Case analysis on,

Lily Thomas vs. Union of India

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**Facts**:-

Mrs. Sushmita Ghosh was married to Mr. Gyan Chand Ghosh on 10th may 1984 according to the rituals of Hindus. After almost eight years of marriage, on 1st April 1992,Mr. G.C. Ghosh insisted her wife to agree on divorce by mutual consent. (Divorce by mutual consent is a kind of divorce recognized in which both the parties willing to take divorce take it with their mutual consent) Her wife refused the proposal given by her husband. The notion behind seeking divorce from his wife was to marry a girl named Vanita Gupta, who herself was a divorcee and resident of Preet Vihar, Delhi. Being a Hindu, he was forbidden by law to remarry so he converted to Islam on 17th June 1992 and also got certificate of issued by MaulanaQari Mohammad Idris, ShahiQazi certifying that he has embraced Islam religion and converted into Mohammad Karim Ghazi. The petitioner in the case (Mrs. Sushmita Ghosh) contacted her father and aunt and tried to stop her husband from conversion and consequently remarriage.

The respondent (Mr. G.C. Ghosh) refused to listen to anyone and finally got married with Miss Vanita on 3rd Sept. 1992. It may be said that the solely motive of respondent to get converted into Islam was to obtain a second marriage which he can’t do being a Hindu. Even after conversion, it was seen that he don’t have any faith in Islam religion.When the birth certificate of his child with his second wife was issued, the name mentioned on the certificate was his Hindu name and also the religion mentioned there was Hindu. Even when he applied for the VISA of Bangladesh, it was his Hindu name that was mentioned in the application form. Again in the electoral roll itself it was his Hindu name mentioned.

The aforesaid facts clearly show that the one and only purpose of Mr. G.C. Ghosh to be converted into Islam was a second marriage. So, the petitioner decided to knock the doors of court for justice to be delivered. At that time, she was 34 years of age and was unemployed. At that time it was quite difficult for an unemployed lady to maintain herself and family. An NGO named Kalyani known forits active participation in the matters related to women rights.

So, finally the petition was filed in summer vacation and this suit was entertained by vacation judge, Justice M.N. Venkatachaliah in 1992. She prayed the honorable court for following reliefs in her writ petition:-

1. By an appropriate writ, order or direction, declare polygamy marriages by Hindus and Non-Hindus after conversion to Islam religion are illegal and void;
2. Issue appropriate directions to the authority concerned to carry out suitable changes in Hindu Marriage Act so as to curtail the practice of polygamy;
3. Issue appropriate direction to declare that where a non Muslim male gets converted to Muslim faith without any change of belief only to obtain a second marriage, any marriage entered by him after conversion to be void.
4. Issue appropriate direction to respondent restraining him to enter the second marriage with Miss Vanita.
5. Pass such other orders and directions which this honorable court may deem fit to this condition and circumstances.

**Issues:-**

There were various issues arose in this matter of Lily Thomas vs. Union of India[[1]](#footnote-2) like the violation of fundamental rights of the petitioner, the violability of the marriage, the truthiness of his conversion, etc. Let’s talk about the issues generated one by one.

The first issue raised by the petitioner was the violation of Article 21. For understanding its violation, we must know about the scope of this Article. Article 21 of Indian Constitution states “No person shall be deprived of his life or personal liberty except according to procedure established by law”. This was the first question before the court to decide

1. Whether the violation of fundamental rights given under Article 21 occurred or not?

The next issue was the regarding the conversion of respondent. It can be clearly stated from the above facts that the only purpose of conversion to Islam religion by the respondent was to enter into a second marriage. So, it’s obvious that the questions will be raised against the conversion.

1. Whether the conversion of respondent to Islam was in accordance with the Muslim Laws?

Another issue raised from the matter was the validity of his second marriage. The major question before the court in this matter was that

1. Whether the marriage done after the conversion can be termed void under section 11 of Hindu Marriage Act, 1955?

Last question in this matter was related to the application of IPC and nature of punishment offered to the guilty party.

1. Whether sections 494 and 495 0f IPC mentioned in section 17 of HMA are applicable or not?

These are the major issues that were raised from the above facts before the honorable court.

**Arguments given by petitioner:-**

On the first issue generated by the matter, petitioner argues it is a clear cut violation of Article 21 as the Right to live with dignity which has been included in the Article 21 itself has been snatched from her. The second marriage of the respondent is also against the principle of natural justice which has been included in the Article 21 in the famous case of Maneka Gandhi vs. Union of India[[2]](#footnote-3) . So, on these grounds it can be said that there has been violation of Fundamental rights given under Article 21 of the Indian Constitution.

Petitioner argues that the conversion done by the respondent is not in accordance with the Muslim Laws. For being a Muslim one must forfeit his earlier religious faith but here respondent can be easily seen practicing his earlier Hindu faith and continues to be Hindu. The various documents like the name and religion on the birth certificate of the child from his second wife, his name on the VISA application to Bangladesh, his name in the electoral roll and his name in the account details clearly reveals he continues to live with his Hindu name Gyan Chand Ghosh instead the name given after conversion to Islam i.e. Mohammad Kareem Ghazi. His only motive of the conversion was to enter a second marriage with Miss Vanita ignoring the religious faith of either religion.

The marriage solemnized on the date of 3rd Sept. 1992 can be termed as void under section 11 of Hindu Marriage Act, 1955. Section 11 of HMA talks about the void marriages and any such marriage which violates the conditions given in clause (i), (iv) and (v) of section 5 of Hindu Marriage Act, 1955 is termed as void marriage. It clearly violates the first condition of Hindu marriage i.e. no other spouse should be living at the time of marriage. Here, Mrs. Sushmita Ghosh is alive at the time of marriage of his husband with Miss Vanita. So, the second marriage is void.

Section 17 of the Hindu Marriage Act, 1955 talks about the punishment of bigamy and section 494 and 495 of IPC should be applied. For the application of these sections of Indian Penal Code the marriage must be declared void by the laws and here it is clear cut a void marriage under section 11 of HMA.

The petitioner requested honorable judges to punish the offender and pass such an order or decre so that justice could be done with the aggrieved party.

**Arguments given by respondent:-**

The respondent argues that there has been no such violation any fundamental rights given under Article 21 of Indian constitution. As it is the matter of personal laws and the respondent has been charged with the sections of IPC. So, there is no such question of violation of any fundamental rights.

Since many a things in Muslim laws are not codified, the conversion rules in the Islam religion is also based on the beliefs and customs which they are following for many years. For being converted into Islamic faith, there are mainly two essentials that are, he must be of sound mind and he must have given consent of conversion. Both the essentials were duly fulfilled in this matter and also the certificate of conversion was obtained by Mohammad Kareem Ghazi from MaulanaQari Mohammad Idris, ShahiQazi. And also the Article 25 of India Constitution guarantees freedom of religion. So, one can expressly convert into the other religious expressing their rights of freedom religion given by Constitution of India.

There is no question of application section 11 of Hindu Marriage At, 1955 as this act only applies on the Hindus but the respondent has turned into an Islamic faith after the conversion. So, no personal laws other that Muslim laws can be applied in this matter. Since, the date of conversion, he has forfeited the Hindu faith and after such forfeiture, all the laws and acts which are binding upon Hindus only are automatically forfeited.

Bigamy is prohibited in Hindu Laws but Muslim laws promote polygamous nature of marriage up to four wives. The holy book of Quran, which is also a primary source of Muslim laws states, a Muslim man can marry with a maximum number of four wives treating them with equal love and affection. For the application of section 494 and 495 of Indian Penal Code (Code 45 of 1860), the marriage must be declared void under the laws. But here the Muslim laws binding upon the respondent permits him to do so.

The respondent requested honorable court to pass such an order or decree lifting all the charges leveled against the respondent and dismissing all the pleas and petitions filed by the petitioners.

**Legal overview of the case:-**

As the matter involved the personals laws mostly so one must have to be clear in Hindu Laws as well as Muslim laws that are applicable in India. These are the following legal sections or articles one must know in order to understand this case.

The list starts with the Section 5 of Hindu Marriage Act, 1955 which states the conditions for a Hindu marriage. The clause (i) of the section clearly states that “neither party has a spouse living at the time of marriage”. This section of HMA clearly prohibits the practice of bigamy under Hindu Law.

Section 11 of Hindu Marriage Act, 1955 talks about the Void marriages, as it states “any marriage solemnized after the commencement of this act shall be null and void, on a petition presented by either of the party thereto[against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clause (i), (iv) and (v) of section 5”.This statement clearly shows that a second marriage will be declared as void under Hindu Law.

Section 13 of Hindu Marriage Act, 1955 talks about the different grounds of divorce recognized under Hindu laws. Clause (ii) of this section made conversion a ground for divorce. In the case of Madanan Seetha vs. MadananVimla[[3]](#footnote-4), a husband was granted divorce on his wife converting into Christianity.

Section 17 of Hindu Marriage Act, 1955 talks about the punishment of bigamy and it states “any marriage between two Hindus after the commencement of this act is void if at the date of such marriages either party had a husband or wife living; and the provisions of sections 494 and 495 of Indian Penal Code (45 of 1860), shall apply accordingly” but there are certain conditions for making this section applicable. The second marriage needs to be valid under the Hindu law. The mere admission by the respondent that he had contracted second marriage is not enough. In the case of Bhaurao vs. State of Maharashtra[[4]](#footnote-5), it was held that the impugned marriage must have been solemnized that is, the marriage should have been celebrated or performed with proper ceremonies and in due form. Also in the case of Surjit Kaur vs. Garja Singh[[5]](#footnote-6), it was held that if the marriage is not a valid marriage, it is no marriage in the eyes of law. If the marriage is not a valid one according to the law applicable to the parties, no question of its being void by reason of its taking place during the life of the husband or wife of the person marrying arises. Having regard to section 17 of the Act the essential ceremonies set out under the Act had not been conducted and merely because there was distribution of sugar or gur would not constitute a marriage.

Section 494 of IPC provides as under;

Marrying again during life-time of husband or wife.- Whoever, having a husband or wife living, marriages in any case in which such marriages is void by reason of its taking place during the life term of husband or wife, shall be punished with the imprisonment of either description for a term which may extend to seven years, and shall be liable to fine. In order to constitute an offence under this section, following ingredients must be found existing:

1. First marriage of the accused,
2. Second marriage of the accused,
3. The first wife or husband, as the case may be, should be alive at the time of the second marriage,
4. Under law, such marriage should be void by reason of its taking place during the life-time of such husband or wife.

We all know that a very less part of the Muslim laws is codified and many a things are still governed by their religious beliefs and spiritual leaders like Qazi and Maulana. Conversion is one such subject which is not codified under Muslim personal law. So, people willing to get converted into Islam religion have to accept the faith in Islam and certificate of conversion can be issued by Qazi himself. There is no hard and fast rule for conversion in Muslim personal law. But the fact here is that the holy book of Quran which is also a primary source of Muslim laws prescribes some basic conditions to be a Muslim. These conditions are also used to define who is a Muslim. Following are five basic conditions of a Muslim;

1. Shahada (profession of faith)
2. Namaaz (prayer in the direction of Mecca)
3. Zakat (Almsgiving)
4. Roza (fasting in the holy month of Ramzan)
5. Hajj ( Pilgrimage)

These are the five pillars of Islam recognized manly by the Sunni sects of the Islam religion. The other sect Shia has different terms and laws but we our concern on this matter is only up to Sunni Laws.

Last but not the least; Article 21 has been used in the writ petition filed by the petitioner as Article 21 of Indian Constitution states “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The scope of this article is very wide and it’s up to the court to see whether its violation occurred or not. It is also mentioned above in major issues of the case.

**Judgement:**

The Supreme Court bench of Sagir Ahmad, J. and Sethi, J.has upheld the decision of Sara Mudgal case and declared the second marriage of the respondent void despite polygamy being permitted by Muslim Shariat laws. The reason behind such a judgement was his malafide intention of conversion. The sole motive of respondent to be converted into Islam religion was only to enter a second marriage with Miss Vanita Gupta. As the Hindu law prohibits bigamy, respondent found a way of conversion to Islam for second marriage but his conversion was not deemed to be fit in the eyes of court as he was still living with the Hindu name and even certain documents like birth certificate of his child, name in the electoral roll and his account details revealed his identity as a Hindu.

Also Muslim laws will apply only on such cases where both the parties are Muslim and here we can clearly see difference in religion and even the conversion doesn’t seems to be right, the application of Muslim law is questionable.

Islam is not only a religion but it’s a faith and belief. Just converting to Islam doesn’t mean you opted the religion, it requires the basic faith and one must be ceased to be a Hindu if he has converted to Islam. The respondent has shown no interest in the faith of Islam even after conversion and continues living as a Hindu. Even according to the established Muslim laws related to conversion, it is quite clear that for conversion there are certain basic requirements and among them foremost his one has to forfeit his earlier religious faith. Even though Quran permits polygamy, it doesn’t mean you are free to marry four persons if you are of Islamic faith. Quran clearly says that if you are able to give equal love, affection and rights to all the wives then only you can enter into second, third or fourth marriage.

The court found the respondent guilty of offences under section 494 and 495 of IPC and ordered to dismiss the entire review petition filed by him.

On the matter of violation of Article 21 by the respondent, the court was of the view that the violation of any fundamental right has not been done by the respondent.Sethi, J. argued that the Article 21 states “no person shall be deprived of his life and liberty except by the procedure established by the law” and here the respondent has been apprehended for offences under section 494 and 495 of IPC. The violation of Article 21 is misconceived.

So in a nutshell following are the answers given by the honorable court on the issues arose out of the matter;

1. No, the violation of fundamental rights given under Article 21 of Indian Constitution has not occurred in this matter.
2. No. the conversion of respondent was not in accordance with Muslim Laws.
3. Yes, the marriage done after the conversion to Islam can be termed void under section 11 of the Hindu Marriage Act, 1955 as the conversion was not in accordance with Muslim Laws.
4. Yes, the sections 494 and 495 of Indian Penal Code (Code 45of 1860) mentioned in section 17 of the Hindu Marriage Act, 1955 is applicable.

**Analysis:**

The above mentioned judgement in the favor of the petitioner became a landmark judgement in the history of Indian Judiciary. Judiciary is said as the guardian of constitutions and also the protectors of laws, this case also proved the worth of judiciary in individuals’ life. We all know that Article 25 of Indian Constitution guarantees the freedom of religion to all the persons living within this Indian Territory. But this doesn’t mean that you are free to do anything on the name of freedom of religion. The cases like Sarla Mudgal vs. Union of India[[6]](#footnote-7), Lily Thomas vs. Union of India[[7]](#footnote-8), Ahmad Khan v Shah Bano Begum[[8]](#footnote-9), and recently Shayara Bano vs. Union of India[[9]](#footnote-10) has abolished some malpractices which were done on the name of Freedom of Religion.

The court have found different new aspects to be added or repealed from the existing laws with the passage of time but one question that still remain unanswered is the need of uniform civil code. The court didn’t answer to the questions asked about the Uniform Civil Code. In part IV of the Indian Constitution i.e. Directive Principles of State Policy, Article 44 says “state shall endeavour to provide for its citizens a uniform civil code (UCC) throughout the India.” The objective this endeavor should be to address discrimination vulnerable groups and harmonize diverse cultural practices. It is well known that Article 44 comes under Part IV of Constitution which is not justifiable but we must not forget the notion behind including the part IV in the constitution. There was a time when this DPSP was used to prevail even over the Fundamental Rights but now it seems to be just a written part of the constitution which is practically very far reached.

Even the parliament never intended to frame laws regarding the Uniform Civil Code. Many leaders came with the promises of UCC but never worked on it as they have a fear of losing a particular vote bank. We must remember the time when Rajiv Gandhi used to be the Prime Minister of India and a judgement on the case of Shah Bano vs. Union of India[[10]](#footnote-11)came in favor of petitioner but the government after few weeks altered the law and making it difficult to interfere in personal laws. This is why we say that Shah Bano lost even after winning the case.

In the present days, we talk about equality but we can witness the differences regarding the same matter in two different personal laws. Bigamy is prohibited under Hindu Law but is permitted up to four marriages in Muslim laws. Isn’t it discrimination? There are several aspects where there is a conflict between personal laws and common laws and the court has to decide which one will prevail. So, in my opinion I feel that if there will be a Uniform Civil Code for everyone then there will be no such conflicts.

In this matter court delivered justice to the petitioner declaring the second marriage of the respondent void but didn’t looked for a long term solution of such a conflict between personal laws and common laws.

But like other cases also in this matter of Lily Thomas vs. Union of India, the court was not willing to answer the question about Uniform Civil Code. We can only have our lights of hope alive towards our Judiciary and also the elected government of ours to look forward towards a very important Directive Principles of State Policy mentioned as Uniform Civil Code in article 44 of the Part IV of the Indian Constitution.

1. Lily Thomas v UOI [2000] 6 SCC 224 [↑](#footnote-ref-2)
2. Maneka Gandhi v UOI [1978] SC 597 [↑](#footnote-ref-3)
3. Madanan Seetha v MadananVimla [2014] APH 183 [↑](#footnote-ref-4)
4. Bhaurao v State of Maharashtra [1965] SC 1564 [↑](#footnote-ref-5)
5. Surjit Kaur v Garja Singh [1994] SC 135 [↑](#footnote-ref-6)
6. Sara Mudgal v UOI [1995] SC 1531 [↑](#footnote-ref-7)
7. Lily Thomas v UOI [2000] 6 SCC 224 [↑](#footnote-ref-8)
8. Ahmad Khan v Shah Bano Begum [1985]3 SCR 844 [↑](#footnote-ref-9)
9. ShayaraBano v UOI[2017] 9 SCC 1 [↑](#footnote-ref-10)
10. Ahmad Khan v Shah Bano Begum [1985] 3 SCR 844 [↑](#footnote-ref-11)