THE LEGAL EFFECT OF CONVERSION TO ISLAM

It is generally agreed that any person who professes the religion of Islam, that is, who accepts the unity of God and the prophetic character of Mohammad, is a Muslim and is subject to Muslim law. It is not necessary that a Muslim should be born a Muslim; it is sufficient if he is a Muslim by profession or conversion. According to the theory of Islam, religion depends upon belief; a believer may renounce Islam just as an unbeliever may accept Islam. It is for the courts to decide whether a person is or is not a Muslim and this depends upon the facts of each case.

What are the tests of a true conversion? When can we say that a man has either accepted Islam or rejected it? In the case of *Abdool Razack* v. *Aga Mohamed Jaffer Bindaneem* [1] it was argued before the Privy Council that —

> No court can test or gauge the sincerity of religious belief. In all cases where according to the Mahomedan Law, unbelief or difference of creed is a bar to a marriage with a true believer, it is enough if the alien in religion embraces the Mahomedan faith. Profession with or without conversion is necessary and sufficient to remove the disability.[2]

The Privy Council agreed with this argument but Lord MacNaghten in giving the advice of the Privy Council would appear to have understood by the term "profession" a good deal more than a mere declaration, for it was held that although the lady in question had stated in evidence that she considered she was a Mahomedan and no longer a Buddhist, and although during her marriage she had, while living with her husband, worshipped with him as a Mahomedan, the fact that she knew nothing about the Mahomedan religion and did not understand a word of the prayers that she was repeating was sufficient for him to hold that she had not made any profession of the Mahomedan faith. In *Raj Bahadur* v. *Bishen Dayal* [3] the suit was for a declaration that certain property was ancestral and for partition thereof. The defence was that the family had become Muslims and were therefore not governed by the Hindu law. Straight J. stated:

> If we are correct in our view that the status of a Hindu or Mahomedan to have the Hindu or Mahomedan law made the rule of decision, depends upon his being an orthodox believer in the Hindu or Mahomedan religion, the mere circumstance that he may call himself, or be termed by others, a Hindu or a

1. 1894 L.R. 21 I.A. 56 In this case the Privy Council held that in determining whether the marriage of an alleged convert with a Muslim is valid, the question of conversion must be decided not by an enquiry into the mind of the convert but by an enquiry into the conformity of her acts to the conduct that may reasonably be expected from a person of her alleged religion.
2. *Ibid*., at p. 64.
3. 1882 I.L.R. 4 All. 343.

> Mahomedan as the case may be is not enough. His only claim to have a special kind of law applied to him is that he follows and observes a particular religion that of itself creates his law for him. If he fails to establish his religion, his privilege to the application of its law fails.[4]

It would appear, therefore, that a mere declaration of belief is not sufficient to establish a conversion for legal purposes. There should in addition be some evidence of the *factum* of conversion in addition to the convert's declaration before the conversion can be given legal effect.

A pretended conversion for the purpose of eluding the personal law of the parties will be considered a fraud upon the law and will not be permitted by the Courts. In the case of *Skinner* v. *Skinner*[5] the Privy Council while referring to the possibility that a change of religion on the part of both the spouses will have the effect of altering rights incidental to the marriage, was careful to add the qualification that such change must be made "honestly" and "without any intent to commit a fraud upon the law". Lord Watson said:

> One of the many peculiar features of this suit arises from the circumstance that. in the case of spouses resident in India, their personal status, and what is frequently termed the status of the marriage, is not solely dependent upon domicil, but involves the element of religious creed. Whether a change of religion made honestly after marriage with the assent of both spouses, without any intent to commit a fraud upon the law, will have the effect of altering rights incidental to the marriage, such as that of divorce, is a question of importance and, it may be, of nicety.[6]

The motive of the person has been said to be immaterial. In *Mussammat Resham Bibi* v. *Khuda Baksh*[7] Din Muhammad J. stated:

> Renunciation of a religious faith, therefore requires no other proof than a person's declaration, the only condition being that the declaration is not casual, of which the declarer may repent afterwards, but it should be attended with volition and should be such to which the declarer adheres and in which he persists. The motive of the declarer is similarly immaterial. A person may renounce his faith for love or for avarice. He may do so to get rid of his present commitments or truly to seek solution elsewhere. But that would not affect the *factum* of renunciation and in cases like the present it is the *factum* alone that matters and not the latent spring of action which results therein. If, therefore, apostasy takes the form of conversion to another faith, proof of conversion in accordance with the tenets of that faith will be sufficient to indicate apostasy and if it is not accompanied by any such extrinsic manifestation, declaration as stated above will do. A genuine conversion is one which has actually taken place and if once it is proved as an accomplished fact, further inquiry is barred.[8]

4. *Ibid*., at p. 348.

5. 1897 L.R. 25 LA. 34. In this case the Privy Council was of the opinion that if a Christian, lawfully married to a Christian woman, were to declare himself a convert to Islam and marry a Muslim woman in Muslim fashion, the second marriage would be of doubtful validity; but it would be otherwise if there had been a *bona fide* conversion of both parties to the Muslim faith.

6. *Ibid*., at p. 41.

7. A.I.R. 1938 Lahore 482. In that case the wife declared that she had become an apostate from Islam and did not believe in Islam, the Quran and the Prophet of Islam. It was held that her marriage was dissolved as soon as she became an apostate.

8. *Ibid*., at p. 484.

Similarly in *Mussamat Ayesha Bibi* v. *Subodh Chakravarty*[9] Ormond J. stated:

> The evidence that the plaintiff herself that she has changed her religion, and as to the fact of the process or rite of conversion having been performed, is uncontradicted and clear. In my opinion, therefore, on proof of these facts I should hold at once that there has been an effective conversion with all the legal consequences that follow from such a conversion, and I should hold so without going at all into the question of motives for the conversion or their relative religious or ethical values; in my view it is not open for me to do so.[10]

There is however a clear distinction between motive and intention and while the courts cannot investigate the question of motive, they can investigate the question of the intention of securing some immediate material advantage. In *Rakeya Bibi* v. *Anil Kumar Mukherji,*[11] Chakravarty J. giving the judgment of the Special Bench, said:—

> It may be that the Court cannot test or gauge the sincerity of a religious belief; or that when there is no question of the genuineness of a person's belief in a certain religion, a Court cannot measure its depth or determine whether it is an intelligent conviction or an ignorant and superficial fancy. But a Court can and does find the true intention of men lying behind their acts and can certainly find from the circumstances of the case whether a pretended conversion was really a means to some further end. We can see no reason to hold that it is in the nature of things impossible for a court of law to determine whether a conversion was *bona fide.* Nor can we agree that the question of *bona fides* is immaterial. In the case of *Skinner* v. *Skinner*[12] the Privy Council, while referring to the possibility that a change of religion on the part of both the spouses might have the effect of altering rights incidental to the marriage, was careful to add the qualification that such change must be made "honestly", and "without any intent to commit fraud upon the law". Indeed, it seems to us to be elementary that if a conversion is not inspired by religious feeling and undergone for its own sake, but is resorted to merely with the object of creating a ground for some claim or right, a court of law cannot recognise it as a good basis for such claim but must hold that no lawful foundation for the claim has been proved. Where conversion gives a legal right, to go through a mock conversion and set it up as the basis of that right is to commit a fraud upon the law. We are clearly of the opinion that where a party puts forward his conversion to a new faith as creating a right in his favour to the prejudice of another, it is proper and necessary for a court of law to inquire and find out whether the conversion was a bona fide one.[13]
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> . . . On the evidence before us, we hold that although the plaintiff undoubtedly went through a form of conversion and did so of his own free will, the con-

9. 1945 Cal.W.N. 439. In this case it was held that the conversion of a non-Muslim wife to Islam dissolves her marriage but this case has been dissented from in *Sayeda Khatoon* v. *Obadiah* 1945 49 Cal.W.N. 745 and in *Robasa Khanum* v. *Khodadad Bamanji Irani* 1946 48 Bom. L.R. 864. This point was left open in the Pakistan case of *Farooq Leivers* v. *Adelaide Bridget Mary* P.L.D. 1958 433 at pp. 438-9. See also footnote 40 *infra.*

10. 1945 49 Cal.W.N. at p. 442.

11. 1948 52 Cal.W.N. 142. In this case the applicant was a Hindu woman who had been married to the defendant according to Hindu rites. She became a Muslim and then applied for a declaration that her marriage with the defendant was dissolved. It was held on the facts that the conversion was not *bona fide* and that a marriage could not be dissolved on the basis of a pretended conversion.

12. 1897 L.R. 25 I.A. 34.

13. *Ibid*., at pp. 147-8.

> version was not *bona fide,* but was designedly undergone with the object of causing a dissolution of the marriage.[14]
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> ... A decree for dissolution of marriage or a decree that a marriage stands dissolved cannot in our opinion be obtained on the basis of a pretended conversion, just as a divorce cannot be obtained on the basis of pretended adultery or on the basis of acts deliberately done with the object of avoiding the marriage.[15]

The cases so far referred to have been cases where the person whose conversion is in question is an adult. In the case of minors the principle appears to be that in strict legal theory an infant cannot choose his own religion and the court must give effect to the parent's wishes unless they run counter to the child's welfare. It has been held that the father has a legal right to bring up his child in the way he thinks best for his or her welfare: *Re Agar Ellis.*[16] James L.J. in that case said:

> The right of the father to the custody and control of his children is one of the most sacred rights. No doubt the law may take away from him this right . . . or interfere with his liberty, but it must be for some sufficient cause known to the law. He may have forfeited such parental right by moral misconduct or by the profession of immoral or irreligious opinions deemed to unfit him to have the charge of any child at all; or he may have abdicated such right by a course of conduct which would make the resumption of his authority capricious and cruel towards the children. But, in the absence of such conduct by the father entailing such forfeiture or amounting to such abdication, the court has never yet interfered with the father's legal right . . . [i]f a good and honest father, taking into consideration the past teaching to which his children have been, in fact, subject and the effect of that teaching on their minds, and the risk of unsettling their convictions, comes to the conclusion that it is right for their welfare, temporal and spiritual, that he should take means to counteract that teaching, and undo its effect, he is by law the proper and sole judge of that, and we, as judges of the land, have no more right to sit in appeal from the conclusion which he has conscientiously and honestly arrived at then we should have to sit in appeal from his conclusion as to the particular church his children should attend, the particular sermons they should hear or the particular religious books to be placed in their hands. He is quite as likely to judge rightly as we are to judge for him. At all events the law has made him and not us, the judge, and we cannot interfere with him in his honest exercise of the jurisdiction which the law has confided to him.[17]

In *Skinner* v. *Orde,*[18] the facts were that an infant, the child of a Christian father and the issue of a Christian marriage, was left, by the death of her father, of very tender age and brought up by her mother as a Christian during her early youth. Her mother after cohabiting with a man having a wife and professing the Christian religion, became with him a Muslim, for the purpose of giving legal effect to a Muslim marriage between them. The infant after attaining the age of fourteen years and being with her mother professed a desire to become a Muslim and adopt the Muslim mode of life. The relatives of the father applied to remove the infant from the custody of the mother and such an order was made

14. *Ibid.*, at p. 149.

15. *Ibid.*

16. (1878) 10 Ch.D. 49.

17. *Ibid.*, at pp. 72-74.

18. (1871) 14 M.I.A. 309.

by the High Court in India and confirmed by the Privy Council. James L.J. in giving the advice of the Privy Council said:

> The course of decision in the English and Irish Courts of Chancery has been such as to lay down as a matter of positive law of the court, that in the matter of religious education, great and in the absence of controlling circumstances, paramount weight should be given to the expressed wishes of the deceased father — a child in India under ordinary circumstances must be presumed to have his father's religion and his corresponding civil and social status; and it is therefore ordinarily and in the absence of controlling circumstances, the duty of a guardian to train his infant ward in such religion.[19]

The Privy Council agreed with the doubts expressed in the High Court as to the legality of the marriage in this case but stated that however this might be, the home was no longer a fit home for a Christian young girl.

The right of the father might be lost if the court is satisfied that the father is so ill-conditioned and of such bad conduct that he should be deprived of the custody of his children *(Re Newton)* ;[20] and also where the child is old enough to have developed a fixed religious belief of its own and when a change of religious education might be fraught with danger to the child's tranquility, health and spiritual welfare *(Stourton v. Stourton)* .[21] But in general the court will not allow a child to determine its own religion against the express wishes of those who have the right to determine it.

It would appear that the principles established in the English cases are applicable in Singapore and in the States of Malaya. In the case of *Re Maria Hertogh*[22] the evidence was that the child, whose parents were Roman Catholics, had been brought up as a Muslim from her tender years until she was fourteen years and although the court held that she could not be said to be a person professing the Christian religion, it made an order returning her custody to the natural parents; and therefore in effect allowed them to determine what religion the child should follow. In Singapore the age of majority is twenty-one years and this is also the age of majority for non-Muslims in the States of Malaya. The age of majority for Muslims in the States of Malaya is eighteen years.[23] The Guardian of Infants Ordinance[24] in Singapore is of general application and applies to Muslims. The Guardianship of Infants Act, 1961 (States

19. *Ibid*., at pp. 323-324.

20. [1896] 1 Ch. 740.

21. (1857) 8 De G. M. & G. 706.

22. (1951) 17 M.L.J. 164. In this case the girl had been married according to the Muslim rites. It was held that although the court had no jurisdiction to declare the marriage null and void, it was necessary to consider whether the girl had been lawfully married to decide on the question of custody. The girl was domiciled in Holland and it was held that, as the marriage was void by the law of Holland, it had not been shown that there was a valid marriage and therefore the custody of the girl should be given to the parents.

23. States of Malaya Age of Majority Act, 1961 (No. 9 of 1961).

24. Guardianship of Infants Ordinance (Cap. 16).

of Malaya), provides for the guardianship of infants and also applies to Muslims but in its application to persons professing the Muslim religion the Act, as adopted by the State legislatures, has been modified to provide that the provisions of the Act (in so far as they are contrary to the Muslim law) shall cease to apply to any person upon his professing the Muslim religion, if at the date of such professing he has completed the age of eighteen years, or if not having completed such age, he professes the Muslim religion with the consent of his guardian.[25] Both the Guardianship of Infants Ordinance in Singapore and the Guardianship of Infants Act in the States of Malaya provide that the father shall normally be the guardian of an infant's person and property; if the infant has no father living, the mother of the infant shall be the guardian of his person and property; if both his parents are dead the testamentary guardian appointed by the last surviving parent shall be the guardian and if there is no such testamentary guardian, then the Court or a Judge may appoint a guardian of the infant's person and property; the Court or a Judge may remove any guardian and appoint another person as guardian in his place and in exercising such powers the Court or a Judge shall have regard primarily to the welfare of the infant and, where the infant has a parent or parents, consider the wishes of such parent or both of them. There is also provision in the Federal Constitution to the effect that the religion of a person under the age of eighteen years shall be decided by his parent or guardian.[26] The result appears to be that in the Federation (including Singapore) a child under the age of eighteen years has no right to choose his or her religion contrary to the wishes of his or her parents and that the parents of such a child have the right to determine his or her religion. The conversion of a child under the age of eighteen years to Islam or any other religion contrary to the wishes of the parents of the child would therefore appear to be illegal. The High Court in Singapore has recently so ruled in the case of *Re Chee Peng Kuek* (*f*) ,[27] In that case the girl aged 16 years, left her home to live with a Malay man. Two days after she left her house, she was taken to the All-Malaya Muslim Missionary Society, where she was converted to Islam. The father of the girl, who was a Buddhist, was not consulted and did not give his consent. He reported her absence to the Police and the Social Welfare Department and eventually she was found in the company of the Malay man and removed and detained in the Muslim Women's Welfare Home. She had had sexual relations with the man and was pregnant. The father applied for an order to declare that he as the lawful father had the right to control the religion, education and upbringing of the girl, that her conversion to the Muslim faith without his consent was null and void and that she should continue to be brought up in the Buddhist faith in accordance with the wishes of the father. The Judge made an order in terms of the application and ordered that the girl be removed from the Muslim Women's Welfare Home to a Social Welfare Home for Buddhist girls and that the name on her identity card (which had been altered on her conversion) be restored to her original name.

25. Guardianship of Infants Act, 1961, (No. 13 of 1961).

26. Federal Constitution, Article 12(4).

27. Singapore Originating Summons No. 170 of 1963.

There are statutory provisions in the laws of the States of Malaya for conversion to Islam. In Selangor for example it is provided that no person shall be converted to the Muslim religion otherwise than in accordance with the provisions of the Administration of Muslim Law Enactment, 1952, or any Rules made thereunder. No person who has not attained the age of puberty[28] shall be converted to the Muslim religion. Any Muslim who converts any person to the Muslim religion shall forthwith report such conversion to the *Majlis* Ugama Islam or Council of Muslim Religion with all necessary particulars. Records of the particulars of conversion are required to be kept by the mosque officials of the *kariah masjid* or mosque area in which the conversion takes place. The President of the Religious Department is empowered to make arrangements for the care and maintenance of juvenile converts. Any person who converts or purports to convert any person to the Muslim religion in contravention of the provisions of the Enactment or fails to report any conversion by him is guilty of an offence.[29]

In Kelantan and Trengganu it is provided that no person shall be registered as a convert to the Muslim religion otherwise than in accordance with the provisions of the Enactment or any rules made thereunder. No person under the age of fourteen years and seven months[30] shall be registered as a convert to the Muslim religion. Any person effecting a conversion shall forthwith report it to the *Majlis* with all necessary particulars. If any person wishes to be admitted to the Muslim religion, he shall repeat the confession of faith before any Muslim and shall thereafter appear before the Kathi of the district in which he ordinarily resides. In Kelantan the Kathi is required to make inquiry as to the age of such person and as to his desire to be admitted to the Muslim religion. If the Kathi is of opinion that the applicant is under the age of fourteen years and seven months he shall cause him to be returned to his lawful guardian and he shall be deemed not to have been converted to the Muslim religion. If the Kathi is satisfied that he is more than fourteen years and seven months and desires to be admitted to the Muslim religion the Kathi shall send him to the custody of the *Majlis.* Such person shall notwithstanding any right to his custody vested in any person or body, be and remain in the custody of the *Majlis* for a period of three months and the *Majlis* shall defray the expenses of his board, lodging and instructions. At the expiration of the said period of three months the convert shall cease to be in the custody of the *Majlis* and the *Majlis* shall if the convert so requests defray the cost of his return to the custody of his lawful guardian. It is expressly provided that nothing in the Enactment shali

28. In default of evidence as to physical maturity, a minor of either sex is presumed to have attained puberty on the completion of his or her fifteenth year. Whether a child below eighteen years of age can be converted to Islam contrary to the wishes of the parents is doubtful in view of the provisions of Article 12(4) of the Federal Constitution.

29. Selangor, Administration of Muslim Law Enactment, 1952, (No. 3 of 1952), ss. 145-148 and 161; Selangor Administration of Muslim Law Rules, 1953, (G.N. Selangor No. 1932 of 1954).

30. This appears to be accepted as the age of puberty. It would appear, however, that a child below eighteen years cannot be converted without the consent of the parents.

operate to permit any minor to be taken from the custody of his natural or lawful guardian without the consent of such natural or lawful guardian. In Trengganu it is provided that the Kathi shall make inquiry as to the age of any such person who wishes to be admitted to the Muslim religion and his understanding of the articles of the faith and shall if satisfied register such person as a convert. If such person is less than eighteen years of age he shall, notwithstanding any right to his custody being vested in any other person or body remain in the custody of the Department of Religious Affairs, for so long as is considered desirable by the Kathi, at the cost of the Department. No female under the age of sixteen years shall be so kept in custody without the consent of her lawful guardian. At the expiration of the said period the convert shall cease to be in the custody of the Department and the Department shall if the convert so requests defray the cost of his return to the custody of his lawful guardian. In both Kelantan and Trengganu it is provided that the Kathi shall report all action taken by him in respect of conversions to the State Secretary; and in Kelantan the Kathi is required in such report to state whether in his opinion the convert made the confession of faith willingly or against his will. Any person who converts or purports to convert any person to the Muslim religion in contravention of the provisions of the Enactment or fails to report a conversion by him is guilty of an offence.[31]

In Penang, Negri Sembilan and Kedah it is provided that no person shall be converted to the Muslim religion otherwise than in accordance with the Muslim law and the provisions of the Administration of Muslim Law Enactment or the rules made thereunder. Any Muslim who converts any person to the Muslim religion is required to report such conversion to the *Majlis* with all the necessary particulars. The *Majlis* is required to maintain a register of the name of all persons converted to the Muslim religion. Any person who neglects or fails to report a conversion is guilty of an offence.[32]

In Pahang it is provided that no person shall be converted to the Muslim religion otherwise than in accordance with the provisions of the Administration of the Law of the Religion of Islam Enactment or any rules made thereunder. Any Muslim who converts any person is required to report such conversion to the *Majlis* with all necessary particulars. The *Majlis* is required to maintain a register of the names of all persons converted to the Muslim religion. Any person who neglects or fails to report a conversion is guilty of an offence.[33]

31. Kelantan Council of Religion and Malay Custom and Kathis Courts Enactment, 1953, (No. 1 of 1953), ss. 165-169 and 181; Trengganu Administration of Islamic Law Enactment, 1955, (No. 4 of 1955), ss. 123-127 and 140.

32. Penang Administration of Muslim Law Enactment, 1959 (No. 3 of 1959), ss. 139-141 and 153; Malacca Administration of Muslim Law Enactment, 1959, (No. 1 of 1959), ss. 137-139 and 152; Negri Sembilan Administration of Muslim Law Enactment, 1960, (No. 15 of 1960), ss. 318-140 and 135, Kedah Administration of Muslim Law Enactment, 1962, (No. 2 of 1962), ss. 139-141 and 155.

33. Pahang Administration of the Law of the Religion of Islam Enactment, 1956, (No. 5 of 1956), ss. 144-146 and 162.

In Perils it is provided that no person shall be converted to the Muslim religion otherwise than in accordance with the Muslim law and the provisions of the Administration of Muslim Law Enactment or any rules made thereunder. No person under the age of eighteen years who has a parent or guardian shall be converted to the Muslim religion without the consent of the parent or guardian. A Muslim who converts any person to the Muslim religion shall forthwith report such conversion to to the *Majlis* with all necessary particulars. The *Majlis* is required to maintain a register of the names of all persons converted to the Muslim religion in the State.[34]

In Singapore by contrast with the position in the other States of Malaysia, conversions are dealt with not by any Government Department or statutory body but by a private society, the All-Malaya Muslim Missionary Society. There is no legislation in Singapore dealing with conversions. An examination of some recent cases, summarised in the Appendix, would appear to show that the position is unsatisfactory. No provision is made for the keeping of registers of conversions and conversions are still left to a private organization with no adequate supervision or control by a religious department. Persons who apply for conversions are not required to make any report or formal application and very little inquiry is made to ascertain that persons who come for conversions genuinely wish to be admitted to the Muslim faith. In the case of minor girls, the rights of the parents as their natural guardians are often ignored and in many cases the parents have had to ask the Social Welfare Department to detain their daughters in the Social Welfare Homes, to prevent them from marrying Muslim men, which appears to be their only motive in becoming Muslims. No arrangements are made for the instruction of the converts nor are any measures taken for their welfare. Where girls are brought to the Society by men who are keeping them away from their parents, no arrangements are made for their accommodation so that they may not be in moral danger — indeed in many cases no effort is made even to record the addresses at which such girls are being kept. No moral instruction or advice appears to be given and in some cases the converts are allowed to continue to live in sin or to follow practices not sanctioned by Islam. All that appears to be done by the Society is to issue a piece of paper which appears to be accepted as a certificate of conversion and it is significant that one convert has stated that when the Secretary gave her the certificate and she asked where she could learn about the Muslim religion she was told to find this out for herself.[35]

The legislation in the States of Malaya does not lay down any procedure for conversion to Islam. The usual practice is for the convert to recite the declaration of the faith of Islam "There is no God but Allah and Mohammed is His Prophet" before at least two witnesses. For the purposes of the law no other test appears to be necessary. It is usual in

34. Perlis Administration of Muslim Law Enactment, 1963, s. 109.

35. Since this was written it is learnt that the All-Malaya Muslim Missionary Society has started a religious class for converts. The opening ceremony was held on the 21st October, 1964.

Malaya to require the convert to be circumcised but this is not compulsory and the cases in India show that it is not the final test. However circumcision and the observance of the requirements and ceremonies of the religion may be taken into consideration in doubtful cases.[36] It is also usual to give a Muslim name to the convert and when this is done, the particulars in the convert's identity card will be altered to conform to the change. In the States of Malaya the alteration is effected after a statutory declaration as to the change of name has been made but in Singapore it has been the practice to accept the certificate of conversion.[37]

In the early days of Islam due provision was made for the instruction of the new converts. The Caliph Umar for example appointed teachers in every country whose duty it was to instruct the converts in the teachings of Quran and the observances of their new faith. The Kathis were also ordered to see that all, whether old or young, were regular in their attendance at public prayer especially on Fridays and in the month of Ramadan. The importance attached to this work of instructing the new converts may be judged from the fact that in the city of Kufah the task was entrusted to no less than a personage than the State Treasurer.[38]

Conversion to Islam is a meritorious act but there is a tradition of the Prophet to the effect that deeds will be judged according to the intention. "Whosoever migrates" he is reported to have said "for the sake of this world or to wed a woman his migration will be judged according to that for which he migrated. And whosoever migrates for the sake of God and His Prophet his migration will be judged as performed unto God and His Prophet".[39] The majority of conversions in Singapore at least, appears to be for the purposes of marriage. It seems to be necessary to distinguish between the fact of conversion and the effect of the conversion on the personal law of the convert and his relations with other persons. It is only where a person can show that he has *bona fide* followed and observed a particular religion that he can claim to be governed by the law created by that particular religion.[40] Even in such a case it is doubtful whether a person can by changing his or her religion alter the legal

36. R. K. Wilson, *Anglo-Muhammadan Law,* (Calcutta, 1930), at pp. 86-87.

37. It is doubtful in view of the decision in *Chee Peng Kuek's* case (see note 27) whether the practice in Singapore is lawful in the case of a minor who has been converted without the consent of the parents. The acquisition of a new name by use and reputation is the only way (apart from an act of the legislature) by which a name is changed, for a man's name is the name by which he is known, a deed poll or statutory declaration being merely evidence of the intention to be known by another name. Evidence of change of name is often provided by a making of statutory declaration, which should set out that the declarant wishes to change his name and intends henceforth to be known by the new name and renounces his former name. Such a declaration can be made by the parent or legal guardian on behalf of a child.

38. T. W. Arnold, *The Preaching of Islam,* (London, 1935), at p. 51.

39. *Sahih al-Bukhari,* translated by Muhammad Asad, (Lahore, 1938), at p. 203.

40. In *Raj Bahadur v. Bishen Dayal* 1882 4 All. 343, Straight J. said (at p. 347): "Their 'status' before the law absolutely depends upon their religious belief, and this in the strict sense of the term".

status of another person who has not changed his or her religion.

Under the Muslim law conversion to Islam on the part of a man following a religion based on a revealed scripture, such as Judaism or Christianity does not dissolve his marriage with a woman belonging to his old creed. But if the couple belonged to a non-scriptural faith, the Muslim husband could not lawfully retain his wife. The law therefore requires that Islam be offered to her, that is, she should be invited to embrace Islam and if she refuses a decree for dissolution of the marriage will be passed. Where the wife alone was converted to Islam, the husband will similarly be invited to adopt Islam and if he refuses to do so the marriage will be dissolved. These rules have not been applied in India, mainly on the ground that the court cannot allow a party to a marriage, by declaring himself to be a convert to evade the legal obligations of a marriage entered into by him and to change the status of another person who has not changed his faith. Thus in *Keolapati* v. *Harnam*[41] it was held that a non-Muslim lawfully married in accordance with his own law, cannot by a mere conversion to Islam dissolve his own marriage. So too it has been held that the conversion of a non-Muslim wife to Islam does not *ipso facto* dissolve her marriage with her husband.[42] In *Robaba Khanum v. Khodadad Bomanji Irani*[43] in which a Zoroastrian woman who had embraced Islam claimed to have offered her husband Islam and on his refusal to be free of the union, Blagden J. said:

> . . . British India as a whole is neither governed by Hindu, Mahomedan, Sikh, Parsi, Christian, Jewish or any other law except a law imposed by Great Britain under which Hindus, Mahomedans, Sikhs, Parsis and others enjoy equal rights and the utmost possible freedom of religion observance, consistent in every case with the rights of other people. I have to decide this case according to the law as it is, and there seems, in principle no adequate ground for holding that in this case the Mahomedan law is applicable to a non-Mahomedan.[44]

In Pakistan however it has been held in *Faiz Ali Shah* v. *Ghulam Abbar Shah*[45] that the marriage of a Hindu married woman on her conversion in British India to Islam according to the Muslim law should be regarded as dissolved without any decree or order of the Judge on the completion of the period of her *iddah.* Abdul Majid C.J. said:

41. 1936 12 Luck. 568.

42. *Rakeya Bibi v. Anil Kumar Mukherji* 1948 52 Cal.W.N. 142; *Noor Jehan* v. *Eugene Tischenko* 1942 2 Cal. 165; *Sayeda Khatoon* v. *Obadiah* 1945 49 Cal.W.N. 745; *Robaba Khanum* v. *Khodadad Bomanji Irani* 1946 48 Bom. L.R. 864. It is submitted that the case of *Ayesha Bibi* v. *Chakravarty* 1945 Cal.W.N. 439, which decides the contrary, is not good law. The point was left open in the Pakistan case of *Farooq Leivers v. Adelaide Bridget Mary* P.L.D. 1958 (W.P.) Lah. 431.

43. 1946 48 Bom. L.R. 864.

44. *Ibid.*, at p. 869.

45. P.L.D. 1952 Azad Jammu and Kashmir 32. The converse case of a married Muslim woman who renounces Islam or who is converted to a faith other than Islam has been dealt with by the Dissolution of Muslim Marriages Act, 1939, which provides that such an act will not by itself operate to dissolve the marriage.

> The main distinction which has been drawn by the Muslim jurists is between a conversion which takes place in an Islamic country where both parties to the marriage may be brought before the Qazi and a conversion which takes place in a country which is not subject to the laws of Islam. In the former case it is laid down in the *Hedaya* that Islam is to be presented to the converted party by the Qazi, and, on refusal to embrace the faith, the Qazi must pronounce a decree of divorce. In the latter case the dissolution of the marriage takes place automatically after completion of three of the wife's "terms" because the requiring of the other party to embrace the faith is impracticable . . .[46]

In that case the facts were that a Muslim residing in India had married a Muslim lady and later a second wife, a Hindu woman converted to Islam, who had a Hindu husband living. He died leaving offspring by both the wives. It was held that British India could not be said to be a country subject to the laws of Islam and therefore immediately upon the conversion of the Hindu woman, her marriage with her Hindu husband was dissolved; her marriage to the Muslim man was therefore lawful, and her children by him legitimate. In referring to the earlier cases, the learned Chief Justice stated that they overlooked one important aspect that children from a union between a married Hindu or Christian woman who had become a convert to Islam and a Muslim would be considered as illegitimate and this stigma will cause life-long hardship.

> The cases in which it was held that a married Hindu or Christian woman could not dissolve her marriage by conversion to Islam without the intervention of the Court were criminal cases under section 494 of the Indian [Penal Code] and to check bigamy these rulings were given. If the question of the legitimacy of the children born to a Muslim from his marriage with a Hindu or Christian married woman converted to Islam had been in issue then probably the Judges would have come to a conclusion reached by me.[47]

There have been no reported decisions in Malaya dealing with this matter but it is submitted that the rules of Muslim law are not applicable. The Shariah Court in Singapore and the Kathi's Courts in the States of Malaya would appear to have no jurisdiction in such a matter as all the parties would not be Muslims and the ordinary civil courts in applying the laws of divorce will have no power to make a decree of divorce only on the ground that one of the parties has embraced Islam.

It is interesting to note that in the Sudan there is special statutory provision dealing with the effect of conversion on marriage. The Sudan Marriage Ordinance provides for a monogamous marriage which will last till death of one party or a decree of nullity or divorce has been pronounced by a court of competent jurisdiction. To this there are added two provisoes:—

> Provided always that if the husband has become an adherent of the Mahomedan faith and by reason of such adherence his personal status conies to be governed by the Mahomedan Religious Law —
>
> (a) such marriage shall continue to subsist but may be dissolved in accordance with the Mahomedan Religious Law; and
>
> (b) notwithstanding the subsistence of such marriage it shall be lawful for the

46. *Ibid*., at p. 36.

47. *Ibid*., at p. 37.

> husband to marry another wife or wives in accordance with the Mahomedan Religious Law.
>
> Provided also that if the husband becomes an adherent of the Mahomedan faith but his wife does not, and the husband marries or purports to marry another wife during the subsistence of such marriage then whether or not his personal status shall have come to be governed by the Mahomedan Religious Law, it shall be lawful for the High Court of Justice to dissolve such marriage on the petition of the wife.[48]

The provisoes apply only to marriages under the Ordinance. In the case of *Farida Fouad Nakhla v. Sameer Ameer,*[49] where a Coptic Christian was converted to Islam, it was held that he could not dissolve his marriage to his Coptic Christian wife by *talak* as the marriage was not a marriage under the Ordinance. The non-Muslim wife was married on terms that she can only be divorced by a court on certain grounds known to the law. The mere fact that her husband has been converted should not interfere with her rights in the matter (unless, of course, she also has been converted to Islam).

In the Negri Sembilan case of *Public Prosecutor* v. *White* [50] it was held that a man who was a Christian and married to a Christian woman according to the rites of the Church of England, would be guilty of bigamy if, after his conversion to Islam, he marries another woman according to the Muslim law, while his wife was still alive. The learned Judge in that case held that a person who enters into a marriage relationship with a woman according to monogamous rites takes upon himself all the obligations springing from a monogamous relationship and acquires by law the status of a husband in a monogamous marriage and he cannot, whatever his religion may be, during the subsistence of that monogamous marriage marry or go through a legally recognised form of marriage with another person. A conversion to another faith of either spouse of such a marriage would, he held, have no legal effect on the status of that spouse. The learned Judge relied on a *dictum* of Reading L.C.J. in *Rex* v. *Hammersmith Superintending Registrar of Marriages*:[51]

> that once the marriage has been celebrated according to the law of the place where it is celebrated the status of marriage with all its incidents is conferred by law upon the parties.[52]

It has however recently been held in a number of cases in England

48. C. D. Farran, *Matrimonial Laws of the Sudan,* (London, 1963), at p. 238.

49. (1957) Sudan Law Journal Report 21.

50. (1940) 9 M.L.J. 214. See also *Dorothy Yee Yeng Nam* v. *Lee Fah Kooi* (1956) 22 M.L.J. 257 where Thomson C.J. said at p. 262: "Marriage is a status arising from a contract the terms of which are determined by law. The parties agree to marry and when that contract leads to the solemnisation of the marriage then each of them acquires the status of a married man or married woman with all the incidents which the law attaches to that status. In contracting to enter into the relationship the parties must be held to have agreed to acquire all the rights and to submit themselves to all the liabilities which the law attaches to the status they have acquired." See however *John Jibban Chandra Datta* v. *Abinash Chandra Sen* 1939 I.L.R. 2 Cal 12 and *Attorney-General of Ceylon* v. *Reid* (1965) 2 W.L.R. 671 and footnote 61 below,

51. [1917] 1 K.B. 634.

52. *Ibid.*, at p. 641.

that a marriage celebrated in England may be dissolved by a pronouncement of *talak* in accordance with the law of the country of the husband's domicile.[53]

Whether the courts would be prepared to hold that a man can, by conversion to Islam, acquire the rights of a Muslim to dissolve his marriage by *talak* or to take additional wives, is however doubtful. The conversion in such a case would appear to be for the purpose of eluding the personal law of the parties so as to constitute a fraud upon the law and might therefore not be recognised by the Courts.

In India it has been held in *Khambatta v. Khambatta*[54] that personal status, rights and obligations and questions of succession and inheritance are frequently governed by religious creed and may be affected by a change of domicile. Blackwell J. in that case stated:

> It has been argued for the appellant that the status imposed by operation of law upon persons who marry in the Christian form cannot be altered by the voluntary act of the parties. But if a change of domicile which is a voluntary act may result in a change of status by reason of the application of a different system of law, it is difficult to see why a change of religion, the domicile remaining unchanged, may not result in a change of status, if the law to be applied is then different by reason of the difference in religion.[55]

In that case a Scotswoman married in Scotland a Muslim domiciled in India. Both parties went to live in India and subsequently the wife became converted to Islam. After her conversion her husband divorced her by the pronouncement of *talak.* It was held that the marriage was validly dissolved. In the Pakistan case of *Farooq Leivers* v. *Adelaide Bridget Mary* [56] however it was held that although under the Muslim law, a Christian husband, on his conversion to Islam is authorised to give *talak,* to his Christian wife by pronouncing the formula of *talak,* the courts in Pakistan cannot recognise such a *talak* in view of the provisions of the Divorce Act of 1869 and other existing laws; in such a conflict of the personal law of the parties to a suit, there was no justification to prefer the personal law of the plaintiff to the personal law of the defendant.

In the case of *Advocate-General* v. *Jimbabai*[57] Beaman J. said:

> On conversion to Muhammadanism converts, no matter what their previous religion may have been, must be taken at the moment to have renounced all their former religious and personal laws in so far as the latter flowed from and was inextricably bound up with their religion and to have substituted for it the

53. See *Yousef* v. *Yousef "The Times,"* 1st August, 1957; *El-Riyami* v. *El-Riyami "The Times,"* 1st April, 1958; *Russ* v. *Russ* [1962] 1 All E.R. 649.

54. A.I.R. 1935 Bombay 5.

55. *Ibid*., at p. 10.

56. P.L.D. 1958 (W.P.) Lah. 431 approved in *Ali Nawaz Gardezi* v. *Mohammed Yusuf* P.L.D. 1962 Lahore 558 where Shabir Ahmed J. said (at p. 627) "I am clear in my mind that after the passing of the Divorce Act of 1869 the law for the place to which the Act was applicable was that if one of the spouses to a marriage was a Christian, the marriage could be dissolved only in accordance with the provisions of the Act and by no other means."

57. A.I.R. 1915 Bombay 151.

> religion of Muhammad with so much of the personal law as necessarily flows from that religion.[58]

In *John Jibban Chandra Dutta* v. *Abinash Chandra Sen*[59] it was held that a married Christian after his conversion to Islam, is governed by the Muslim Law, and is entitled during the subsistence of his marriage with his former Christian wife, to contract a valid marriage with another woman according to Muslim rites. Latifur Rahman J. said:

> Under the Mahomedan Law where a Christian embraces Islam he acquires all the rights which a Mahomedan possesses and can contract a valid marriage even though the first one with the Christian wife subsists.[60]

Although this case has been criticised, it would appear to be correct on the question of the validity of the second marriage according to the Muslim Law.[61] However it is open to the Court to say that the conversion was for the purpose of perpetrating a fraud upon the law, that is to elude the personal law of the parties, and therefore should not recognised.

In the case of *Attorney General of Ceylon* v. *Reid*[62] it has been held by the Privy Council that a Christian monogamous marriage contracted in Ceylon did not prohibit for all time during the subsistence of that marriage a change of faith and of personal law on the part of the husband resident and domiciled there. He had an inherent right to change his religion and so to contract a valid polygamous marriage, if recognised by the laws of Ceylon, notwithstanding an earlier subsisting marriage. If such inherent right was to be abrogated it must be done by statute and there was none in the case of Ceylon.

It appears to be generally accepted that the effect of conversion to Islam brings about a complete change as regards the right of inheritance. In *Re the Estate of Timah binte Abdullah*[63] the deceased was a Japanese woman who married a Malay and had become a convert to the Muslim faith. It was held that the next of kin of the deceased who were non-Muslims were not entitled to her estate. In the Privy Council case of *Mitar Sen* v. *Maqbul Hasan Khan*[64] it was held that once a person has changed his religion and his personal law, that law will govern the rights

58. *Ibid*., at p. 155.

59. A.I.R. 1939 Calcutta 417.

60. *Ibid*., at p.. 419.

61. See A. A. Fyzee, *Muhammadan Law,* (London, 1964), at p. 173; C. D. Farran, *Matrimonial Laws of the Sudan,* (London, 1963), at p. 239. A contrary opinion is given in *P.P.* v. *White* (1940) 9 M.L.J. 214 but see *Attorney-General of Ceylon* v. *Reid* [1965] 2 W.L.R. 671.

62. [1965] 2 W.L.R. 671. The effect of this case is that a man who is already married can get himself converted to Islam and marry again during the subsistence of his previous marriage. The remedy would appear to be to a stricter control of the exercise of the so-called right of polygamy among Muslims.

63. (1941) 10 M.L.J. 51.

64. A.I.R. 1930 P.C. 251.

of succession of his children. Lord Atkin in giving the opinion of the Privy Council further observed as follows:—

> It may, of course, work hard to some extent upon expectant heirs, especially if the expectant heirs are the children and perhaps the unconverted children of the ancestor who does in fact change his religion, but, after all, it inflicts no more hardship in their case than in any other case where the ancestor has changed the law of succession, as, for instance, by acquiring a different domicile and their Lordships do not find it necessary to consider any questions of hardship that may arise. They will certainly, in their Lordship's view, be outweighed by the immense difficulties that would follow if the wider view were to prevail.[65]

In Sarawak provision for the property of Muslim converts has been made by the Muslims Converts (Property) Ordinance.[66] This Ordinance provides that it shall be the duty of a prospective Muslim convert prior to becoming a Muslim convert, or, if conversion occurs outside Sarawak, within thirty days of his return to Sarawak, to apply to a District Court for directions as to what provision he should make to the non-Muslim beneficiaries, that is such persons not being Muslims or Muslim converts who but for his becoming a Muslim convert, would be entitled to share in the distribution of his estate upon his death intestate; such non-Muslim beneficiaries do not include the brothers and sisters of any collateral relative of the Muslim convert. A non-Muslim beneficiary may also apply to court for an order calling upon the Muslim convert whose beneficiary he claims to be to appear before the court for inquiry as to what provision should be made for the non-Muslim beneficiaries. The District Court on receiving such application shall hold an inquiry to decide as to what fair and equitable provision should be made for the non-Muslim beneficiaries and order the Muslim convert to make such provision. If the Muslim convert fails to comply with such order the Malay *Undang-Undang* and the Muslim Malay custom of Sarawak shall not apply to the testate or intestate succession to his property but the law applicable shall be the law and custom which would have applied had the Muslim convert not been so converted. It is however provided that in such a case notwithstanding any testamentary disposition made by him the Muslim convert shall be deemed for all purposes to have died intestate; that the issue of such Muslim converts and any person related to him by blood or marriage who became Muslim converts contemporaneously with or after the date of his conversion shall be entitled to such rights to his property as they would have possessed had they not become Muslim converts; and that the husband or wife of the Muslim convert, whether or not they were Muslims at the time of the conversion of the Muslim convert, shall have the like rights to the property of the Muslim convert as they would have had had they not been Muslims.

The most frequent cases of conversion in Singapore appear to be those where young girls are converted to Islam in order to enable them to marry Muslim men. The Women's Charter, 1961, prescribes the age of eighteen years as the minimum age of marriage and also provides that the consent of the parents shall be obtained where the parties or either

65. *Ibid*., at p. 253.

66. Cap. 95 of the Laws of Sarawak, 1958.

of them are under twenty-one years of age.[67] It appears to be assumed that where a girl under eighteen years is converted to Islam she can be married under the Muslim Law despite the fact that she has not attained the age of eighteen years and even against the wishes of her parents. If the conversion in such cases is used as a subterfuge to escape from the provisions of the law, then it should be regarded as a fraud upon the law and therefore refused recognition. The rights of the father as natural guardian, where the girl is under eighteen years of age would appear in any event, to be preserved by Article 12 of the Federal Constitution.

In a country such as England in which the law does not have a specifically religious bias, religious conversion tends to be without legal significance. The short and simple rule of English law on the matter is that a change of religious belief is without any consequence on the marriage of the converted party which derives its validity from the law of the land. The matter is different in countries like India, Pakistan or Malaysia where the marriage law is to a large extent based on the religious adherence of the parties. In such cases, it is submitted, it is necessary to ensure that the provisions of the law are not abused and that conversion is not used as a device to escape an inconvenient rule of the personal law. Such abuse of the law would bring no credit either to the law or to the religion.[68]

APPENDIX

AB, born on 17.10.45, is the daughter of a Chinese father and Malay mother who had cohabited with each other for the past 20 years and have had four children. She left home on the 22nd May, 1962, to stay with a Malay family with the parent's knowledge and consent. Subsequently she refused to return home in spite of repeated requests by the parents. She was converted to the Muslim religion at the All-Malaya Muslim Missionary Society in June 1962. Her parents reported her missing and as a result she was arrested and detained in the Muslim Women's Welfare Home. She refused to stay at the Home and when released went back to stay with the Malay family. The father strongly objected to her becoming a Muslim. Subsequently the girl was again removed and returned to her mother and paternal uncle. The mother had in the meantime separated from the Chinese man.

(2) *BC* aged 18 years had been missing from her home since April 1962. Her parents suspected that she had run away with a married Malay man with whom she had fallen in love. She went to the All-Malaya Muslim Missionary Society to have herself converted. The Secretary wrote to the father on 25th April, 1962, asking the father for permission for her conversion. The father did not go to the Society but reported the matter to the Social Welfare Department. The Secretary was asked as to the whereabouts of the girl. He replied that he did not know the whereabouts of the girl, but said he would ask her to call at the Social Welfare Department when

67. Women's Charter, 1961, (No. 18 of 1961), ss. 9 and 12.

68. This can be dramatically illustrated by a case which occurred in Egypt. A Coptic wife. who had married a Coptic husband in a Coptic Church grew tired of him but did not wish to incur the expense of a divorce. She therefore was formally converted to Islam and by the application of the Muslim Law, her marriage was automatically brought to an end. Next day the woman was formally re-converted to the Coptic Church and being now an unmarried woman was able to marry a Coptic husband, of her own choosing. Although the court in Egypt upheld the legal validity of this remarkable procedure, it would appear with respect that this was a clear case of abuse of the procedure of the law. See C. D. Farran, *Matrimonial Laws of the Sudan,* (London, 1963), at p. 153.

she came again to the Society. It was later learned that the girl had been converted to Islam in Johore.

(3) *CD* a Muslim born on 2nd July, 1945, was working as an amah with a European family. The family works in a Veterinary Station. The girl had known a Chinese man working at the same station for two years and in 1962 she ran away from her home and went to live with the boy's parents. On 11th July, 1962, the Chinese man approached the Secretary of the All-Malaya Muslim Missionary Society and asked to be converted. The Secretary refused and told the Chinese man that since his intention of conversion was to get married and as neither the father nor the mother of the girl agreed to this, he should wait for fear that if he failed to get her for marriage he might become a *murtad.* The girl subsequently ran away from home and on 3.7.63 she was detained at the Social Welfare Home. On 14th August, 1963, she had an abortion.

(4) *EF,* born on 23rd July, 1940 was the daughter of a goldsmith. She met a Malay man in 1960 and cohabited with him. She was converted to the Muslim faith on 9th January, 1961, but the Malay man did not marry her but instead drove her out. She became confused and later had to be sent to the Mental Hospital. The psychiatrist was of opinion that her mental illness was brought about by her conversion to Islam and the rejection by her family. On the advice of the medical officers she was allowed to renounce Islam and she was subsequently taken back to her family.

(5) A Chinese man had been living with a Malay woman for a number of years and had a number of children from her. Two of his daughters, one 18 years old and one 16 years old, ran away from their home on 16th April, 1963. They had been associating with Malay boys who had asked to marry them but the father had refused permission. On 8th April, 1963, the father received a letter from the Secretary of the All-Malaya Muslim Missionary Society stating that his daughters wanted to embrace Islam and asking for his consent. The father went to the Police Station and in the company of the Police went to the Society. The Secretary however informed him that although the girls had come to register for conversion he did not know where they were staying. In June 1963 the father found his two daughters and he went to the Society to give his consent for their conversion. Later in the month he also got himself converted. Despite his conversion however the man refused to marry the Malay woman with whom he had been living and he still continued to worship Chinese idols.

(6) *GH* was born on 9th December, 1945. She left her home early in 1962. She was later taken to the All-Malaya Muslim Missionary Society and was converted to Islam on 7th May, 1962. The father had reported her missing but when inquiries were made from the Secretary he stated that the girl had not come to see him. On 10th July, 1962, the girl was found living with a Malay boy and his family and she was arrested and detained in the Muslim Welfare Home.

(7) *IJ,* a medical student had difficulties in his studies and was suffering from mental illness. While under treatment, he went to the All-Malaya Muslim Missionary Society and was converted to Islam. Subsequently he was admitted to the Mental Hospital and died there.

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