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THE LAW RELATING TO
CONVERSION TO ISLAM :
A COMPARATIVE STUDY WITH
SPECIAL REFERENCE TO THE POSITION
IN MALAYSIA

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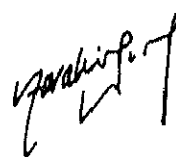
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DECLARATION

I HEREBY SWEAR THAT THIS DISSERTATION IS MY OWN ORIGINAL
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ABSTRACT

Faith constitutes the core of human's well-being and forms the bedrock of the institution of the family. Hence it would be most ideal if two people of the same belief decides to join in matrimony for in doing this, both may enhance themselves and their family.

This dissertation will delve into the effects of conversion to Islam on the the status of the person and also the effects it will entail on his marriage and children. This is pertinent in view of the fact that conversion to Islam will confer new responsibilities upon a person while absolving certain ones which existed prior to his conversion.

Befitting its comparative nature, this paper will also deal with the position in India and Pakistan before finally embarking to discuss the position as evident in Malaysia.

PRELUDE

Chapter 1 deals with the authorities pertaining to the roots of the rules relating to conversion to Islam and its effect upon the status of the person, marriage and children of the purported marriage. This will include the Quranic injunctions, Sunnah of the Prophet S.A.W. and the practice of the companions. The writer will also quote the opinions of the jurists and also abstracts of some prominent texts on Islamic Law.

Chapter 2 delves into the law regulating the effects of conversion as occurred in India. A rather extensive coverage is made on the history of the Islamic Law as practised in India in order to elucidate the background of such laws not only in India but also in Pakistan. Case study pertaining to the matter in question is laid down at the end of this chapter.

Chapter 3 briefly discusses the position of conversion in Pakistan. As the history of its laws are almost similar to that of India (prior to the Partition), in this

chapter it is dealt with rather briefly.

The emphasis of this dissertation will be expounded in chapter 4, i.e., the position of conversion to Islam in

Malaysia. In this chapter the complexity of jurisdiction of the Malaysian courts concerning Muslim affairs will be discussed. The conflicts due to the controversial Section 51 of the Law Reform (Marriage & Divorce) Act, 1976 are also included in this chapter.

Finally, the concluding remarks will be in Chapter 5.

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19. Sayeda Khatoon v Obadiah [1945] 49 Cal W.N 439
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21. Skinner v Orde [1871] 14 M.L.A 309

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22. U Viswalingam v S Viswalingam [1980] 1 M.L.J 10

CHAPTER 1

CONVERSION UNDER THE CLASSICAL ISLAMIC LAW

The original rule regulating the effect of conversion upon the personal and marital status of a person can be traced in the primary sources of Islamic Law, i.e., the Al-Quran and the Sunnah of the Prophet Muhammad (s.a.w). This issue was also evident in the practices of the Companions and gave rise to various opinions among the jurists and scholars of the Islamic law.

1.1 AL-QURAN

Al-Quran, being the most authoritative text of the Islamic law had laid down the injunctions pertaining to the basic rules regulating marriages and status of a person.

1.1.1 Marriage with a Polytheist (Mushrikah)

It is stated in the Holy Quran to the effect:

"Do not marry unbelieving woman until they believe:- nor marry your girls to unbelievers until they believe".

(translation of Surah Al-Baqarah:part
of ayat 221)

In his commentary on this ayat, Abdullah Yusuf Ali¹ said: 'Marriage is a most intimate communion and the mystery of sex finds its highest fulfilment when intimate spiritual harmony is combined with the physical link. If religion is at all a real influence in life to both parties or to either party, a difference in this vital matter must affect the lives of both more profoundly than differences of birth, race, language or position in life. It is therefore only right that the parties to be married should have the same spiritual outlook. If two persons love each other, their outlook in the highest things of life must be the same. Note that religion here is not a mere label or a matter of custom or birth. The two persons may have been born in different religions, but if, by their mutual influence, they come to see the truth in the same way, they must openly accept the same rites and the same social brotherhood. Otherwise the position will become impossible individually and socially.'

This verse was revealed about a Muslim, Kannaz ibn Hasin al-Ghanawi, who had been attracted to a certain woman polytheist since the days before he embraced

¹ Abdullah Yusuf Ali, "The Meaning of the Holy Quran," USA: Amana Corporation (1992), p 555

Islam.² She was called Anaq and she asked him to marry her. So he asked the Prophet (PBUH) for permission to marry her and Allah revealed this verse and the Prophet told Kannaz that he should not marry her since he was a Muslim while she was a polytheist.

The aforementioned verse, although did not explicitly stipulate the rule and effect of conversion to Islam, it laid down the general rule prohibiting the marriage of a Muslim with a non-Muslim. Hence it can be deduced from the verse that should any of a non-Muslim couple decides to convert to Islam, his or her continuance of marriage depends on the other party's mutual conversion. Should the other party decides to convert, then the marriage will remain intact without the need of undergoing any procedure of re-marriage. However, if the contrary occurs, then the marriage will be dissolved upon the refusal of the non-converting party to convert to Islam.

'Abdullah ibn 'Abbas, however, mentions a different reason for the revelation of this verse.³ According to him, 'Abdullah ibn Rawaha once became angry with his slave-girl and when the Prophet (PBUH) asked 'Abdullah b. Rawaha about her,

² Al-Jami' Li-Ahkam al-Qur'an, V.3, 67, also cf. Sayyid Sabiq, 'Piqh as-Sunnah' v. 6, Kuwait, 1968, 206; quoted and translated by 'Abdur Rahman I. Doi, 'Women in Shariah', Kuala Lumpur (1990), 43

³ Ibid

he told the Prophet that she fast, offered her prayers, made ablution properly, and believed that there was no God but Allah and that he (Muhammad) was the messenger of Allah. On hearing this, the Prophet told 'Abdullah that she was then a believer. Then 'Abdullah declared her to be a free woman and married her. Many Muslims taunted him for marrying a slave-girl. They did this because they preferred to marry polytheist women of high lineage rather than Muslim slave-girls. It was on this occasion that 'Abdullah's action was approved by Allah through this verse.

2.1.2 Marriage With The Woman of The Book

With regards to the position of the Kitabiyyah, the Quran stipulates as follows:

"This day are (all) things
 Good and pure made lawful unto you.
 The food of the People of the Book
 Is lawful unto you
 And yours is lawful unto them.
 (lawful unto you in marriage)
 Are (not only) chaste women who are believers,
 but chaste women among the People of the Book,

Revealed before your time-

(translation of Surah Al-Maidah:5)

In his commentary, Abdullah Yusuf Ali said¹: 'Social intercourse, including inter-marriage, is permitted with the People of the Book. A Muslim man may marry a woman from their ranks on the same terms as he would marry a Muslim woman, i.e., he must give her an economic and moral status, and must not be actuated merely by motives of lust or physical desire. A Muslim woman may not marry a non-Muslim man, because her Muslim status would be affected: the wife ordinarily takes the nationality and status given by her husband's law. A Non-Muslim woman marrying a Muslim husband would be expected eventually to accept Islam. Any man or woman, of any race or faith, may, on accepting Islam, freely marry any Muslim woman or man, provided it be from motives of purity and chastity and not of lewdness.

Based on the ayat and the commentary, it is clear that marriage between a Muslim man and a kitabiyyah woman is permissible. On the contrary, if the Muslim party is the woman, then she cannot contract a marriage with a

¹ Op. Cit., n. 1

kitabiyah man as eventually, her Muslim status will be affected. If the Muslim party is the man, there is more possibility of the kitabiyah woman eventually becoming a Muslim due to the influence of the husband. However, it is pertinent to note that a Muslim man cannot arbitrarily marry any woman whom he believes to be among the People of the Book. According to the aforementioned verse, she must belong to the group of People of the Book whose revelation was made before the time of the Prophet Muhammad s.a.w. Can this be determined in today's period where multi inter-marriages have already taken place, leaving large spaces of doubt lingering as to whether the People of the Book are actually the true People of the Book? This issue was a topic of frequent debate even during the times of the companions.

1.1.3 Marriage with The Sabian and Magian Women

The Holy Quran mentions the Sabians, in the following words:

"Those who believe (in the Quran), those who follow the Jewish (Scriptures), and the Sabians and

the Christians, and those who believe in Allah and the Last Day, and work righteousness, on them shall be no fear, nor shall they grieve."

(translation of Surah Al-Maidah:72)

It is upon these grounds that a Muslim is permitted to marry a Sabian woman.

Abdullah Yusuf Ali⁵ has ventured to use the term 'Sabian' to cover the followers of Buddha, Confucious or the Vedas. However, Abdur Rahman I.Doi⁶ respectfully submitted that because no cogent and convincing reason has been given by the former to justify such extension, it is not easy to concur with such opinion, particularly when the validity of the marriage of a Muslim man with a Hindu, Buddhist or Shinto woman comes up for consideration. It is submitted that the women of these faiths should be regarded as on a par with the polytheists.

Magians or Zoroastrians or Parsees are those who worship fire. Marriage with a Zoroastrian woman is not forbidden to

⁵ Abdur Rahman I.Doi, Op. Cit, 46

⁶ Ibid

a Muslim. It is also lawful for a Muslim to eat the meat of animals slaughtered by them⁷. Strictly speaking, however, they are not Ahl al-Kitab because they have no book. As a matter of fact, they do not believe in prophethood.

1.2 Conversion in the Sunnah of the Prophet s.a.w

Although there are no explicit provisions in the Holy Quran pertaining to the status and effect of conversion to Islam to personality and marriage, there seem to be quite a number of traditions of the Prophet s.a.w dealing with the matter in question.

In the Sunan Abu Dawud, Ibn Abbas was reported to have said⁸:

"A man came after embracing Islam during the time of the Apostle of Allah (may peace be upon him). Afterwards his wife came after embracing Islam. He said: Apostle of Allah, she embraced Islam along with me; so restore her to me."

⁷ Ibid

⁸ Sunan Abu Dawud, V.2, (trans.) Prof. Ahmad Hasan, Lahore, 1984, 603.

This tradition indicates that if the husband and wife embrace Islam together at the same moment, the wife will be rendered legal to him and him to her. Their previous marriage will be valid, provided they are not within the prohibited degrees of relationship.

In another narration, Ibn Abbas said⁹:

"A woman embraced Islam during the time of the Apostle of Allah (may peace be upon him); she then married. He (former) husband then came to the Prophet (PBUH) and said: Apostle of Allah, I have already embraced Islam, and she had the knowledge about my Islam. The Apostle of Allah (PBUH) took her away from her latter husband and restored her to her former husband."

This shows that if the husband embraces Islam and his wife knows about this, she will remain his wife. Therefore, if she marries another man, the marriage will be void.

As regards to the issue whereby a husband embraces

⁹ Ibid

Islam later on, Ibn Abbas said¹⁰:

'The Apostle of Allah (PBUH) restored his daughter Zainab to Abu Al-As on the basis of the previous marriage, and he did not do anything afresh.'

In the commentary to the abovementioned tradition¹¹, it is stated that Zainab, the daughter of the Prophet (PBUH), was the wife of Abu Al-As. When she embraced Islam, she waited till he also became a Muslim after two or six years. The Prophet (PBUH) restored her to him and did not solemnize the marriage afresh. Ibn Qayyim said that in such a case the waiting period was not taken into consideration. No tradition indicates that the Prophet (PBUH) took the waiting period into account. Had it been so, the Prophet (PBUH) would have asked the woman about the expiry of her waiting period. If embracing Islam by one of the spouses could be the cause of separation, that would have been an irrevocable divorce, and the husband would have no right to take her back. The decision of the Prophet (PBUH) shows that the marriage remains suspended. If the husband embraces Islam before the expiry of the waiting period, he can take her back

¹⁰ Ibid

¹¹ Ibid

in marriage. If her waiting period expires, she can marry another man if she likes, or she can wait until he embraces Islam. If he becomes a Muslim there is no need for remarriage.

When an unbeliever converts and become a Muslim, he assumes the responsibilities of a Muslim and is bound by the stipulations of the Islamic Law. In a case where a Non-Muslim had more than four wives, he has to release those he wishes and maintain only four as advocated in Islam. An incident to this effect took place during the time of the Prophet (s.a.w.)¹².

'Al-Harith b. Qais Asadi said: I embraced Islam while I had eight wives. So I mentioned it to the Prophet (PBUH). The Prophet (PBUH) said: Select four of them.

In the case where a man had more than one wife and they happen to be of the same parentage, he has to release either one of them. This is in accordance to the general rule which stipulates that no man can marry two women of the same

¹² Ibid., 604.

parentage. This was laid down in the following tradition¹³:

'Al-Dahhak b. Firuz reported on the authority of his father who said: Apostle of Allah, I have embraced Islam and two sisters are my wives. He said: Divorce any one of them you wish.'

In the commentary to the abovementioned hadith, it is stated that Al-Shafii, Malik and Ahmad maintain that if a man embraces Islam and two sisters are his wives, he can retain anyone of them if they also become Muslim along with him. It matters little whom he married first.

The status of the children is also affected upon the parents' conversion to Islam. If both parents convert then the child (or children) automatically become a Muslim as well. However, in the event where only one party converts, the child shall assume the status of a Muslim. This issue arose during the time of the Prophet, as reported by Abd Al-Hamid b. Ja'far from his father on the authority of his grandfather Rafi' b. Sinan¹⁴.

¹³ Ibid

¹⁴ Ibid

'Rafi' b. Sinan embraced Islam but his wife refused to do so as well. She came to the Prophet (PBUH) and said: 'My daughter, she is weaned or about to wean. Rafi' said: My daughter.' The Prophet (PBUH) said to him: Be seated on a side. And he said to her: Be seated on a side. He then seated the girl between them; and said to them: Call her. The girl inclined to her mother. The Prophet (PBUH) said: 'O Allah! Guide her'. The daughter inclined to her father, and he took her.'

The hadith shows that if one of the parents embraces Islam, the child will belong to the Muslim party¹⁵. This is the view held by Al-Shafii. The Hanafis are of the opinion that if the spouses are separated by divorce and the wife is an unbeliever, the mother will be entitled to her child so long as she does not remarry. In this case there is no distinction between a Muslim and a Non-Muslim.

1.3 Practice of the Companions

Majority of the Companions upheld that marriage

¹⁵ Ibid., 605