CHAPTER VI

POLYGAMY BY CONVERSION

(a) Concept of conversion.

(b) Effect of Conversion to Muslim religion on marriage solemnized under Hindu, Parsi and Christian Personal Laws.
Concept of Conversion:

According to the Oxford English Dictionary, a convert is any person who renounces his own faith and adopts another.

According to the Webster Dictionary, a convert is one who changes from one religion, doctrine, opinion, course of action to another. Thus one who gives up one's religion and turns into an atheist or starts practising the religious faith of another community does not become a convert. Thus conversion consist not only of giving up one's own religion but also voluntarily and openly adopting another in such a way that the community in which he is converts also accepts him.

The Concept of conversion has two constituent elements: (i) External element (ii) Internal or mental element. From the philosophical point of view, religion, its renunciation and its change are matters of the spirit and therefore, internal.

The internal aspect is concerned with the working of the mind of the convert. He or she should
have undergone a change of mind, in the sphere of religion, since primarily religion is a matter of belief, though it is accompanied by ritual.

The belief in a religion, its abandonment or its transference is an internal matter, but if such a belief is to have legal consequences, it is desirable that the change of religion or the change of belief should find some manifestation. Herein lies the significance of these twin elements of conversion, namely, the external and the internal.

Both the elements raise interesting questions in the field of law. Conversion, being a matter of faith, the law expects that it should be honest and sincere and not fictitious or sham. It must not be the result of some interior motive. Thus it must be an end in itself not a means to secure some other, non-spiritual ends. From legal point of view, here lies the importance of the internal element. It is, therefore, equally relevant to draw attention to the legal significance of the external element.

The law court or some other agency charged with the administration and implementation of the law can,
in general, judge the actions of men and women
only from their external behaviour.

6. Under Hindu law "(a) person does not cease
to be Hindu merely because he declares that he has
no faith in his religion. A person will not cease to
be Hindu if he does not have faith in his religion
or renounces his religion or leads an unorthodox life,
so much so even if he eats beef and insults all Hindu
gods and goddesses. He will also not cease to be a
Hindu even if he expresses his faith in another
religion and even starts practising another religion.
Such a person will continue to be a Hindu".

To sum up, under the modern Hindu law two
propositions are well established:

(i) A non-Hindu will became a Hindu by conversion
if he undergoes a formal ceremony of conversion
or reconversion prescribed by the caste or
community to which he converts or reconverts.

(ii) If he expresses a bonafide intention to become
a Hindu accompanied by conduct equivocally
expressing that intention with the acceptance

1. Haras Driwan; Modern Hindu Law, p. 141.
of him as a member of the community into the fold of which he was ushered into.

No formal ceremonies are laid down for conversion to Hinduism. Supreme Court in Perumal v. Poonuswami, laid down that a person may also become a Hindu if after expressing an intention, expressly or impliedly, he lives as a Hindu and the community or caste into the fold of which he is ushered in accepts him as a member of that community or the consensus of the community into which he was initiated is sufficiently indicative of his conversion. Here the lack of some formalities can be neglected what is an accomplished fact.

What is important here is that the convert professes the religion into which he so converts or reconverts. Raja Mani C.J., in Michail v. Venkateswaran discussed at length the meaning of the word 'professing a religion'. According to this judgement, Hinduism is a mode of life and denotes a community of people who have fashioned their life in a particular pattern.

2. Paras Diwan; Modern Hindu Law, p.6.
In regard to the word 'profess' the learned judge said, "I do not think undue stress should be laid on the word 'profess'. I think the expression 'profess' is intended to have the same meaning as the expression 'belong to and the person belongs to the religion either by birth or by conversion. Mere sympathy with or admiration for particular tenets of any religion by a person not born into it and who has not been converted into it would bring him within the meaning of the expression 'professing a particular religion'.

Equally if a person has been born into a particular religion and has not been converted to another religion, the mere fact that he is of an unorthodox type or has no belief personally in the tenets of that religion would not make him out of the category of a person professing that religion.

Kajamanner C.J., observed that a person who is born into a particular religion, even though he personally has no belief in the tenets of that religion would not cease to be a person belonging to that religion.

It is submitted that while this observation may held good in respect of Hindus, it cannot be applied to the Christians.

The term Christian is defined the Indian Christian Marriage Act, 1872 as "one who professes Christianity". Then who can be said to profess Christianity, so as to be recognized as a christian in law. In Janamma v. Joseph the High court observed:

"The absence of clergy may not be conclusive to show that the creed was not Christianity. Similarly the absence of Child Baptism may not also be conclusive of the question, but adult baptism is an essential sacrament of Christianity".

In K.J.B. David v. Neelaman David the Orissa High Court had occasion to consider whether the person was Christian, where there was no evidence of the persons having undergone Baptism, and the court had to determine whether or not the husband was a Christian. The court quoted "Halsbury's Laws of England" to show

6. 1967, Orissa, i.K., 57.
that Baptism was a sacrament by which a person was admitted into the church or Christ. It is not only a sign and distinguishing mark of the Christian profession, but also a sign of regeneration of new birth.

Judge observed in this case:

"I have not been shown any authority in support of the view that a person cannot profess Christianity unless and until he is baptized. I see no reason to disbelieve the opposite parties' statement that she is a Christian notwithstanding her admission that she was not baptized. Thus, Baptism is good evidence, but absence of Baptism does not prove that one is not a Christian".

To be a Christian, one has to owe allegiance exclusively to Christianity, unless a person professes Christianity and accepts Jesus Christ as his saviour and as the full revelation of God, he cannot be a Christian. An atheist cannot be said to profess Christianity.

Parsis of India do not have any system of conversion into their faith. They do not admit people from other religions into their fold, they
have ceremony or initiation by which Parsis boys
and girls are received into the Zoroastrian faith
between the age of 7 and 9. But this ceremony is
not relevant for conversion. Parsis do not admit
7 aliens in religion into their fold, on the other
hand, a Parsi is perfectly competent to convert
8 to any other religion.

For Muslims to quote Tyabji:

A Muslim is a person who professes the faith
of Islam i.e. belief in the unity of God and
the mission of Muhammad as a prophet or messenger
of God) and to such person Muslim law will be
applicable......

Where a Muslim professes or is alleged to belong
to, or to have been converted to, or (being a
Sunnite) to have elected to belong to, a particular
school or community, - the question will be
decided with reference to the tenets, ways, and
(in cases where, or matters in which, customs

7. Sir Din Shaw M. I etit v. Sir Jum Seth Jiji Bhai,
11, Bom., I.K. 85.

8. Jiwaji v. Boman Ji, 5 Bom., I.K. 655,
are enforceable) to the customs, of the particular school or community.

Where a Muslim avowed belief and conduct in the past do not conform to those of any recognized school of Islam, the court will apply that law to him which will be in accordance with justice, equity and good conscience.

The Court will not permit anyone to commit a fraud upon the law by pretending to be convert to Islam in order to elude the personal law by which he is bound.

Polygamy by Conversion:

Due to social, cultural, historical reasons different communities of India are governed by their respective personal laws. In matrimonial matters the Hindus are governed by the Hindu Marriage Act 1955, the Muslim by the uncodified Muslim law of marriage and divorce and the Dissolution of Muslim Marriage Act, 1939, the Parsis by the Parsi Marriage and Divorce Act, 1936, and the Jews by the Jewish Customary law. There is also special Marriage Act, 1954 which

provides for a civil form of marriage for man
and woman of any community. Then we have the Converts,
Marriage Dissolution Act, 1866, which is applicable
to native converts to Christianity. In these
circumstances marriage between the Christians, Parsis,
Hindus, Muslims is not possible until one of spouses
converted to the religion of other party prior to the
marriage. Thus conversion from one religion to another
religion leads to different consequences under different
personal laws.

Sometimes in the personal law conflictual problems
arise when the converted spouse (as distinguished from
the non-converted spouse) invokes the application of
his new personal law to sort out his or her matrimonial
problems. Sometimes conversion is sought so that the
converts could seek the application of the new law
which is more favourable to him. The question of change
of religion becomes rather conspicuous in India because
of the existence of one polygamous personal law amidst
monogamous personal laws. The Monogamy has become the
law by legislation for the Christians, the Parsis

10. Under the Special Marriage Act, 1954, Marriage
between man and woman belonging to different religion
is possible.
11. Section 19(4), the Indian Divorce Act, 1869.
12. Section 11, the Hindu Marriage Act, 1955.
and the Hindus but not the Muslims.
When a Hindu or Christian husband does not find any excuse to divorce his wife, he becomes Muslim for the sole purpose of getting hold of the facility of marrying more than one wives which is available only under Muslim law. This has opened the door for the evasion of the Hindu Marriage Act 1955 and the Christian Marriage Act 1872. Such conversion are due not to a genuine change of belief which is for spiritual purpose. On the contrary they are due to the legally binding rule of monogamy.

a) **The Effect of Conversion on the Marriage Solemnized between two Parsis:**

The matrimonial matters of the Parsis in India are governed by the Parsi Marriage and Divorce Act, 1936. Under this Act, only the unconverted Parsi spouse is entitled to the remedy of divorce on proof of change of religion by the other spouse. There is neither any automatic dissolution of marriage nor the converted spouse has any right to get his marriage dissolved.

13. **Section 4, Parsi Marriage and Divorce Act, 1936.**
14. **Section 32(w) Parsi Marriage And Divorce Act, 1936.**
Thus, a Farsi husband or wife is entitled to divorce under section 32(J) if the defendant has ceased to be a Farsi as defined in section 2(7), if the defendant has ceased to be a Farsi as defined in section 2(7) of the Act and also the suit is to be brought within two years from the date of the plaintiff's knowledge about the defendant's ceasing to be a Farsi. It is not open to the defendant in such cases to show that he or she has become a Farsi Zoroastrian again, either at a time the suit was filed, or at the time of the hearing. The plaintiff must also satisfy the court that the requirements of section 35 of the Act, so far as may be necessary are fulfilled. There mere doubt or suspicion on the part of the plaintiff that the defendant has ceased to be a Farsi will not suffice. The onus is on the party alleging the fact.

It is enough, if the plaintiff shows that during their married life, the defendant had ceased to follow the tenets and doctrines of the Zoroastrian religion. He or she may rely on any admission etc., made by the

15. Section 35, Farsi Marriage and Divorce Act, 1936.
defendant.

The marriage between the two Parsis continue even after the conversion of other spouse. There is no automatic dissolution of the marriage, with the result that the converted spouse cannot marry again, till the first marriage is validly dissolved by the courts. Remarriage in such cases shall be unlawful. Section 4 of Parsi Marriage and Divorce Act, 1936, reads as under:

1. No Parsi (whether such person has changed his or her religion or domicile or not) shall contract any marriage under this act or any other law in the lifetime of his or her wife or husband, whether a Parsi or not, except after his or her lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been declared null and void or dissolved, and, if the marriage was contracted with such wife or husband under the Parsi Marriage and Divorce Act except after a divorce, declaration or dissolution as afore-said under either of the said acts.

2. Every marriage contracted contrary to the provision of sub-Section(1) shall be void.

Thus according to Parsi Marriage Act, 1936, Parsi
husband or wife cannot remarry in the lifetime of his wife or husband until his or her marriage is dissolved by a competent court, although he or she may have become a convert to any other faith. In the case of Kobasa Khanum v. Khodada Chagla J. (as he then was) said with reference to a marriage contracted between two Parsees that it was a solemn pact that the marriage would be monogamous and could only be dissolved according to the tenets of Zoroastrian religion and that it would be patently contrary to the justice and right that one party to a solemn pact should be allowed to repudiate it by a unilateral act.

Thus a Parsi husband cannot marry second time by conversion into Muslim religion during the subsistence of his first marriage under the Parsi Marriage and Divorce Act, 1936.

In Yezdiar v. Yezdiar, wife filed a suit for divorce against her husband under the provisions

of the Farsi Marriage and Divorce Act, 1936. The Parties were both Zoroastrian immigrants from Iran and were married in Bombay under the Farsi Marriage and Divorce Act. The husband contested the jurisdiction of the court on the ground that the parties were not domiciled in India. The trial court accepted this contention. The appellate court held that an Iranian Zoroastrian could become Parsi only if he changed his domicile and became an Indian subject and not if he continued to have his domicile and nationality in Iran.

Faras Diwan has rightly pointed out that this case does not represent good law, since it did not consider certain specific provisions of the Farsi Marriage and Divorce Act. Section 52 (2) lays down that a Farsi, who has been married under the Act will remain bound by the provisions of the Act, even though he changes his religion or domicile so long as his spouse is alive or marriage has not been dissolved or declared null and void by a competent court. Section 4 further provides that a Farsi married under the Act
cannot contract a second marriage by change of religion or domicile so long as his marriage subsists. Thus under the Act the change of domicile or religion is of no consequence and the Act will apply to parties who have married under the Act.

In Jamshed Irani v. Banu Irani on similar facts, of Yezdiar v. Yezdiar's case was considered and the court observed that it laid down bad law, and held that once parties were married under the Act, they continued to be governed by it, change of religion or domicile was immaterial.

Thus a Hindu husband (or a husband belonging to any religion except Farsi) on his conversion to Islam

21. For the Farsis, s.4 of the Farsi Marriage and Divorce Act (1936) ensures that-----

1) "No Farsi (Whether such Farsi has changed his or her religion, domicile or not) shall contract any Marriage under this Act or any other law in the life time of his or her wife or any other law in the life time of his or her wife or husband, whether a Farsi or not except after his or her lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been declared null and void or dissolved, and if the Marriage was contracted with such wife or husband under the Farsi Marriage and Divorce Act, 1865 or under this Act except after a divorce, declaration or dissolution as aforesaid under either of the said acts,

2) Every Marriage contracted contrary to the provisions of sub-section(1) shall be void"
can contract three more marriages under the Muslim law though his first marriage is still subsisting.

Same is the position under the Special Marriage Act, 1954, though religion is not a ground for matrimonial relief under this Act. Since the Act permits inter-religion marriages, this applies to only those persons who choose to marry under it.

Section 44 of the 1954 Act provides:

"Every person whose marriage is solemnized under this Act and who, during the life time of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in S.494 and S.495 of the Indian penal Code (Act 45 of 1860) for the offence of marrying again during the life time of her husband or wife and the marriage so contracted shall be void".

No doubt the religious element is not important as far as the Special Marriage Act is concerned. But as this Act does not specifically figure change of religion, situations will keep on arising were there
is an inter-personal conflict of laws.

Section 494 and 495 of the Indian Penal Code mentioned in S. 44 of 1954 Act apply to a second marriage which is void at the time it is contracted. Their application may be avoided if the second marriage is established to be valid, according to the personal law applicable to the parties at the time of second marriage. All specific provision, in 1954 Act, is made only in respect to succession to the property of the parties married under the Act, but it does not take away other rights and obligations following from the personal law of the religion to which the parties belonged or any of them belongs after his or her conversion to a new religion.

Thus the special Marriage Act, 1954 cannot escape the difficulties inherent in special conversion.

Under the Hindu Marriage Act, 1955 a curious situation may arise where a male spouse embraces Islam and marries according to Muslim law a Hindu girl converted to Islam before her marriage. After a lapse of some years they reconvert to the Hindu religion, both marriages being valid when solemnized, it seems,
The great protection of monogamy conferred on the Hindu and Christian wives is thus taken away by any Hindu or Christian husband from their wives at their sweet will or caprices.

Section 13(2)(i) of the Hindu Marriage Act: intended to enable wives of polygamous husbands to obtain their freedom, if they wished, upon the mere ground of the subsistence of another marriage of the common husband. But unfortunately the clause refers only to marriage which took place prior to the enactment of the statute itself, where a Hindu husband has validly married again after the Act (We have shown above how he can do it). He commits no matrimonial offence thereby. Even the provision of a ground for relief in change of religion (See. S. 13 (1) (ii) "has ceased to be a Hindu by conversion to


23. S.4(1) of the Parsi Marriage and Divorce Act, 1936, has already protected the Parsi wives by prohibiting a Parsi husband from marrying again even if he were to become a Muslim.
another religion" cannot help be. if, shortly after
his Muslim marriage he relapses into hinduism. It is
very difficult to claim relief on the ground that
a husband became a Muslim if his first defence is
that he has been a Hindu and remains a Hindu,
notwithstanding a period as a Non-Hindu. And the
husband may provide no other ground for relief.
Of course the non-converted spouse being the
aggrieved party may seek a divorce on the ground
that the husband has been converted to Islam. But
this is no real relief to the innocent wives who do
not desire such divorce. But they cannot prevent their
husbands from becoming Muslims. Had it been only a
question of freedom of conscience of these husbands,
no objection could have been taken to such conversions.
But the objectionable thing about such conversions is
that they are not genuine. The husbands have no
interest in Islam as a religion at all. Their only
purpose is to be able to marry again as Muslims.
Such conversions have created a serious problem.
Same is the position under the Indian Christian

marriage Act, 1872. Christians in India are governed in their matrimonial matters by the Indian Christian Marriage Act, 1872 and the Indian Divorce Act, 1869. The converts Marriage Dissolution Act, 1866 which is applicable only to those Christians who are converts from other religions and to no one else.

Under the Indian divorce Act, 1869, the change of religion by the Christian wife is not a ground for the husband to obtain any remedy either of divorce or restitution of conjugal rights. On the other hand, if the husband exchanges his profession of Christianity for the profession of some other religion and goes through a form of marriage with another woman, the first wife can petition for divorce. It is here that the Christian law differs from the other laws, because here the wife can get relief not just on the ground of her husband's conversion, but she has to show in addition that after conversion he has also married some other woman.

25. Section 10, Indian Divorce Act, 1869.
In Helen Skinner v. Orde, a Christian widow and a Christian husband having a wife living (and not divorced) after conversion to Islam, married a Mohammedan woman. Their lordship of the Privy Council expressed doubts as to the legality of such a marriage. The Privy Council, however, leaned in favour of the validity of the marriage where the couple married according to Christian rites and afterwards having converted to Islam, married again according to the Muslim law.

In Emperor v. Lazar the Madras High Court again held the accused guilty of bigamy. In this case native Christian having Christian wife (living) married a Hindu woman according to Hindu rites without renouncing his religion. The Court held, obiter that it would make no difference if he had renounced the Christian religion before contracting the second marriage.

26 Helen Skinner v. Orde (1871) 14, N.I.A., 309, 324.
In Emperor v. Antony, the same court, in a case where a Christian having a Christian wife converted to Hinduism and contracted a marriage with a Hindu woman according to Hindu rites, held that the offence of bigamy was not committed. In John Jahan Chandra v. Chander Sen, it was held that a married Christian domiciled in India after his conversion to Islam is governed by Muslim law and is, thus entitled, during the subsistence of his marriage with his former Christian wife to contract a valid marriage with another woman according to Mohammedan rites.

Thus a Hindu or Christian husband can adopt Muslim religion only for the purpose to contract another marriage.

So the question of motive in conversion obviously telescope into the question of freedom of religion.

Irrespective of motives, has a citizen of this country the freedom to change his religion?

The question of colourable fraudulent and dishonest conversion, has come up before the Indian

High Courts in a number of cases, where a non-Muslim has embraced Islam, either to claim divorce on the ground of apostasy, or, to enter into a polygamous marriage.

It appears to be a well established proposition of law that a non-Muslim, on undergoing the ceremonies of conversion prescribed under Islam, becomes a Muslim. In Islam, the ceremonies of conversion are very simple. A person seeking 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 becomes a Muslim. The Imam then confers a Muslim name on the convert. In most mosques, a register is kept in which the name of the person embracing Islam is entered and the convert puts his signature thereto.

Whether mere profession of Islam is sufficient to make a non-Muslim is not free from doubt. Faiz Badruddin Tyabji, on the basis of the case of Abdul Razak v. Aga Mohamed, observed.

31. 1894, L.R. 21, I.A. 55.
"Profession with or without conversion is necessary and sufficient to remove the disability of having another religion". 

In this case no evidence was given to show that alleged convert made any 'Profession of Islam'. Alleged counsel said in this case she knew nothing about the Muhammadan religion; all her life she lived and worshiped as a Burmese, so it was held by the court she was not Muslim.

In Mst. Kesham Bibi v. Khuda Baksh the court observed:

32. Paiz Hadruddin Tyabji; Muslim Law, (ed. 1968) p.7.
33. 1938 Lah. 277. Cited by Faras Diwan; Muslim Law in Modern India., p.3.(Ed.-1977).
"One may relinquish a faith which is an easy thing to do, but one may not acquire liking for these 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 Muhammad as his prophet and in the Quran, and thus ceased to profess Islam. The Court then said,

"...(A) person's religious belief is not a tangible thing which can be seen or touched. It is the mental condition of one is believing in certain articles of faith that constitutes one's religion and if one ceases to believe in them, which again is a mere mental condition, One automatically ceases to profess that religion."

In this case, Din Mohammad J remarked that the motive of the declarer was also immaterial; a person might renounce his faith for love or avarice; one might do

34. Id. at 280.
as to get rid of his present commitments, or truly
to seek salvation elsewhere, but that would not
affect the factum of change of faith. In matters like
these, it was the factum alone that matters and not
the latest spring of action which resulted there

Justice Ormond also spoke in similar tune
36
in Avesha bibi v. Subodh Chandra Chakravarti.

The Privy Council in Attorney General of Ceylon
37
v. reid held that a person, domiciled in Ceylon: a
country of many races and creeds, had an inherent
right to change his religion and personal law and
thus, could contract a valid polygamous marriage, if
recognised by the laws of Ceylon, notwithstanding
an earlier subsisting marriage. Thus, in the case of
a male embracing Islam and contracting a second
marriage the subsistence of his first marriage is to
be determined by the rules of his former religion and
validity of his second marriage according to Mohammedan
law. This is because in deciding on the husband's
capacity to take a second wife, the personal law of the

35. Id. at 206.
husband at the time of marriage has to be taken into account. A right to take a second wife is an incident of the status of marriage which a husband may or may not possess. If on conversion (as it happens when the husband converts to Islam) he acquires that status, he can exercise that right which naturally flow from it.

Citing Chagla J., as he then was in Khedari v. Kheda, their lordships of the privy Council emphasise that in India and equally in Ceylon there is no one law of marriage. No marriage was therefore in essence not potentially polygamous. It was emphasised that in a country of many personal laws a change of faith must mean a change of personal law, and so long as no status provided to the contrary there could be no impediment to full enjoyment of the rights attached to the new personal law. In their Lordships view, in such countries there must be an inherent right in the inhabitants domiciled there to change their religion and personal law and so to contract a valid polygamous marriage if recognised by the laws of the country notwithstanding an earlier:

38. AIR 1947 Bom., 272-73.
marriage. If such inherent right is to be abrogated, it must be done by statute, admittedly there is none. In Emperor v. Antony, David v. Sudha, Morthamma v. Muniaswami, Hindus being converted to Christianity and relapsing into Hinduism in order to marry another wife, the court held that no offence of bigamy within S. 494 was committed thereby.

In Kankal Kao v. I.B., Meshram the Supreme Court laid down that so long as the fact of conversion is genuine, the motive of conversion does not affect the question. A person may embrace a particular religion in order to benefit from a worldly point of view or in the hope of entering the kingdom of Heaven, but not affect the question.

In Hakeyai Bibi v. Anil Kumar Mukherjee Division Bench of the Calcutta High Court speaking through I.B. Chakraborthy J. has held that the bona fides of conversion is a relevant and justifiable consideration. Chakraborthy J. at pp. 124 - observed:

"The question, however, still remains whether

42. AIR 1951 Mad. 888.
43. AIR 1965 S.C. 1179.
44. L.L.R. 1948, 2 Cal. 119.
her conversion was a bonafides one or a mere device adopted for the purpose of avoiding the marriage.

Mr. Das who appeared for her contended on the authority of certain observations made by Ormond J., in the case of Ayesha bibi v. Sutour Chandra that the question of bonafides was wholly irrelevant and, further that no court could determine the bonafides or otherwise of a person's change of faith. We entirely dissent from those propositions. It may be that a court cannot test or gauge the sincerity of religious belief, or that, where there is no question of the 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 and superficial fancy. But a court can and does find the true intention of men lying behind their acts and can certainly find in the circumstances of a case whether a pretended conversion was really a means to some further end, we can see no reason to say that it is in the nature of things impossible for a court of law to determine whether a conversion was bonafide. Nor can we agree that the question of bonafides is immaterial.

It is true as Lord Macnaughten has stated no court of law can test or gauge the sincerity of religious belief, but we cannot say that question of bonafides is wholly irrelevant and no court could determine the bonafides or otherwise of a change of religion. Court can certainly find from the circumstances of a case whether a pretended conversion was really a measure to secure some further end. It is not impossible for a court to determine whether a conversion was bonafide. Neither can we say that the question of bonafide is immaterial.

It would result in accepting the principle that one can evade one's personal law, if one wants, by resorting to a feigned conversion. Such a principle may lead to a lot of complications in matrimonial law. For instance, when a Hindu or a Christian or a Parsi husband finds it difficult to get a divorce under his personal law, on account of insufficiency of the ground he may evade his personal law by the method of conversion. He may embrace Islam and enter into a polygamous marriage on the specious plea that since he has become a Muslim he is entitled to do so under his new personal law.
In the case of Skinner v. Skinner the Privy Council, while referring to the possibility of change of religion on the part of both spouses, was careful to add the qualification that such change must be made honestly and without any intent to commit a fraud upon the law:

"Indeed; it seems to us to be elementary that if a conversion is not inspired by religious feelings and undergone for its own sake, but is resorted to merely with the object of creating a ground for some claim of right, a court of law cannot recognize it as a good basis for such claim, but must hold that no lawful foundation of the claims has been proved; where a party puts forward his conversion to a new faith as creating a right in his favour to the prejudice of another it is proper and necessary for a court of law to enquire and find whether the conversion was a bonafide one".

45. (1897) 28 Cal., 537.
Justice Deshpande has rightly said:

"Thus decision that the bonafide of a conversion is justiciable by the court before applying Muslim personal law to the convert is supported by the analogy of the decision of the Supreme Court in Satya v. Teja Singh. In this case the husband had gone to Nevada only with a view to complete the short period of residence necessary to acquire the domicile in that state. He had no intention of settling their permanently or for an indefinite time, when he represented to the domiciled in that state it amounted to the Nevada court and as such foreign judgement of divorce so obtained was initiated by fraud within the meaning of Section 13(e) of civil procedure code. Under Section 44 of the Evidence Act also such a judgement can be shown to be initiated by fraud.

46. V.S. Deshpande; Mehar Chand Mahajan Memorial Lectures 1982-83, Department of Laws, Panjab University, Chandigarh.

Just a person can change the law applicable to him by change of domicile, similarly he can change it by change of religion when the applicability of a personal law depends on the profession of a particular religion.

The reason given by the court is:

"True that the concept of domicile is not uniform throughout the world and just as long residence does not by itself establish domicile brief residence may not negative it. But residence for a particular purpose fails to answer the qualitative test. For, the purpose being accomplished, the residence would cease. The residence must answer the qualitative as well as a quantitative test, i.e. two elements of factum animus must concur. Respondent went to Nevada for forum hunting, found a convenient jurisdiction which would easily purvey a divorce to him and left it even before the ink of his domiciliary assertion was defied. Thus the decree of the Nevada court lacks jurisdiction. It can receive no recognition in our courts".

Dicey and Morris observed:

"If the existence of special motive leads to the conclusion that the residence was intended to cease upon the accomplishment of the purpose for which it was taken up". 49

In determining the validity of such a change of domicile, the court would take into account the motive for which the new domicile is acquired.

The existence of such a motive would negative the necessary intention to acquire the domicile; intention has to be to reside the new place or country permanently or indefinitely.

49. Dicey & Morris; Conflict of Laws, (10th Ed.) Rule 12(1).
If a domicile obtained merely for the purpose of getting divorce and without a bonafide intention of residing at that place permanently or indefinitely, is a fraud on the law and on the court, then conversion to Islam undergone merely for the purpose of avoiding the application of personal law, without any bonafide belief in Islam as a religion would also be a fraud on the law. If such domicile did not result in the application of the new law of the place of domicile in the Supreme Court case, then the change of religion merely for the purpose of avoiding the application of Hindu Law or Christian law not result in the application of Muslim personal law to the convert.

We can conclude that no doubt the citizen of this country has the freedom of religion, namely to continue to follow a particular religion in which he was born or to renounce that religion and embrace a new one if he so desires, and the law cannot in any way interfere with such a freedom. But we cannot accept the view that the law should not refuse to recognize the conversion of a person if it has been
prompted by some perfidious motive.

Mr. Justice Deshpande has rightly observed:

"If a conversion were to be genuinely based on freedom of conscience alone, that would be permissible as an exercise of the fundamental right guaranteed by Art. 25 of the Constitution. Art. 25, however, does not guarantee the validity of a motivated conversion which has nothing to do with the fundamental right of the freedom of conscience and of the practice profession and propagation of religion. Therefore, a plea can be made out that such motivated conversion should not be regarded as genuine. Therefore, in reality there would be no change of religion by a Hindu or a Christian husband whose only motive is to marry again. The consequences would be that even after such motivated conversion such a Hindu or a Christian husband would not be governed by the Muslim personal law. He would be continued to be governed by the Hindu Marriage Act 1955 and the Christian Marriage Act 1872".
Thus validity of the second marriage of convert Hindu husband has to be considered from different points of view. Firstly whether the conversion itself is valid. If it is to be noted that in such cases the sole object of conversion if to avoid the Hindu Marriage Act, particularly S. 17 thereof, then such a conversion is not true and bonafide conversion.

But the current position is that as Islam permits polygamy and second marriage by a convert Hindu husband under the Muslim law is valid, and therefore he does not commit the offence as defined and punishable under S. 494 IEC. If a Hindu husband become a convert to Islam without having to do any thing with Islam except to use it as a means to evade the rule of monogamy imposed by the Hindu law then it is no compliment to Islam. On the contrary Islam is being used for the purpose of evading law.

V.S. Deshpande while delivering Mehar Chand Mahajan Memorial Lectures, 1982-83- Department of Laws, Panjab University, Chandigarh.

In Shanti Prasad Jain V. The Director of Enforcement, Foreign Exchange Regulation Act, AIR 1962 B.C.1764 the the question was whether the word 'resident' should be used to denote actual residence in India at the time of the commission of the offence. Such a constructions would have allowed the violation of the act by a person who resides out of India. This would have lead to large scale evasion of the statute. The Supreme Court therefore did not construe the word to mean actual residence in India.
Mahajaj Memorial Lectures in Deptt. of Laws, Panjab University (Chandigarh 1982-83) has rightly pointed that it is an elementary principle of construction of statutes (such as the Hindu Marriage Act, 1955, the Christian Marriage Act 1872 and the Shariat Act 1937), that one is not to be so construed as to lead to the evasion of the other. S.4 (b) of the Hindu Marriage Act 1955 gives an overriding effect. It says,

"Save as otherwise expressly provided in this Act, any other law enforced immediately before the commencement of this Act, shall cease to have effect in so far as it is inconsistent in any of the provisions contained in this Act".

He further said:

"S. 4 (b) does not repeal any conflicting law, on the other hand its effect is to override them to prevent evasion of the Hindu Marriage Act, whenever conflicts between statutes is to be prevented each is so construed as to apply in its own ambit".


The Shariat Act can, therefore, be construed to include only genuine conversion and the Hindu Marriage Act can be construed to continue to apply Monogamy even after a motivated conversion.

Systems of Hindu, Muslim and Christian personal laws in India are existing side by side. The presumption, therefore, is that there is a harmony in the working of these three personal laws. The Muslim personal law is not to be so construed as to invite evation of the Hindu and the Christian personal laws. This presumption of harmony is violated if the Muslim personal law is so construed as to enable a Hindu or a Christian Convert husband to marry a second time by embracing Islam, even though the only motive of the change of religion is the desire to marry again.

Such marriages can be unconstitutional. Because the Muslim personal Law alone allows polygamy while the other Personal law do not allow it. If it is assumed that the Hindus and the Christians are more progressive than the Muslims and therefore Monogamy can be enforced against the Hindus and the Christians but not against the Muslims. But the convert Hindu and

Christian husbands are similarly situated with other Hindu and Christian husbands who are not converted. They have the same historical, cultural and social background, so there is no justification for such discrimination at all. So far as the Muslim Personal law is applied to validate polygamy of such convert Hindu and Christian husbands, that part of law is unconstitutional as violating Art. 14 and 15 (i). These converts cannot claim the facility of polygamy merely because they have changed their religion. In respect of them the classification between them and the other Hindu and Christian husband will be based only on religion.