

CONVERSION OF RELIGION FOR MARRIAGE IN ISLAM

Ishwita Mondal¹

ABSTRACT

This research Paper briefly contain the concept of Marriage and Conversion. Marriage is only valid when it full fills certain criteria's. And Conversion should be done honestly and without intent to commit fraud upon law.

Getting converted to other religion give rise to many issues and it is taken into consideration by acknowledging fact and circumstances of the situation. If conversion is done wrongly or to commit any illegal activities then it is also punishable by law.

After conversion there is some legal effect which must be undergone by the convert and such must not be refused.

This paper also discussed about the property rights in case of conversion.

INTRODUCTION

A Muslim is one who generally believes in one God that is 'Allah' and believes and Prophetic character of Mohammad.

It is not required that a person should be a Muslim form very beginning that is form birth but a person can also be a Muslim if he adopts the religion of Muslim by going to mosque and utters *Kalma* . Then a Muslim name is given by *Imam*. A person can also be converted to Islam by marriage.

Over here a particular focus will be given on conversion by marriage.

LITERATURE REVIEW

To complete the research topic on 'Conversion of Religion for marriage in Islam' , I have used both primary and secondary source. I have gone through the books like Shariat Act, Dissolution of Muslim Marriage Act and also Aqil Ahmad's Mohammedan Law. I am also taken help of online resources like journals and articles of different scholars and writers.

RESEARCH OBJECTIVE

¹ BA.LL.B, Presidency University , Bangalore

- To understand Marriage an Conversion
- To know about valid conversion by marriage
- To know about legal aspect of Conversion.
- To know about property rights available in case of conversion.

RESEARCH QUESTION

1. How can a person be converted to Islam by marriage?
2. What are the martial rights available ?
3. What are the legal effect of conversion?
4. What are rights of inheritance available in case of conversion?

SCOPE OF STUDY

Basically this research paper studies about , Test of Conversion, how can be person converted to Muslim by marriage, the rights available to Muslim ,what are the legal effect of conversion, property rights available in case of conversion and comparison with other laws.

RESEARCH METHODOLOGY

Doctrinal methodology has been used for doing this research. Types of method involve are:-

- Analytical method
- Descriptive method

DEFINITION OF MARRIAGE

“Muslim Personal Law defines marriage as legitimate only when it fulfills certain prerequisite. The most important condition for valid marriage demands that both parties should be Muslims. Departure in any form from this stipulation would lead to the martial status having its impact on dissolution of marriage and deprivation of inheritance.”²

² Skehteshamuddin Ahmad and Sk. Ehteshamuddin Ahmad, Marriage and the issue of Conversion Under Muslim Law during the Colonial period, Volume no. 42, Social Scientist , 71, 71(2014), available at <https://www.jstor.org/stable/24372903>. , last visited 30/12/2020

This gives rise to a question that “as to what position the other religion, to which one of the parties may belong , or convert to , hold on these matter”³

This matters is dealt by Muslim Personal Law that are :- the Shariat Application Act,1937 and Dissolution of Muslim Marriage Act,1939.

CONVERSION

“ The conversion of an individual from one faith to another would immediately affect not only his or her rights and obligations but also those of others to whom he or she is related unless all of them take to new faith. Conversion , in general , effectuates interpersonal law conflicts in some from or other faith. Conversion generate some legal problem which defy satisfactory solution in existing personal law”⁴

A TEST OF TRUE CONVERSION

A test of true conversion was laid down in the case of *Abdol Razack v. Aga Mohammad Jaffar Bindaneem*⁵ it was held that no court can test the sincerity of anyone’s religious belief. To determine the validity of conversion , the question of conversion should not be done by enquiring in to the mind of the conduct rather it must be decided by enquiring into conformity of the conducts of the convert which is generally expected from that alleged religion.

“A mere declaration of belief is not sufficient to establish a conversion for legal purpose. There should in addition be some evidence of the factum in conversion in addition to convert’s declaration before the conversion can be given any legal effect”⁶

In the case of *Skinner v. Skinner*⁷ the privy council held that for valid conversion a qualification should be added that conversion should be made ‘honestly’ and ‘without any intent to commit fraud upon the law’.

³ Ibid.

⁴ P.C Bedwa, Conversion of a Non-Muslim into Islam and Interpersonal Law Conflicts with Special Reference to Martial Relation, Volume No. 17:3 ,The Indian Law Institute, 410, 410, available at http://14.139.60.114:8080/jspui/bitstream/123456789/16398/1/015_Conversation%20of%20a%20Non-Muslim%20into%20Islam%20and%20Interpersonal%20Law%20Conflicts%20with%20Special%20Referenc.pdf, last seen on 30/12/ 2020

⁵ [1894] UKPC 17

⁶ Mrs.M.Siraj, The Legal Effect of Conversion To Islam , 7th Volume of Malaya Law Review, National University of Singapore, 95, 96(1965) , available at <https://www.jstor.org/stable/24862305?seq=1>, last seen on 30/12/2020

⁷ 1897 L.R. 25 I.A.34

“In the case of *Rikhya Bibi v. Anil Kumar*⁸, a Hindu woman accepted Islam in order to get rid of her husband, who was impotent. It was held that her conversion to Islam was colourable and was effected with the intent to commit fraud upon law, and was therefore invalid and ineffective”⁹

CONVERSION TO ISLAM BY MARRIAGE

Any person can be convert himself into Islam through marriage. According to Muslim law a distinction is made between conversion to Islam of one of the spouses when such conversion takes place :-

- In a country subjected to Muslim Law.
- In a country where the law of Islam is not the law of land

The country which is subjected to Muslim law, in that case if one spouses accepts Islam then he/she need to offer it to the other but at any point acceptance get refused then it can dissolve the marriage.

But in the country where the law of Islam is not the law of the land if one spouses converted to Islam and other does not then automatically after the lapse of three months marriage stands dissolve.

In India, only those laws are valid which are valid laws for India and this case parties involved are also need to be from Muslim community.

In the case of *Roobaba Khanum v. Khodad Bomanji Irani*¹⁰ it was held that if one spouses has converted to Islam and other spouse has refused to do so then he/she can be sued for divorce or a declaration for dissolution of marriage.

If a spouse of other religion converts himself to Islam in order to marry again without divorcing the first spouse then the marriage stands as invalid.

The same happen in the case of *Sarala Mudgal v. Union of India*¹¹ where a Hindu married man converted himself to Muslim in order to marry again with out divorcing the first wife is considered to be invalid and it is a offence under section 494 of IPC.

⁸ 1948 52 Cal. W.N. 142

⁹ (1948) 2 Cal.119.

¹⁰ (1946) 48 B.L.R. 864

¹¹ (1955) 3 SCC 635

In the case of *Lily Thomas v. Union of India*¹², a Hindu wife filed a writ petition in Supreme Court of India cause her husband had converted to Islam to remarry. He has only converted to Islam to remarry but does not have any faith in Islam. So, the question arises whether a Hindu husband can solemnize second marriage?

So, it was held that as per section 17 and 11 of Hindu marriage act, the Husband is liable for bigamy and should be punished under section 494 of IPC. Such marriage is also not also valid as per Islamic law.

If a woman converts to Islam from other any other faith and after marriage she again embraces her former faith then the marriage will be dissolve immediately but in case if anyone convert into Islam and get married and after it she embraces any other religion other than the former one, then it will not ipso facto dissolve the marriage.

In the case of – *Munavvar ul -Islam v. Rishu Arora*,¹³ a Hindu convert herself to Islam to get married after that she embraces her former religion so the marriage stood dissolve.

In case of a Muslim woman converts herself to any other religion and get married before the dissolution of first marriage then, the woman will be guilty of bigamy under section 494 of IPC.

And if a Muslim husband converts himself to any other faith then the marriage will automatically be dissolved. In this case if the woman gets married before the expiry of *iddat* it will be valid and the wife will not be liable for bigamy. This particular thing was held in the case of *Abdul Ghani v. Azizul Huq*.¹⁴

In the case of *Govt. of Bombay v. Ganga*¹⁵ it was held that even if a Hindu wife converted to Islam the marriage will not be dissolved. She can not marry again or enter into a contract of marriage during the life time of her husband or else she will be liable for bigamy.

In the case of *J.J Chandra v. Abinash*¹⁶ “ The Calcutta High Court has held that where an Indian Christian domiciled in India and married to an Indian Christian girl who

¹² AIR 2000 SC 1651

¹³ AIR 2014 Del 130

¹⁴ (1912)ILR39Cal409

¹⁵ (1880) 4 Bom.330

¹⁶ (1939)2 Cal.12

also is domiciled in India , embraces Islamic faith , he may enter into a valid contract of marriage with a Muslim woman , though the first with the Christian wife subsist.”¹⁷ In case of *Khambatta v. Khambatta*¹⁸ a Christian lady married to a Muslim man and converted her to Islam . Later the husband pronounced *Talaq* and it was valid because *lex domicile* applied the law of their religion.

In the case *Farooq Leivers v. Adelaide*¹⁹ a husband converted him to Islam and pronounced *Talaq* it was held that it is not valid because both parties are not Muslim so *Talaq* is invalid.

RIGHT OF INHERITANCE IN CASE OF CONVERSION

If a Hindu gets converted to Islam then right of inheritance is governed by Muslim law and not by Hindu law. This was held in the case of *Vohara Bai Khatija Isabhai V. Vohra Karimbhai*²⁰.

In case a if a Hindu who had a wife or children , embraces Islam and marries a Muslim woman , then his property will be inherited by Muslim woman and children not by Hindu wife and children cause according to Muslim law a Hindu can not succeed in property of Muslim. It was held in the case of *Chandra Sekhar v. Govt. of Mysore*²¹

EFFECTS OF CONVERSION

The legal effects of Conversion are:-

- The religion of Muslim or rules of Muslim law should be followed after conversion from any other religion. Such things of former religion should be renounced which is not followed in Muslim law.
- The status and right enjoyed by the convert must be as per Muslim law.
- The apostasy of the convert must have an immediate and perspective effect. It should not be retrospective.
- The conversion should not be with any intention to commit fraud upon the law.
- Succession and inheritance of the convert should be governed by Muslim law.

¹⁷ Aqil Ahmad, Mohammedan Law, 93(26th ed, 2016)

¹⁸ (1935) 59 Bom.278

¹⁹ (1958) 2 W.P 116.

²⁰ AIR 1974 Guj.4.

²¹ AIR 1953Mys.621

CONCLUSION

In a country like India, which is secular every one has the right to profess the religion of their own choice. So, it is legal as per laws of India to convert to one religion from the other. But certain term and condition should be followed. The convert should have full faith upon the religion which he or she has accepted. Conversion should not be done with the intention to commit fraud upon law. It should be done honestly and good intention. So, conversion is valid in India.

BIBLIOGRAPHY

PRIMARY SOURCE

- Aqil Ahmad , Mohammedan Law, Revised By Iqbal Ali khan, Central Law Agency.

SECNODARY SOURCE

- www.legalservice.com.
- www.jstor.org.
- www.bitstream.com