per Hindu law; and a spouse who has converted loses the right to give consent for adoption to the other party. The respondent can adopt in his or her own capacity where the spouse has adopted another religion.

Under Muslim law, apostasy has the following consequences:

1. Right to inheritance is not lost for the convert after coming into force of Caste Disabilities Removal Act, 1850.

2. Conversion to another religion operates as a forfeiture of maintenance rights, but if the husband renounces Islam, maintenance can be claimed by the wife till iddat.
3. Where a female renounces Islam, it shall not result in automatic dissolution of marriage.
4. On the other hand, apostasy by the husband would operate as immediate dissolution of marriage.
5. Hazina forfeits her right to hizanat on her conversion, but she doesn't lose her right of custody.

In general, change of religion stirs a lot of controversies as it is assumed that the religion in which he/she was born, has failed to fulfill its expectations whether spiritual or rational. The main question that crosses everyone's is the need to convert to another faith. As it is quite evident in the modern era, people sell religion like salesmen with the trap of lure of money. On the other hand, some people may convert to escape their personal law constraints and to be set free from any kind of commitments. Other reasons may also include poverty like in cases where it is difficult for people to afford their basic sustenance; they are promised financial backups by some groups if they agree to convert themselves. Some people may change their religion if they have faced injustice or any kind of humiliation in their own religion. It is also a well-known fact that people may convert into another religion because of their belief that the other religion will take care of his spiritual wellbeing and let him/her accomplish their legitimate aspirations. Sometimes, it is also possible that a person may change his or her faith without any rational reason. Right to conversion allows a person to quit their own religion and embrace another religion.

It is a well-known fact that the freedom of conscience and the right to profess, practice and propagate religion has been exclusively and elaborately mentioned under Article 25 of our Indian Constitution. It also expresses equality towards all three religions and emphasizes upon the ideas of secularism.

The best judgment till date was given in case was the Rev Stanislaus v. Madhya Pradesh by the constitutional bench headed by honorable Justice AN Ray. The biggest issue before the court was whether the fundamental right to practice and propagate religion also includes the right to convert. The Court clarified that though the Article 25 provides freedom of religion, it also went on to state the word propagate religion does not give the right to convert. The word propagate has been used in Article 25(1) in the Constitution of India, but it does not bestow the

right to convert another person to one's own religion .It just means to transmit or spread one's original faith.

Religion is a belief which binds the spiritual aspect of man to a supernatural being; it is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense denotes an act of worship. Faith constitutes firm reliance on the truth of religious doctrines in every system of religion. Religion, faith or devotion cannot be interchanged. If the person pretends to having converted to another religion for some worldly gain or benefit, it would be religious bigotry. From this point of view, a person who simply adopts another religion where plurality of marriage is permitted so that he can renounce the previous marriage and leave the wife, cannot be allowed to take advantage of his exploitation as religion is not a commodity to be exploited. Thevery institution of marriage under all personal laws is sacred institution. Under Hindu law, marriage is a sacrament. Hence, both need to be preserved.

The laws pertaining to the conversion of a party to another religion and their effects over family and succession rights have been aptly and extensively drafted under both Hindu and Muslim laws. Regard has been given to the rights of the party concerned including their right to conjugal relationships, adoption rights and most importantly succession rights. The coming into application of Caste Disabilities Removal Act, 1850 was a major milestonein the history of laws. The rights which were generally lost by the parties and the discrimination they faced by the society, came to an end after coming into force of this act. The effect of just one section in this Act is more than sufficient to protect the rights of the converted spouse.

Apart from the numerous provisions that are provided in various personal laws and secular laws, the role of judiciary has always been pivotal in interpreting the laws. Everyone is well aware of the fact that the laws which have been drafted by the constitution need to be applied appropriately and justly, otherwise the very purpose of drafting such laws would be defeated. Since these laws have been drafted many decades ago, in view of the changing circumstances, the laws need to be interpreted and applied in a correct manner, keeping in mind the present situations. Hence, if the judiciary would have failed in the appropriate application of these laws, the aggrieved parties would have suffered immensely and their loss could not be rectified even by adequate compensation or. There have been innumerable judgments which have been passed by the courts in India, which attempt to protect the rights of the parties. The court has been just for both the guilty as well as the innocent party. The court has always made attempts to protect

the interests of the parties as well as their families. Whenever people have tried to evade the laws laid down by the legislature, the offenders have been punished and not given an advantage in name of religion. Religion, being an exceptionally sensitive issue in India, has been handled with due care by our law protectors. Some outstanding judgments which shaped up the future include Lily Thomas case, Sarla Mudgal case, Rev Stainlaus case, Shah Bano case, Asfaq Quareshi case and many more alike. For a very long time, people have tried to outsmart laws by converting only for the ulterior motive of getting benefits under the newly adopted religion, however the Court has recapitulated in majority of the judgments that a person would not allowed to convert only for mala fide purposes.

It is a well-known fact that the personal laws differ immensely under each religion which at many instances has led to commotion amongst the people in understanding the laws. There is a wide chaos and dispute amongst different religions in following different laws. For example, under one religion, what is permissible and considered legal may contradict with the personal law of the other religion and this leads to various controversies. As a result, it is about time that a uniform civil code is accepted so that there is uniformity in laws as it will put an end to this chaos. Under Article 44 of our Indian Constitution, State shall make attempts to bring uniform civil code. All the developed nations already have a Uniform civil code. One added benefit is that it will also help in promoting secularism, as everyone irrespective of their religion will be governed by the same laws. It will not be restricting the rights of any person, but will only give a common code to govern everyone. It is also required to integrate India and to prevent the ever rising number of litigations due to differences under various personal laws. A uniform civil code will also help in reforming age old traditions which have no importance in the modern society and changed world. Such orthodox laws need to be removed as soon as possible. There has been an ongoing debate in the Parliament after Shayra Bano challenged the three evils in Muslim law i.e. tradition of Halala, Triple talaq and Polygamy on grounds of violating fundamental rights of the women. As of now, India has failed to implement uniform civil code because of vote bank politics and the criticism from All India Muslim Personal Law Board. However, on the future, there is a chance that India would be able to achieve a uniform code for all citizens and thus unite India.

REFERENCES

[i] J.N. Pandey : Constitution of India (ed 49, 2012) p. 328
[ii] https://en.wikipedia.org/wiki/2011_Census_of_India
[iii] Family Law Lectures, Family law 1, 3rd edition, Lexis Nexis
[iv] http://lawcommissionofindia.nic.in/reports/report235.pdf
[v] Tahir Mahmood : Religion, law & society across the globe (ed. 2013), p.144-145
[vi] *ibid*
[vii] http://punjabrevenue.nic.in/cust37.html
[viii] http://lawyerslaw.org/the-caste-disabilities-removal-act-1850/
[ix] highcourtchd.gov.in/hclscc/subpages/pdf_files/4.pdf
[x] AIR 1971 SC 2352 : (1970) 1 SCC 605
[xi] Sethalakshmi v. Poonuswami, (1966) 2Mad 374: (1967) 2 MLJ 334
[xii] Prof. U.P.D Kesari : Modern Hindu Law (ed 7, 2009), p.9
[xiii] Hindu Marriage Act, 1955, Section 10
[xiv] Gobardhandas v. Jasodamani Dasi (1891)18 Cal 252
[xv] Rakiya Bibi v. Anil Kumar (1948)2Cal 19
[xvi] AIR 1983 Del 351
[xvii] AIR1995 SC 1531
[xviii] AIR 2000 SC 1650
[xix] 10 Mad 69
[xx] 31 Bom 25
[xxi] 40 Cal 407
[xxii] http://www.shareyouressays.com/117386/what-are-the-effects-of-conversion-from-one-religion-to-another-under-hindu-law
[xxiii] Section 24 the Hindu Adoptions and Maintenance Act, 1956
[xxiv] Paras Diwan : Law of adoption minority guardianship & custody (ed 5, 2010), p.278
[xxv] Vijaylakshmi v. Police AIR 1991 Mad 243
[xxvi] 14 MIA 309
[xxvii] *1999(1) SC 524*
[xxviii] Section 7-8 of Hindu Adoption and Maintenance Act, 1956
[xxix] Aqil Ahmad: Mohemmadan Law, (ed.26 ,2016) p.105
[xxx] Aqil Ahmad: Mohemmadan Law, (ed.26 ,2016) p.101
[xxxi] Aqil Ahmad: Mohemmadan Law, (ed.26 ,2016) p.105
[xxxii] (1871) 14 M.I.A. 309
[xxxiii] (1882) 21 IA 56 (64).
[xxxiv] Juristic Opinion Relating to Divorce, http://shodhganga.inflibnet.ac.in/bitstream/10603/39005/15/15_chapter%207.pdf

[xxxv] AIR 1938 Lah 277: 182 IC 438.
[xxxvi] AIR 1938 Lah 280.
[xxxvii] AIR 1938 Lah 280 (286).
[xxxviii] Abdul Razak v. Aga Mohammed, (1892) 27 IA 56: 19 Bom LR 164.
[xxxix] Skinner v. Skinner, (1897) 28 Cal 537.
[xl] Rokeya Bibi v. Anil Kumar, (1948) 2 Cal 119.
[xli] Naraontkath v. Parkkal, (1925) 45 Mad 986, where a Mappilla Muslim became an Ahmadia; see also Jiwan Khan v. Habib, (1933) 14 Lah 518. The Shias are Muslim even though they renounce the first three Caliphs.
[xlii] (1871) 14 MIL 309.
[xliii] However, in this case it was not established that the ceremony of marriage took place after conversion.
[xliv] (1891) 18 Cal 264.
[xlv] (1949) 2 Cal 119.
[xlvi] AIR 2010 Chh 58
[xlvii] Paras Diwan :Law of marriage and divorce (ed 6, 2012) p.521
[xlviii] (1912) 39 Cal 409
[xlix] Paras Diwan :Law of marriage and divorce, (ed 6, 2012), p.521
[l] Tahir Mahmood: Muslim law in India and abroad (ed 2, 2016), p.78-79

[li] Paras Diwan :Law of adoption minority guardianship & custody (ed 5, 2012), p.746
[lii]Paras Diwan: Law of adoption minority guardianship & custody (ed 5 2012), p.746
[liii] The orthodox Muslim authorities stated that woman changing her religion should be prisoned till she changes her faith however in its modern ramification it states that hazina who ceases to be a muslim forfeits her right of hizanat. Shia law clearly states that a person who has change her faith is not entitled to the custody of a child. It is submitted that apostasy is no longer a bar to the right of hizanat after the coming into force of the Caste Disabilties Removal Act 1850. The Act provides that no law or usage shall inflict on any person who renounces his religion any 'forfeiture of right or property'.

[liv] (1866) 5 W.R. 235
[lv] Aqil Ahmad: Mohammedan Law (ed 26 2016) p. 106
[lvi] Buden v. Bahadur Khan, AIR 1942 Pesh 41
[lvii] http://www.conservapedia.com/Anti-conversion_legislation_in_India
[lviii]http://www.kandhamal.net/DownloadMat/International_Institute_of_Religious_Freedom_report_on_India.pdf
[lix]http://www.kandhamal.net/DownloadMat/International_Institute_of_Religious_Freedom_report_on_India.pdf
[lx] https://blogs.wsj.com/indiarealtime/2015/01/09/the-arguments-for-and-against-a-national-anti-conversion-law/
[lxi] https://www.lausanne.org/content/lga/2016-05/anti-conversion-laws-india?gclid=CjwKEAjwjPXIBRDhwICRg-DbgHISJADP6QXpHjp2MFpeHfnv9iboV7NCm6m9Q_HMp97gk5ays780yBoC-Z_w_wcB
[lxii] AIR 1977 SC 908
[lxiii] J.N. Pandey: Constitution of India (ed 49 2012) p. 337
[lxiv] AIR 1973 Ori 116
[lxv] https://www.lausanne.org/content/lga/2016-05/anti--laws-indiaconversion
[lxvi] http://www.thehindu.com/opinion/lead/conversion-and-freedom-of-religion/article6716638.ece

[lxvii] (2002) 1 MLJ 216
[lxviii] MAT. APP. (FC) NO.34/2013, CM APPL.14330/2013
[lxix] http://www.thehindu.com/news/cities/Delhi/apostasy-valid-ground-for-dissolution-of-marriage-hc/article5997889.ece
[lxx] 2006 (3) KLT 891
[lxxi] Indiankanoon.org
[lxxii] ILR (2) Mad 209 (1880)
[lxxiii] AIR 1939 Cal 417
[lxxiv] (1898) 25 Cal 537
[lxxv] 2008(2) ALD818
[lxxvi] AIR 1991 Mad 243