



# Jus Corpus Law Journal

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## Application of Muslim Law

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*In India, each non-secular community in affairs is ruled by its laws. even as the Hindus, the Christians, the Parsis, and therefore the Jews square measure ruled by their laws, same approach the Muslims too. India may be a country that abounds in personal laws. each spiritual community in personal business is ruled by its laws. even as the Hindus, the Christians, the Parsis, and also the Jews are ruled by their personal laws, therefore ar the Muslims. The Hindus and also the Muslims have, all along, claimed that their laws are of divine origin. However, in Hindu law, it's been a longtime proposition that a sound custom overrides the sacred law. Custom has ne'er been a crucial side of Muslim law, although, at only once, the council commands the read that a sound custom overrode Muslim law.*

*Notwithstanding any custom or usage to the contrary, in all queries (save queries with reference to agricultural land) concerning intestate succession, special property of females, as well as personal property hereditary or obtained underneath contract or gift or the other provision of non-public Law. marriage, dissolution of the wedding, as well as talaq, ıla, zıhar, lian, kbula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable establishments and charitable and spiritual endowments) the rule of call in cases where the parties area unit Muslims shall be the Muslim Personal Law (Shariat).*

**Keywords:** muslim law, conversion, belief.

## INTRODUCTION

The Hindus and therefore the Muslims have, all along, claimed that their laws square measure of divine origin. (However, in Hindu law it's been a long-time proposition that a sound custom overrides the sacred law. Custom has ne'er been a crucial facet of Muslim law, although, at just one occasion, the council controls the read that a sound custom overrode Muslim law. During the long amount of Hindu rule, Hindu law was all-pervasive. All aspects of the lifetime of a private were regulated by it. once the Muslims dominated the country, the majority of areas of Hindu law, except the Hindu personal law, were outdated.)

Once the Britishers came to rule this country. each non-secular community was allowed to retain its personal law in affairs. That continues to be the position in fashionable Asian nations. **In India, whenever affairs precede a court of law, the primary question that arises is: that law applies to the parties to litigation? If the parties square measure Hindus, Hindu law can apply; and then on.**

Since here we have a tendency to square measure involved with the question of application of Muslim law, we might answer that question beneath Muslim law. In fashionable Asian nations, Muslim law means the portion of the law that governs the Indian Muslims in their affairs.<sup>1</sup> **Since Muslim law applies to Muslims alone. however, most of the parts of Muslim Law are uncodified.** For the aim of applying Muslim law, the Muslims make up the subsequent 3 categories:

(a) **Muslims by origin;** and

(b) **Muslim by Birth**

(c) **Muslims by conversion.**

**(1) Muslim by Origin:** No person is often a Muslim United Nations agency doesn't purchase the essential church doctrine (doctrines/beliefs) of Islam. A person, United Nations agency subscribes to the essential tenets of Islam, could be a Muslim.

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<sup>1</sup> Muslim Personal law [Shariat] Application Act 1937, s 2

the essential tenets of Islam square measure the subsequent two:

Basic tenets of Islam (5 Basic) Islam, a faith that has a name that has that means "Submission of the can to God, and a Muslim is that the one United Nations agency submits his can to God. during this slideshow, I even have explained concisely the five Basic tenets of Islam, Hope it'll be attention-grabbing for readers.

### 1. **Shahada**

Shahada could be a declaration of religion in Islam, it describes the strict monotheistic facet of faith, Shahadah itself could be a basic definition of Islam that states, "There is merely one god i.e Allah (God) and Muhammad is his messenger". There is another version of Shahadah however it bears the same that means. A Muslim ought to have full religion on this statement for being Muslim. it's the first Pillar of Islam. This is what folks' advice become Muslim, and it's perennial throughout prayer, within the decision to prayer, and at different times throughout the day. This declaration of religion, known as the shahada.

### 2. **Salah**

- Salah or **Namaz** could be a **prayer** in Islam. There is mounted manner and glued time to perform Salah throughout the world.
- Five times worship is obligatory on a very day, however, you'll do a lot of if you want for identical, it'll be a decent virtue.
- Muslims square measure presupposed to create 5 daily ritual prayers -- one at dawn(beginning), one at noontide(midday), another within the afternoon, at sunset, and before bed.
- These prayers could also be performed alone or in a very cluster. Salah desires to associate intention through heart and devotion of soul to God.

### 3. **Saum**

- Saum or Roza square measure fast that is finished from dawn until sunset. One cannot eat or drink throughout this era.

- It is finished in Ramadan month, (but truth is that it may well be worn out any month excluding days like Eid on that Saum is Haraam (unlawful).) Though in Ramadan keeping Saum is obligatory.
- Like worship, saum additionally wants devotion of your soul. Saum isn't just not feeding or drinking.

#### 4. Zakat/Zakah

- Zakah means that alms-giving. It's the liability that God has placed on all Muslims. As such, zakah is much on the far side - simply charity.
- A Muslim has to be compelled to offer a pair of.5% of his annual financial gain per annum as charity to poverty-stricken. you'll offer even a lot of however that may not be charity it'll be Sadaqah which can be a decent virtue however discretionary.
- A Muslim United Nations agency is in a position to earn enough to satisfy his desires and family desires is merely eligible to provide charity, one United Nations agency isn't guaranteed to provide rather he might receive charity.

#### 5. Hajj

- Hajj is associate annual pilgrim's journey to Mecca, control in the last month of the Moslem calendar. Muslims square measure needed to form a pilgrim's journey, or hajj, to Mecca once throughout their lives. you will go the maximum amount as you'll however it'll not be an associate obligation.
- Their square measure bound rituals in hadj like lapidation devil, etc. many rituals square measure performed throughout hajj: circling the Kaaba; running between the hills of Safa and Marwa (echoing Hagar's hunt for water for her son, Ishmael);<sup>2</sup> traveling to the plain of Arafat, outside of Mecca; and throwing stones at pillars that symbolize the devil.

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<sup>2</sup> Adrija Roychowdhary, 'Shariat and Muslim Personal Law: All your questions answered' (*Indian express*, 22 August 2017) <<https://indianexpress.com/article/research/shariat-muslim-personal-law-sharia-history-shayara-bano-shah-bano-triple-talaq-personal-laws-religious-laws-uniform-civil-code-2784081/lite/>> accessed 19 April 2021

- A Muslim United Nations agency has resources and wealth that is enough for his desires is eligible for an obligation of hadj, one United Nations agency hasn't isn't boned for hadj.<sup>3</sup>
- The obligation of hadj is merely once in a very lifetime, If they're financially and physically ready, Mecca is in the Asian nation, and is that the website of the shrine, the building Muslims believe was the primary house of worship dedicated to the one God.

**There square measure 5 elementary practices that square measure typically common to Muslims worldwide.** These square measures are ordinarily called the 5 Pillars of Islam. They include:

1. **Declaration of religion** - This can be what folks' advice become Muslim, and it's perennial throughout prayer, within the decision to prayer, and at different times throughout the day. This declaration of religion, known as the shahada, states, "There is not any god however God and Muhammad is his traveler."
2. **Prayer** - Muslims square measure presupposed to create 5 daily ritual prayers -- one at dawn, one at noon, another within the afternoon, at sunset, and before bed. These prayers could also be performed alone or in a very cluster. Friday is that the Muslim rest day, thus folks could furl a house of prayer for the noontide prayer. this can be known as juma'a.
3. **Giving charity** - Muslims square measure needed to provide of their bounty (abundance) to those that have less. this can be known as charity, which accurately means "purification." it's a tax of two.5% of one's annual savings.
4. **Fasting throughout the month of Ramadan-** Ramadan is that the ninth month of the Muslim calendar. Muslims quick from dawn till fall. They abstain from food, water, sex, cigarettes, gossip, anger, backbiting, and different negative behaviors. The quick is meant to encourage self-discipline and sympathy. Ramadan is that the month once the primary revelation was given to the prophet.

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<sup>3</sup> 'Sources of Islamic Law' (*Legal service India*)<<http://www.legalserviceindia.com/article/I302-Sources-of-Islamic-Law.html>> accessed 27 April 21

5. **Pilgrimage, or hadj** - If they're financially and physically ready, Muslims square measure needed to form a pilgrim's journey, or hajj, to Mecca once throughout their lives. Mecca is in the Asian nation and is that the website of the shrine, the building Muslims believe was the primary house of worship dedicated to the one God. many rituals square measure performed throughout hajj: circling the Kaaba; running between the hills of Safa and Marwa (echoing Hagar's hunt for water for her son, Ishmael); traveling to the plain of Arafat, outside of Mecca; and throwing stones at pillars that symbolize the devil.

## **BASIC BELIEFS OF THE ISLAMIC FAITH**

Muslims share bound beliefs, including:

**The identicalness of God (Allah)** - For Muslims, there are no entity warrants worship however Supreme Being. Supreme Being has no partners, no relatives, and no gender.

**Belief in God's prophets** - Muslims believe that Allah's message was given to varied prophets, together with Noah, Abraham, Moses, Elijah, and Jesus, and different prophets common to Christianity and Judaism, still as Muhammad. Muslims believe that Muhammad is that the last prophet, partially as a result of he had the foremost success instituting God's word in his time period.

**Belief in angels** - Muslims believe non-secular beings United Nations agency do the desire of God.

**Belief in sacred books** - These embody the Torah, the Psalms, the Gospel, and therefore the sacred writing.

**The day of judgment and resurrection** - Muslims believe that persons square measure answerable for their behavior throughout their lifetimes. At death, that behavior is a component of what determines, however, the person is judged.

- (a) The principle of the unity of God, i.e., God is one i.e Allah, and

(b) Muhammad is that the Prophet of God. Prophet Muhammad is that the traveler of God.

According to Muslim theology, different essential beliefs of a Muslim square measure: the holy book, the Koran, is that the solely disclosed book of Supreme <sup>3</sup>Being, Hazrat Muhammad was the last rasul (prophet), and there's daily of judgment (Keyamat) followed by life when death (Aakhirat).

1. **A person, United Nations agency subscribes to the essential tenets of Islam**, are a Muslim by origin if it's not established that he's a convert to Islam.
2. **Muslim by birth** - If an individual is born of Muslim oldsters, he is a Muslim; associated it's not in any respect necessary to determine that he's an orthodox believer in Islam. Such an individual can still be a Muslim until he renounces Islam. Mere observance of a number of rituals of Hinduism, or for that matter, of the other faith, won't by itself create that person a non-Muslim. Conversely, an individual won't become a Muslim simply because he calls himself a Muslim, or is taken into account by others a Muslim.<sup>4</sup>

In Muslim law, **a child born to Muslim parents** is probable to be a Muslim. **The Shariat lays down that if one among the parent could be a Muslim**, even then the kid is a Muslim. The ordinary decree Asian nation is that the kid takes to the faith of his father unless the contrary is verified. This rule is currently subject to the rule of contemporary Hindu law, viz., if one among the fogeys could be a Hindu and therefore the kid is named as a Hindu, then the kid is a Hindu. To this class of Muslims, Muslim personal law applies in its totality, and no rule of Muslim law is often changed by custom.

3. **Muslims by conversion** - A non-Muslim could become a Muslim by profession Islam, i.e., by acknowledging that there's only 1 God and Muhammad is his prophet, or by undergoing the ceremonies of conversion to Islam. A convert of Islam is normally ruled by Muslim law. Till 1937, it had been potential for a convert to be continued to be ruled

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<sup>4</sup> *Ibid*

by his personal law, together with customary law. When the approaching into force of the Shariat Act, 1937, the generality of that statement stands changed, though, it's submitted the applying of custom to the Muslims has not been wholly abrogated.

## PROFESSION OF ISLAM

A non-Muslim could become a Muslim by professing Islam. "Profession with or while not conversion is important and enough to get rid of the incapacity of getting another religion". Thus, discovered Lord Macnaughten in *Abdul Razak v. Agha Mahommed*. during this case, a rich Muslim, Abdul by name, had died, apparently, with none heir. But, Abdul Razak created 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 a Burmese lady, Mah Thai, a Buddhist by faith, however, it was not established that she had been born-again to Islam either before, or after, the wedding. It was established that she was to recite the Muslim prayers. The court concluded that since the wedding of Abdul's brother with the Buddhist lady was void below Muslim law, Abdul Razak, although a Muslim couldn't succeed to Abdul's estate, being Associate in a Nursing love child.

## CASE LAW

The converse state of affairs arose in local time. **Resham Bibi v. Khuda Baksha**, wherever a Muslim married woman, with a read to ending Associate in Nursing sad wedding, renounced Islam and prayed to the court that Muslim law of apostasy ought to be applied to her, and her wedding ought to be deemed to possess been mechanically dissolved from the date of her apostasy. (Law of Apostasy-It is that the act of aware abandonment of Islam by a Muslim- It includes the act of changing to a different faith by an individual World Health Organization was born during a Muslim family or World Health Organization had antecedently accepted Islam.) Curiously enough, the District court Observed a plate of pork to be brought within the court area, and therefore the married woman was asked to eat it. On her refusal to try and do this, the court terminated that her apostasy was fawning.



Accepting the appeal, the tribunal observed: “One could relinquish a religion that is a straightforward issue to try and do, however one might not acquire feeling for those things that one has been instructed to hate throughout one’s life”. The court accepted the wife’s statement that she did not believe in God, in Muhammed as her Prophet and within the al-Qur'an, and so ceased to profess Islam. **The court then said: “a person’s belief isn't a tangible issue which might be seen or touched. it's the mental condition of one’s basic cognitive process in sure articles {of faith | of faith} that constitutes one’s religion and if one ceases to believe them, that once more could be a mere mental condition,** one mechanically ceases to profess that religion”.

In this case, Din Muhammad J. remarked that the motive of the declarer was additionally immaterial; an individual may renounce his religion for love or avarice; one may do thus to urge eliminate his gift commitments or really to hunt salvation elsewhere, however that may not affect the factum of modification of religion. And, in matters like these, it was the factum alone that matters and not the latent spring of action that resulted therefrom.

Whether the mere profession of Islam is enough to form a non-Muslim Muslim isn't entirely free from doubt. It is true, as Lord Macnaughten had explicit, no court of law will check or gauge the sincerity of non-secular belief. In all cases wherever, in keeping with Muslim law, unbelief, or distinction of creed, could be a bar to the wedding with a real believer, it's enough if the alien in faith embraces Islam. It is submitted that a non-Muslim can become a Muslim by professing Islam, as long as it's not colourable or malar bonafide or created with a read to perpetrating (committing) fraud upon law.

## **CONVERSION TO ISLAM**

It seems to be a well-established proposition of law that a non-Muslim, on below going the ceremonies of conversion prescribed under Islam, becomes a Muslim.

## **CEREMONY OF CONVERSION**

In Islam, the ceremonies of conversion area unit simple:

- A person seeking conversion to Islam could head to a Muslim house of worship.
- On the Muhammedan asking him, "Are you voluntarily clench Islam", if he answers affirmatively, he's given the Kalma to recite. On the completion of the recitation of the Kalma, the conversion ceremony is over, and therefore the non-Muslim becomes a Muslim.
- The Muhammedan then confers a Muslim name on the convert. In most of the mosques, a register is unbroken during which the name of the person clench Islam is entered and therefore the convert puts his signature to it.

**Conversion of a Muslim from one sect to a different doesn't quantity to apostasy**, and an individual dynamical from- one sect to a different continues to be a Muslim. The genuineness of belief within the new religion is immaterial, and even once a convert doesn't practise the new religion, he can still be a Muslim. however, it's necessary that the conversion ought to be existent, honest, and will not be colourable, put on, or dishonest.

In the leading case, **Skinner v. Orde**, a Christian lady was cohabiting with a married Christian man. With a read to legalizing their inhabitation as husband and married woman, each of them underwent a ceremony of conversion to Islam. when conversion, they married. Later on, once the question of the validity of this wedding arose, the council control that the wedding was null and void on the bottom that conversion wasn't existent. Moreover, it was a fraud upon the law, since the parties underwent the ceremony of conversion with a read to elusion their personal law.

The **question of colorable, fallacious, and dishonest conversion has come back up before the Indian High Courts** during a range of cases, wherever a non-Muslim has embraced Islam, either to assert divorce on the bottom of apostasy or to enter into a polygamous wedding. Thus, within the matter of Ram Kumari, a Hindu spouse adopted Islam, and assumptive that this meant the automatic dissolution of her wedding, took a second husband. She was prosecuted and guilty of bigamy.

In **Rakeyabibi v. Anil Kumar**, this facet of the matter has been terribly cogently and brightly mentioned by Chakravarti, J. **during this case, a married Hindu lady**, with a read to obtaining eliminate her impotent husband, embraced Islam, and sought-after to a declaration that on her conversion to Islam, her Hindu wedding stood dissolved.

Observing that the question of whether or not conversion was existent or just a tool for terminating the wedding, was vital, the learned decide said: “it could also be that a court of law cannot check or gauge the sincerity of non-secular belief, or that, wherever there's absolute confidence of genuineness of a person's belief during a sure faith, a court cannot live its depth or verify whether or not it's Associate in Nursing intelligent conversion or Associate in Nursing ignorant superficial fancy.

But a court will and will notice verity intention of men lying behind their acts and might ascertain from the circumstances of a case whether or not a put-on conversion was very a method to some additional finish so, it looks to America to be elementary that if a conversion isn't galvanized by spiritual feelings and undergone<sup>5</sup> for its own sake, however, is resorted to just with the thing of making ground for a few claim of right, a court of law cannot acknowledge it as a decent basis for such claim, however, should hold that no lawful foundation of the claim has been tried.

When conversion offers a right through a mock conversion and came upon as the basis of that right is to commit fraud upon the law. we tend to area unit clearly of opinion that wherever a celebration puts forward his conversion to a replacement religion as making a right in his favor to the bias of another, it's correct and necessary for a court of law to inquire and ascertain whether or not the conversion was an existent one”.

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<sup>5</sup> *Skinner v Orde* (1875) ILR 1 ALL 230