CONVERSION AND INTER-PERSONAL CONFLICT OF LAWS

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I. Introduction

THE STATEMENT that various personal laws, namely, the Hindu, Muslim Christian and Parsi laws, are applicable to the adherents of Hinduism, Islam, Christianity and Zoroastrianism, though obviously naive, does not suggest a satisfactory solution to problems arising out of conversion of an adherent of one religion to another faith. Apostasy from one religion followed by conversion to another generates inter-personal conflict of laws, which cannot be solved by the existing provisions of the personal laws. Settlement of such conflicts by the application of the provisions of any one of the personal laws would lead to the untenable position of upholding one personal law to the detriment of the followers of another, which approach would promote unhealthy tendencies in the multi-religious Indian society.[1] On the other hand, the principle of 'justice and right' as emphasised in some of the cases involving inter-personal conflict of laws,[2] which obviously means the rejection of the provisions of personal laws for solving such conflicts, would draw us one step closer to the intended uniform civil code. An attempt is made in this paper to indicate some of the problems arising out of conversion to and apostasy from Islam,[3] with a view to stressing the importance of enacting a uniform civil code for solving such problems.

The conversion of a non-Muslim to Islam would decisively affect the

1. It may encourage people to resort to conversion, as illustrated by several cases, as a a device to evade the obligations arising under their personal law. See *infra* note 2.
2. *Rokeya Bibi* v. *Anil Kumar Mukherji* (1948), 2 Cal. 119; *Robasa Khanum* v. *Khodadad Bomanji Irani* (1946) 48 Bom. L.R. 864. In *Ayesha Bibi* v. *Subodh Kumar Chakravarty* (1945) 2 Cal 405 unfortunately Ormond, J. misapplied the principle of "justice and right".
3. It is not possible to investigate in this brief paper all the problems arising under Indian personal laws when apostasy and conversion take place in various permutations and combinations.

property rights of the convert *vis-a-vis* his non-Muslim relatives. Such a convert would himself be governed by his new personal law, namely, the Muslim law, in so far as his property rights are concerned. There may not be a better alternative to the presently accepted rule that a Muslim convert is not entitled to succeed to the property of his non-Muslim relatives (subject, of course, to the provisions of the Caste Disabilities Removal Act, 1850),[4] nor his non-Muslim relatives are entitled to inherit his property,[5] even though such a proposition may lead to curious results in some cases.[6]

However, it is in the field of matrimonial law that we encounter some conundrums which defy a satisfactory solution in the prevailing state of personal laws. The question may be tackled under two heads : (i) conversion to Islam and (ii) apostasy from Islam.

II. Conversion to Islam

The consequences ensuing conversion of a non-Muslim spouse to Islam has to be studied under Muslim law and the personal law to which the spouses previously belonged and one of them continues to belong.

When a non-Muslim spouse embraces Islam, Muslim law lays down that if the parties belong to *dar al-Islām* (which in effect means a country whose state religion is Islam) Islam, has to be offered by the *qādī* to the non-Muslim spouse and if the non-Muslim spouse does not accept it even after three offers, the *qādī* will break off their matrimonial bond; and then the Muslim convert will be free to contract another marriage. On the other hand, where the parties belong to *dar al-harb* (a 'foreign country' as Chakravarty, J. puts it in *Rakeya Bibi's* case[7]) the marriage stands dissolved at the completion of a period equivalent to *'idda*. If we have to apply Muslim law, we will encounter initially the difficult question whether India is a *dar al-Islām* or *dar al-harb*. India, it seems, is neither *dar al-Islām* nor *dar al-harb*; and falls into a category not taken notice of by the Muslim jurists. In spite of this peculiar situation, efforts have been made in several cases to persuade the courts to recognize the procedure of offering Islam

4. For instance, when a Hindu coparcener embraces Islam, even though the traditional Hindu law laid down a strict rule that he shall lose all his rights in the family property, the Caste Disabilities Removal Act, 1850 protects the interests of such an apostate by protecting his right to seek his share.
5. *Mitar Sen* v. *Maqhbul Hassan*, 57 I.A. 313.
6. See *Chandrasekharappa* v. *Government of Mysore*, A.I.R. 1955 Mysore 26. A Hindu brother claimed the property of his sister who had embraced Islam and had inherited considerable wealth from her Muslim husband. He was disqualified from inheriting his sister's property for, under Muslim law, a non-Muslim is not permitted to inherit the property of a Muslim. At the same time, the claim of the Muslim relatives of the husband was also rejected for Muslim Law does not recognize any rule resembling reversion under Hindu law.
7. *Supra* note 2.

to the non-Muslim spouse and, on his or her failure to accept Islam, to terminate his or her marriage.

In so far as other personal laws are concerned, it is significant that whether it is Hindu law, Christian law, or Parsi law, mere conversion of a spouse to Islam or any other religion will not affect the status of the spouses. It may be that the spouse who continues under that personal law has a cause of action against the converted Muslim spouse for seeking the dissolution of the marriage,[8] but that has no relevance to the question we are tackling. It may, therefore, be stated that conversion to Islam will not *ipso facto* alter the status of the parties according to other personal laws.

Therefore, the primary question before the courts is whether to uphold the personal law of the non-Muslim spouse and declare that the matrimonial status is not disturbed despite conversion of the other spouse to Islam, or to apply Muslim law and terminate the marriage. It may be observed here that in most of the cases which have come up before the various High Courts[9] conversion to Islam was resorted to by the concerned party as a subterfuge to achieve some other end, namely, to get rid of the non-Muslim spouse when the former personal law provided no relief. It has been suggested that where a person has embraced Islam by fulfilling the required formalities (without, of course, such an act being vitiated by factors such as coercion), the conversion should attract the application of Muslim personal law irrespective of the motive of the converted spouse.[10] We may, therefore, examine the situation where the conversion is *malafide* as also when it is *bona fide*.

Where a spouse has embraced Islam with the intention of evading his or her own personal law,[11] if the court recognizes such a *malafide* conversion and terminates the matrimonial bond it would indirectly encourage frustrated non-Muslim spouses to seek conversion only with a view to get rid of his or her spouse. It is interesting to note that the application of the rule of Muslim law may cause considerable hardship to the parties even in a case of *bona fide* conversion. We may consider an instance where non-Muslim spouses have deep love and affection for each other but one of them embraces Islam out of a genuine conviction while the other continues to be the adherent of their original religion. If we apply the rule of Muslim law that the marriage stands dissolved automatically with the expiry of a period equivalent to that of *'idda*, the spouses will find to their dismay that their marriage has been dissolved, without their initiative even if they

8. Abdur Rahim, *Muhammadan Jurisprudence*, 397 (1911). For instance, under the Hindu Marriage Act if a Hindu spouse becomes a convert to any other religion, the aggrieved spouse (namely, the spouse who continues to be a Hindu) may seek divorce under s. 13 (I) (ii). See also the Parsi Marriage and Divorce Act 1936, s. 32.
9. See the cases cited *supra* note 2.
10. As per Ormond, J., in *Ayesha Bibi's* case, *supra* note 2.
11. See for instance *Skinner* v. *Orde*, (1871) M.I.A. 309.

want to continue their happy married life, rendering their union illicit and their future children illegitimate. However, non-application of the Muslim law to the Muslim convert also creates some awkward situations. If a Hindu embraces Islam, even for *bona fide* reasons, such a person will be governed by two personal laws, namely, Hindu and Muslim laws. In so far as his or her property is concerned Muslim law will be applicable,[12] but with respect to matrimonial status Hindu law will be applied.[13] Such a situation is far from being satisfactory, but it is the inevitable outcome of the present judicial decisions.

Some may suggest that marriage should be treated as a "package deal" and that if two persons belonging to a particular religion marry under that personal law, they should continue to be governed by that personal law irrespective of their change of religion. The "package deal" bristles with its own problems. For instance, let us assume that two Hindus married according to the *Shastras* embrace Islam and then, some time later, the husband becomes a Christian. In such circumstances the Muslim wife may argue that her marriage with her Christian husband is unsustainable and should, therefore, be terminated. The "package deal" solution provides for the application of the personal law under which they were originally married. So, in this case Hindu law will have to be applied to disentangle the spouses, one of whom is a Muslim and the other a Christian; and we are sure that no court will relish such a situation. We have, therefore, before us a problem in which Muslim law cannot be applied, Christian law may not be applied and Hindu law should not be applied; and we do not know which law to apply. Such a situation is not worth putting up with any longer in the present age.

III. Apostasy from Islam

In so far as apostasy from Islam is concerned, the Muslim law declares that apostasy either by the husband or by the wife would automatically terminate the matrimonial bond. But in the present legal position, there is some variance between the husband and the wife. When a Muslim husband renounces his religion, the marriage stands dissolved because of the strict rule that a Muslim woman cannot have a non-Muslim husband. As regards apostasy of the wife, the marriage stands dissolved under the traditional Muslim law.[14] But a significant question may be raised in this connection. Since Muslim law permits a *Hanafī* Muslim to enter into a *nikāh* with a woman professing a scriptural religion (*kitābiyya*), it may be suggested that when a Muslim woman embraces a scriptural faith the marriage should not be terminated. In fact, such a suggestion coming from a leading

12. See *Mitar Sen's* case, *supra* note 5.
13. See *Rakeya Bibi's* case, *supra* note 2.
14. See *Resham Bibi* v. *Khuda Baksh* (1937) 19 Lak. 277.

scholar like Ameer Ali[15] had not been acceptable to the courts, and they had been applying the strict Muslim law. This attitude of the Muslim law is understandable. Muslim law, while primarily requiring a Muslim to marry a Muslim only, extends a concession in the case of a *kitābiyya*. But it would like to express its utmost displeasure when a born Muslim woman abjures her faith. However, in India a statutory change lays down that the committing of apostasy by a Muslim woman does not *ipso facto* terminate her marriage (subject, of course, to an exception stated therein).[16]

One more curious situation arises by the apostasy of a Muslim spouse. A Muslim could commit apostasy and go out of the purview of Muslim law, even without embracing another religion. A Muslim by withdrawing his subscription to the fundamental tenets of Islam would cease to be a Muslim.[17] If he does not care to embrace any other faith, the important question which may arise is: by what personal law he would be governed in future. In this connection, we may notice a provision under the various Hindu law enactments. It states that where a person is not a Muslim or a Christian or a Parsi or a Jew, he will be deemed to be a Hindu for the purposes of the application of personal law.[18] Therefore, a Muslim committing apostasy from Islam would cease to be a Muslim and since he has not become a Christian or a Parsi or a Jew, he may be deemed to be a Hindu. a proposition which is detestable to him and unpalatable to us.

IV. The solution

Thus we find that the personal laws in their present form cannot satisfactorily deal with the aforementioned situations. The concept of personal law is an outcome of historic necessity and the policy pursued by the British. So long as we retain the personal laws in the present pattern, we will not be in a position to solve the problems arising out of conversion. Though the law has adopted a natural stand regarding the pursuance of a particular faith by an individual, it cannot help itself when an individual changes his or her religion. The only satisfactory course for the secular India is to enact a uniform civil code applicable to all citizens of this country.

15. Ameer Ali, 2 *Mohammedan Law*, 384, 390-391, (1929).
16. The Dissolution of Muslim Marriages Act 1939, s. 4.
17. See *Resham Bibi's* case, *supra* note 14.
18. The Hindu Marriage Act 1955, s. 2; the Hindu Succession Act 1956, s. 2. Of course, the burden of establishing that he shall not be governed by Hindu law lies on that person if he wants to escape from the application of Hindu law.