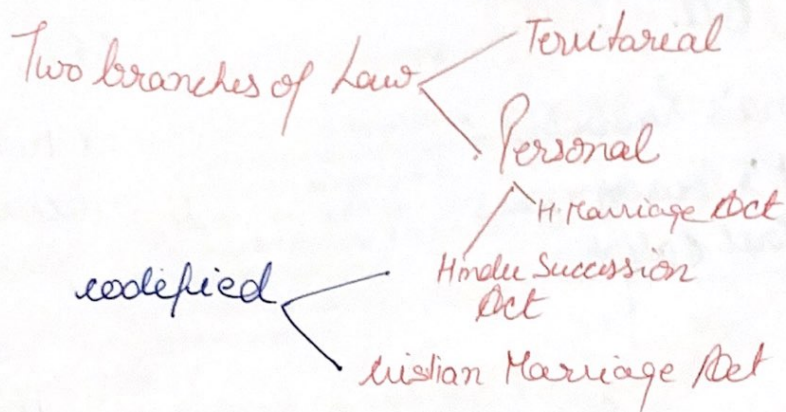


Origin of Muslim Law



Uncodified - Muslim Law -

- It is a personal law and a branch of civil law that is applied by court in regard to family matters when parties are Muslim.
- Muslim law is called Sharia (Syariah) in Arabic
- Muslim is derived from the word 'Islam' which means peace & submission.
- third largest religious group.
- Originated from Divine
The Divine communicated it to Prophet Mohammad who prescribed them in Quran.
- completely developed at the time of death of Prophet Mohammad
- Prophet left Mecca & went to Madina, this flight is Hijrat.

P. Mohammed (Birth 570 A.D. in Mecca, Death 632 A.D.)
- no son

Shia
(Ali) Die I Caliph

Fatima's husband &
Prophet's cousin was
first Caliph

son
Hasan (Sunni) Hussain (Shia)

- 11 wife were there
- Sunni are there in every country except Iran.
- Shia in Iran

(Abu Bakr) Sunni
envote

P. Mohammed last wife
Aisha declared her father
first Caliph.

↓
Hajrat Umar
second Caliph

Polished & refined Quran
↓
Hajrat Usman III 12 years

↓
Hajrat Ali IV 5 years
some Shia one

Who is Muslim? (short note)

By Birth when...

- 1- Both parents are muslim
- 2- One parent is muslim
+ & brought up as muslim
- cogent evi to prove that this child has brought up as Hindu.

Conversion

→ By Birth

① By public declaration

Sec-3 Muslim Personal Law (Shariat) Act.

By going to Mosque.

By Public declaration

The concerned person shall publically renounce his old religion & shall declare publically that he believes only in one God that is Allah & also that prophet Mohammad is the messenger of God. This will automatically convert in Islam.

Mosque

Instead of making pub. declaration, a concerned person go to mosque & read Kalima before Molvi where he will be given Muslim name & there he gets converted to Islam.

There has been an issue as what is the nature

of conversion when conversion has been made with a
malafidly Intention. Eg to get into four marriages &
to have any such benefit of conversion, which
is not available in his earlier religion.

It has been held in *Sarla Mudgal vs UOI (1995)* s.c
as well as

Lily Thomas vs UOI (2007) s.c.

That such a conversion for the purpose of getting into
more than one marriages, is malafidly & illegal.

However neither of these cases has declared the conversion
itself to be void. That is convert shd not to be
considered to be a Muslim.

The law does not as such declare him to be no convert
or conversion to be void. rather the law just aims
at, deeming the conversion to be malafidly & illegal
depriving such persons for best benefit for which
he converted. However the Muslim society does have
the capacity to declare the conversion to be no conversion
or to outcast him & deprive him of any benefits of
Islam

E. EFFECT OF CONVERSION TO ISLAM

On conversion to Islam, converts, no matter what their previous religion may have been, must be taken, at that moment, to have *renounced their former religion and personal law*, and to have substituted, in its place, the Muslim religion and so much of the personal law as necessarily flows from that religion. (*Advocate-General of Bombay v. Jimbabai*, I.L.R. (1917) 41 Bom. 181)

Thus, an Indian Christian domiciled in India can, after his conversion to Islam, legally contract a second marriage with a Muslim woman while his former marriage with a Christian woman is still subsisting. (*John Jiban Chandra Datta v. Abinash*, I.L.R. (1932) 2 Cal. 12)

But, if the first marriage was contracted in *England* under *English* form, during its subsistence, the second marriage would be regarded as a nullity. (*King v. Superintendent, Registrar of Marriages, Hammersmith*, (1917) 1 K.B. 634)

But the conversion of a Hindu wife to Islam does *not ipso facto* dissolve her marriage with her husband, and she would be guilty of bigamy if she marries again. (*Mst. Nandi v. The Crown* (1920) I.L.R. 1 Lah. 440)

In *Khambatta v. Khambatta* [(1934) 36 Bom. L.R.], a Muslim married a Christian woman in the Christian form. The wife became a convert to Islam and the husband divorced her by *talak*. In these circumstances, the Court held that the divorce was *valid*.

Problem : Yusuf, a Muslim, marries Rita, a Christian woman, in Scotland according to *lex loci* (i.e. the law of Scotland). They return to India where Rita embraces Islam. Can Yusuf divorce Rita by *Talak*?

accept **Ans.** : Y can divorce R by *talak*, R having embraced Islam. (See *Khambatta v. Khambatta*, above)

The succession of property of a convert to the Muslim religion would be governed by *Muslim* law, and *not* by the *Indian Succession Act*. The property therefore, of a Hindu convert to Islam will devolve according to Muslim law.

But, in all such cases, the conversion must be *bona fide*, and *not* a colorable one, i.e., *not* a conversion with the sole purpose of evading the personal law to which such a person is subject.

(i) *Effect on succession*

According to the strict Muhammadan Law, difference of religion is a bar to inheritance. But, by the application of the Freedom of Religion Act, 1850, a convert from Islam does *not* lose his right of inheritance. That Act does away with the provisions of Muhammadan Law by which apostates were excluded from inheritance.

According to Muslim law, a Hindu *cannot* succeed to the estate of a Muslim. Therefore, if a Hindu, with a Hindu wife and his children, embraces Islam, and marries a Muslim wife, his property will pass on his death to his *Muslim* wife, and *not* to his *Hindu* wife and children. (*Chedabaram v. Ma Nyien*, I.L.R. (1928) 6 Ran. 243)

(ii) *Effect on marriage*

If a Muslim *husband renounces* Islam, his marriage with his Muslim wife is dissolved *ipso facto*. Such apostasy may be *express* (as for instance, when he says "I hereby renounce Islam", or "I do *not* believe in God or the Prophet Mohammad") or *by conduct* (as for example, by using grossly disrespectful language towards the Prophet).

As regards a Muslim *wife*, the mere renunciation of Islam by her does not *ipso facto* dissolve the marriage. Thus, for example, a conversion by a Muslim wife (who was born a Muslim) into Christianity does *not*, by itself, dissolve her marriage. However, if the wife had been converted to Islam from some other faith, and she re-embraces her former faith, the marriage is dissolved. Thus, in the above example, if the wife was originally a Christian who had embraced Islam, if she re-embraces Christianity, her marriage would stand dissolved. (This topic is discussed at greater length in Chapter VI.)

(iii) *Effect on guardianship in marriage*

(The effect of apostasy on the right of guardianship in marriage is discussed in Chapter IV, under the heading "Guardianship in marriage").

632 A.D.

What is Islam—The meaning of Islam is :

(i) In religious sense it is submission to the will of God.

(ii) In secular sense it is establishment of peace.

A person who follows these five is a muslim :

(i) Tawhid—means complete faith in God and his messenger Prophet Mohamad.

(ii) Namaj—means pray to God five times daily.

(iii) Zakat—means each Muslim should donate a definite part of his income.

(iv) Roja—means fast for one month in a year.

(v) Haj—means to visit Macca and Madina once in his life.

Shariat—Shariat means the path to be followed. According to Shariat there are five religious injunctions :

(a) Farz means duties which are strictly obeyed by Muslims.

(b) Haram means restrictions which are strictly followed by Muslims.

(c) Mandub means advised which are advised to do to Muslims.

(d) Makruh means advised not to do. Things which are advised not to do to Muslims.

(e) Jaiz means not expressed.

How to live life.