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Case Comment: Lily Thomas vs Union of India

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INTRODUCTION

India is a secular country, and every citizen has the right to practice, follow or convert to any religion of their choice. But can it be said that this right conferred upon the citizens is absolute? Can a citizen convert to another religion to fulfill their dubious motives and not devotion? Will such conversion be considered valid in the eyes of the law? The practice of converting to Islam in the hopes of ending a second bigamous marriage has long been used by married men whose personal law forbade bigamy. These men believed that by converting, they would be able to remarry without having their first marriage annulled. The Supreme Court's ruling, in this case, Lily Thomas v Union of India[1], is quite a significant one. The Court had held that according to the provisions of Hindu Personal law entering into a second marriage without ending or dissolving the first one would make the second marriage null and void.[2] The Court had observed, "*men were converting to Islam to solemnise the second marriage, but all of this was considered void unless and until the first marriage was dissolved according to the Hindu Marriage Act; otherwise,*

[1] *Lily Thomas v Union of India* [2000] AIR SC 1650
[2] *Ibid*

the husband would be liable for bigamy under section 494[3] *and 495*[4] *of Indian Penal Code.*" The Hindu Marriage Act, 1955, states that bigamy is "*an offence of marrying another while the first marriage persists and such bigamous relations are illegal and the second marriage is void ab initio*."[5] Apart from this, section 17 of the Act has mentioned that "*any marriage solemnised by the husband during the subsistence of that marriage, despite his conversion to another religion, would be an offence triable under section 17 of this act, read with section 494 IPC*."[6]

The observations and ruling of the Supreme Court simply mean that conversion to Islam or any other religion that allows a bigamous marriage would not ultimately dissolve the first marriage. However, the same could be a ground for divorce or judicial separation. The husband could still be held accountable for all his obligations before such conversion.[7] The decision in Lily Thomas's case was considered a turning point as there had been many instances where men were resorting to such acts and tactics that had nothing to do with what the religion teaches and its practices but used it to marry and have multiple spouses.[8]

FACTS OF THE CASE

The petitioner, Mrs. Sushmita Ghosh, had filed a writ petition before the apex court contending that her husband, Mr. G.C. Ghosh, was married as per the Hindu customs and rites and had been married since May 10th, 1984. On April 1st, 1992, the petitioner's spouse informed her that he had converted to Islam to get remarried and that he had chosen to wed Delhi resident Miss Vanita Gupta. Therefore, for their benefit, the petitioner should consent to the divorce. The petitioner said that her right to equality under Article 15(1)[9] had been violated since she had experienced gender and religious discrimination as a result of her husband's actions.[10] It was claimed that Mr. Ghosh's decision to convert to Islam was motivated by his desire to marry a second woman, which is expressly against the provisions of Hindu law. The petitioner, who is

[3] Indian Penal Code 1860, s 494
[4] Indian Penal Code 1860, s 495
[5] Hindu Marriage Act 1955, s 17
[6] *Ibid*
[7] *Lily Thomas* (n 1)
[8] *Ibid*
[9] Constitution of India, art 15(1)
[10] *Ibid*

34 years old and unemployed, suffers from severe emotional trauma due to her husband's conduct. The petitioner further argued that it had been usual for Hindu men who were unable to obtain a divorce and desired a second wife to convert to Islam to fulfill their desire. But following remarriage, they once more restored to keep their title to the estates. The petitioner contended for the following relief[11]:

A. Declare polygamy marriages between Hindus and non-Hindus following conversion to Islam to be unlawful and void by proper writ, order, or a directive;
B. Give the appropriate instructions to Respondents Nos. 1 and 2 to change the Hindu Marriage Act as necessary to restrict and outlaw the practice of polygamy;
C. Issuance of relevant instructions declaring that any marriage entered into by a non-Muslim man who converts to the 'Muslim' faith without any genuine change in belief and only to avoid a previous marriage or engage in a second marriage would be void;
D. Give Mr. G.C. Ghosh the proper instruction prohibiting him from marrying Miss Vanita Gupta or any other lady while his marriage to the petitioner is still legal.[12]

ARGUMENTS PRESENTED BY THE PARTIES

Petitioner:

a) The petitioner had contended that marriage is a sacred union of two individuals but "*taking recourse to the act of religious conversion to Muslim with the principle aim to commit the act of marrying again as Muslim personal law allows it is an attempt where the women freedom of facing such bigamous marriage and such betrayal is violative of Art. 21*[13]*(right to life and liberty).*"[14]
b) The petitioner had demanded the declaration of male polygamy as unconstitutional and invalid.

[11] *Lily Thomas* (n 1)
[12] *Ibid*
[13] Constitution of India, art 21
[14] *Lily Thomas* (n 1)

c) The question of implementation of the Uniform Civil Code was put forward before the Court. UCC was meant to address the complicated, wide-ranging socio-legal challenges that were emerging due to multiple religious personal laws.
d) It was argued before the Court that polygamy should be outlawed because it is detrimental to the integrity and liberty of women who are compelled to live in such unions and that changes should be made to Muslim personal law to reflect the passage of time; having a uniform civil code will ensure that no one's religious law violates the fundamental rights of women[15].

Respondent:

a) The respondent had presented before the Court that he is not restricted under the law to get married twice. Though Hindu Law prohibits bigamy, such is not the case under Muslim Law, which encourages polygamous marriage, and a Muslim man may take a maximum of four wives, treating them equally with love and affection, according to the holy book of the Quran, which is also the main source of Muslim law. The marriage must be ruled legally void under sections 494 and 495 of the Indian Penal Code (Code 45 of 1860) to apply. But in this case, the respondent is allowed to do so by the Muslim laws that apply to him.
b) The respondent argued that section 11 of the Hindu Marriage Act would not apply in this case as he has been converted to a Muslim, and section 11[16] only applies to Hindus.

ISSUES IN THE CASE

1. Article 44,[17] the uniform civil code issue was brought up. It is a suggestion to create rules governing marriage, divorce, inheritance, and other private concerns that would apply to all residents of differing religious beliefs. However, as every religion has its own

[15] *Ibid*
[16] Hindu Marriage Act 1955, s 11
[17] Constitution of India, art 44

unique set of norms, this interferes with citizens' ability to exercise their right to do so under Article 25[18] of the Constitution.

2. Can a spouse who is Hindu or not converted to Islam have a second wife? How legitimate are the first and second marriages?
3. What should legal action be taken against the husband when he converts to Islam for a second marriage? Can he be prosecuted under section 494 of IPC?

RATIO DECIDENDI OF THE CASE

The Court had observed that the conversion to Islam by Mr. Ghosh was done to bring an effect to the second marriage. The Court came to such a conclusion after considering the birth certificate of Mr. Ghosh, issued by the Govt. of Union Territory of Delhi concerning a son born to Shree G.C. Ghosh from his second wife on May 27th, 1993. Shree GC Ghosh was a Hindu by religion, and his wife, the respondent's mother, was also Hindu. Not just this, but also in the visa application for Bangladesh, the applicant's name was listed as G.C. Ghosh, professing Hinduism. The electoral roll also showed the same thing.

While discussing the provisions of the Hindu Marriage Act, the Court stated that one of the prerequisites of a valid marriage under section 5[19] is that "*either party should not have a spouse living at the time of marriage*.". Section 11 describes the marriage of such individuals as void. Also, section 17 of the Act prescribes the punishment for individuals who enter into a bigamous marriage, and sections 494 and 495 of IPC would be applicable in such cases. The Court referred to the issue of *Gopal Lal v State of Rajasthan.*[20], wherein it was observed by the Court that when a spouse enters into a second marriage, while the previous marriage is still legal,[21] the spouse would be found guilty of bigamy under section 494[22] if it could be demonstrated that the second marriage was legitimate in the sense that all legal or customary rituals had been carried out. In this case, the Court had stated, "*The voidness of the marriage under Section 17 of the Hindu Marriage*

[18] Constitution of India, art 25
[19] Hindu Marriage Act 1955, s 5
[20] *Gopal Lal v State of Rajasthan* 1979 AIR 713
[21] *Ibid*
[22] Indian Penal Code 1860, s 494

Act is, in fact, one of the essential ingredients of Section 494[23] *because the second marriage will become void only because of the provisions of Section 17 or the Hindu Marriage Act*." But the Court does not have the authority to take *suo moto* cognisance of the offence, and it should be the complainant to file the complaint as per the provisions of section 198 of CrPC.

Under section 13 of the Hindu Marriage Act, converting to another religion is neither an offence in itself nor does it automatically dissolve a marriage that has been solemnised under the Act. Section 13[24] prescribes that conversion can be a ground for divorce, but not an offence. Likewise, under section 10[25], it is a ground for judicial separation as well. A judgment of the Bombay High Court was referred to by the Supreme Court where the High Court had dealt with a case of a Hindu married woman who converted to Islam and married a Mohammedan after conversion, she committed the offence of polyandry as *"by mere conversion, but the previous marriage does not come to an end"*[26].

The consequence of conversion is that the original marriage continues to be lawful as a result, while the second marriage is void.[27] Despite conversion, the person is still subject to prosecution under Section 494 of the IPC. The Court opined that a simple conversion does not end a marriage; instead, a competent court must first grant a divorce judgement before the marriage can be declared legally ended. While dealing with the first issue at hand, the Court referred to the case of *Maharshi Avadhesh v Union of India.*[28] When the Supreme Court dismissed the petition demanding the enactment of a Uniform Civil Code. The Court had expressly declined to issue a writ ordering the respondents to take into consideration the issue of enacting a uniform civil code for all Indian citizens, reasoning that since the issue arose as a matter of policy, it is the Legislature that has to/should take appropriate action since the Court cannot legislate.[29]

[23] *Ibid*
[24] Hindu Marriage Act 1955, s 13
[25] Hindu Marriage Act 1955, s 10
[26] *Govt of Bombay v Ganga* ILR (1880) 4 Bombay 330
[27] *Ibid*
[28] *Maharshi Avadhesh v Union of India* 1994 SCC OnLine
[29] *Ibid*

JUDGEMENT OF THE CASE

According to Section 11 of the Hindu Marriage Act of 1959, a marriage would be void if a party had a living spouse and entered into or attempted to enter into a second marriage. Additionally, section 17 of the aforementioned Act will not recognise this marriage, which addresses the crime of bigamy. The provisions of sections 494 and 495 of the IPC, 1860, must be followed while punishing someone who violates the requirements under section 17.

The Hindu Marriage Act of 1959 will be used to address the offence of bigamy if a Hindu wife files a complaint against her husband for entering into a second marriage while they were still legally wed. The Court observed, "*Renunciation of Religion does not end the civil obligations or the matrimonial bond, but it is a ground for filing divorce under Section 13 and judicial separation under Section 10 of the Hindu Marriage Act. The Hindu law supports 'monogamy'. Therefore, a second marriage is void under Sections 11 and 17, and it is an offence under Sections 494 and 495 of the Indian Penal Code*." The Court had ruled that a Hindu husband entering into a second marriage after conversion would constitute a fraudulent conversion. As a result of which, such a marriage would be deemed null and void.

Regarding the question of a uniform civil code, it was noted that implementing one would be unfair to personal laws like the Hindu Marriage Act and Sharia Law.[30] However, it was also made clear that violating any personal law will result in criminal prosecution.[31]

CONCLUSION

The issue discussed in this case has been under the veil for the longest time until the case of Sarla Mudgal[32] came to light. The Lily Thomas case further validated and strengthened the ruling of the former. The apex court had nullified the marriage between two individuals where one

[30] Prachi Bharadwaj, 'Remembering Adv. Lily Thomas, Supreme Court's Senior Most Woman Advocate' (*SCC Blog*) <www.scconline.com/blog/post/2019/12/10/remembering-adv-lily-thomas-supreme-courts-senior-most-woman-advocate/> accessed 06 September 2022
[31] *Ibid*
[32] *Sarla Mudgal v Union of India* 1995 AIR 1531

spouse had already been married and had a living spouse. However, the Court remained silent on the issue of a uniform civil code for all citizens.[33]

The judgement of Lily Thomas was pronounced in 2000, and since then, there have been many unanswered questions for the country.[34] The Court had remained silent on the issue of a uniform civil code for all. It preferred not to comment on the execution and transformation of a standard code. There have been many stances on this issue.[35] One section is that a uniform code for all would be beneficial in the sense that there would be uniformity and no room for interpretation of personal laws when the question regarding divorce, marriage, or inheritance comes up. On the other hand, others view UCC as an attack on their laws, claiming that with the practice of UCC,[36] they would not have the independence to practice their religion as per their laws.

Thus, it can be seen that the judiciary's participation is required in a secular nation like India to prevent the abuse of fundamental rights. The ruling will continue to be essential for protecting women from their husbands' wrongful actions and in the context of unethical religious conversions. The need of the hour is that the law commission could propose a few changes to the existing laws. Such as an additional section in the Hindu Marriage Act prohibits unlawful conversion to enter into a bigamous marriage when the first marriage has not yet been absolved, and it should also prescribe punishment for the violation of such. The country needs an effective mechanism or a system that would govern the personal laws without conflicting with the interests of the citizens.

[33] *Ibid*
[34] *Lily Thomas* (n 1)
[35] *Ibid*
[36] Constitution of India, art 44