

Rights be guilty of
bigamy and liable



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Rights and Status of the Converted Muslims:

The question of rights and status of the convert arises mostly when a married person converts to another religion. The question has arisen in some acute form in cases where a person whose personal law prescribe monogamy and who converted to Islam with a view to taking advantage of the Muslim law provision which permits polygamy. It is happening that Hindu or Christian who wants to take a second wife and who has no ground available to divorce his first wife, converts to Islam and takes another wife. Since Muslim law permits polygamy, such a person cannot be prosecuted for bigamy, and his former spouse has to put up with such Situation.

Of course, under Hindu law, she may divorce her convert husband under the Hindu Marriage Act, 1955, but that is not what she wants though her convert husband may welcome it. The Supreme Court in *Sarla Mudgal v. Union of India*,¹ has wiped out the entire dust from this matter. It has laid down that if a monogamously married husband converts to Islam and takes another wife, taking advantage of four-wife polygamy rule of Muslim law, he will be guilty of bigamy and liable to be prosecuted under Section 494 of the Indian Penal Code. His second marriage will be void.

There is yet also another aspect of the matter. There has been some misconception that on conversion of a person to Islam, his marriage stands automatically dissolved. This is not so. This rule has two parts, one relating to conversions taking place in Muslim countries and the other relates to conversions which take place in non-Muslim countries.

In Baillie's Digest, the second part of the rule is thus formulated: " When one of the married parties adopts the Muslim faith in a foreign country, the cutting off their marriage is suspended for the completion of three menstrual periods. And, if the other party also adopts the faith before their completion, the marriage remains subsisting". The first part of the rule lays down that on conversion, the convert has to offer Islam to the other party. This may be done by the kazi, " time after time, till the completion of three" (i. e., the Islam is to be offered thrice), and the parties are to be separated if the other party refuses to accept Islam.

For the purposes of application of Muslim law, India is considered neither a Muslim country nor a non-Muslim country. In India, a marriage cannot be dissolved at the instance of the spouse who had embraced Islam on the ground that the other spouse refuses to accept Islam.