PETITIONER:
LILY THOMAS, ETC. ETC.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 05/05/2000

BENCH:
R.P.Sethi, S.S.Ahmad

JUDGMENT:

S. SAGHIR AHMAD, J.

I respectfully agree with the views expressed by my esteemed Brother, Sethi, J., in the erudite judgment prepared by him, by which the Writ Petitions and the Review Petition are being disposed of finally. I, however, wish to add a few words of my own. Smt. Sushmita Ghosh, who is the wife of Shri G.C. Ghosh (Mohd. Karim Ghazi) filed a Writ Petition [W.P.(C) No. 509 of 1992] in this Court stating that she was married to Shri G.C. Ghosh in accordance with the Hindu rites on 10th May, 1984 and since then both of them were happily living at Delhi. The following paragraphs of the Writ Petition, which are relevant for this case, are quoted below: "15. That around the 1st of April, 1992, the Respondent No. 3 told the petitioner that she should in her own interest agree to her divorce by mutual consent as he had any way taken to Islam so that he may remarry and in fact he had already fixed to marry one Miss Vanita Gupta resident of D-152 Preet Vihar, Delhi, a divorcee with two children in the second week of July 1992. The Respondent No. 3 also showed a Certificate issued by office of the Maulana Qari Mohammad Idris, Shahi Qazi dated 17th June, 1992 certifying that the Respondent No. 3 had embraced Islam. True copy of the Certificate is annexed to the present petition and marked as Anneuxre-II. 16. That the petitioner contacted her father and aunt and told them about her husband's conversion and intention to remarry. They all tried to convince the Respondent No. 3 and talk him out of the marriage but of no avail and he insisted that Sushmita must agree to her divorce otherwise she will have to put up with second wife. 17. That it may be stated that the Respondent No. 3 has converted to Islam solely for the purpose of re-marrying and has no real faith in Islam. He does not practice the Muslim rites as prescribed nor has he changed his name or religion and other official documents. 18. That the petitioner asserts her fundamental rights guaranteed by Article 15(1) not to be discriminated against on the ground of religion and sex alone. She avers that she has been discriminated against by that part of Muslim Personal Law which is enforced by the State Action by virtue of the Muslim Personal Law (Shariat) Act, 1937. It is submitted that such action is contrary to Article 15 (1) and is unconstitutional. 19. That the truth of the matter is that Respondent No. 3 has adopted the Muslim religion and became a convert to that religion for the sole purpose of having a second wife which is forbidden strictly under the Hindu Law. It need hardly be said that the said conversion

was not a matter of Respondent No. 3 having faith in the Muslim religion. 20. The petitioner is undergoing great mental trauma. She is 34 years of age and is not employed anywhere. 21. That in the past several years, it has become very common amongst the Hindu males who cannot get a divorce from their first wife, they convert to Muslim religion solely for the purpose of marriage. This practice is invariably adopted by those erring husband who embrace Islam for the purpose of second marraige but again become reconvert so as to retain their rights in the properties etc. and continue their service and all other business in their old name and religion. 22. That a Woman's Organisation "Kalyani" terribly perturbed over this growing menace and increase in number of desertions of the lawfully married wives under the Hindu Law and splitting up and ruining of the families even where there are childrn and when no grounds of obtaining a divorce successfully on any of the grounds enumerated in Section 13 of the Hindu Marriage Act is available to resort to conversion as a method to get rid of such lawful marriages, has filed a petition in this Hon'ble Court being Civil Writ Petition No. 1079 of 1989 in which this Hon'ble Court has been pleased to admit the same. True copy of the order dated 23.4.90 and the order admitting the petition is annexed to the present petition and marked as Annexure-III (Collectively)." She ultimately prayed for the following reliefs : "(a) by an appropriate writ, order or direction, declare polygamy marriages by Hindus and non-Hindus after conversion to Islam religion are illegal and void; (b) Issue appropriate directions to Respondent Nos.1 and 2 to carry out suitable amendments in the Hindu Marriage Act so as to curtail and forbid the practice of polygamy; (c) Issue appropriate direction to declare that where a non Muslim male gets converted to the "Muslim" faith without any real change of belief and merely with a view to avoid an earlier marriage or enter into a second marriage, any marriage entered into by him after conversion would be void; (d) Issue appropriate direction to Respondent No. 3 restraining him from entering into any marriage with Miss Vanita Gupta or any other woman during the subsistence of his marriage with the petitioner; and (e) pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case." This Petition was filed during the summer vacation in 1992. Mr. Justice M.N. Venkatachaliah (as he then was), sitting as Vacation Judge, passed the following order on 9th July, 1992 : "The Writ Petition is taken on board. Heard Mr. Mahajan, learned senior counsel for the petitioner. Issue notice. Learned counsel says that the respondent who was a Hindu by religion and who has been duly and legally married to the petitioner purports to have changed his religion and embraced Islam and that he has done only with a view to take another wife, which would otherwise be an illegal bigamy. Petitioner prays that there should be interdiction of the proposed second marriage which is scheduled to take place tomorrow, i.e. 10th July, 1992. It is urged that the respondent, whose marriage with the petitioner is legal and subsisting cannot take advantage of the feigned conversion so as to be able to take a second wife. All that needs to be said at this stage is that if during the pendency of this writ petition, the respondent proceeds to contract a second marriage and if it is ultimatley held that respondent did not have the legal capacity for the second marriage, the purported marriage would be void." On 17th July, 1992, when this case was taken up, the following order was passed :

"Counter affidavit shall be filed in four weeks. Place this matter before a Bench of which Hon'ble Pandian, J. is a member. Shri Mahajan submitted that since the apprehended second marriage has not yet taken place, it is appropriate that we stop the happening of that event till disposal of this petition. Learned counsel for the respondent-husband says that he would file a counter affidavit within four weeks. He assures that his client would not enter into a marriage in hurry before the counter-affidavit is filed." On 30th November, 1992, this Writ Petition was directed to be tagged with Writ Petition (C) No. 1079/89 (Smt. Sarla Mudgal, President, "Kalyani" & Ors. vs. Union of India & Ors.) and W.P. (Civil) No. 347/90 (Sunita @ Fatima vs. Union of India & Ors.). It may be stated that on 23rd April, 1990 when the Writ Petition (C) No. 1079/89 and Writ Petition (C) No. 347/90 were taken up together, the Court had passed the following order : "Issue Notice to respondent No. 3 returnable within twelve weeks in both the Writ Petitions. Learned counsel for the petitioners in the Writ Petitions, after taking instructions, states that the prayers in both the writ petitions are limited to a single relief, namely, a declaration that where a non-Muslim male gets converted to the Muslim faith without any real change of belief and merely with a view to avoid any earlier marriage or to enter into a second marriage any marraige entered into by him after conversion would be void." Thus, in view of the pleadings in Smt. Sushmita Ghosh's case and in view of the order passed by this Court in the Writ Petitions filed separately by Smt. Sarla Mudgal and Ms. Lily Thomas, the principal question which was required to be answered by this Court was that where a non-Muslim gets converted to the 'Muslim' faith without any real change or belief and merely with a view to avoid an earlier marriage or to enter into a second marriage, whether the marriage entered into by him after conversion would be void? Smt. Sushmita Ghosh, in her Writ Petition, had clearly spelt out that her husband, Shri G.C. Ghosh, had not really converted to 'Muslim' faith, but had only feigned conversion to solemnise a second marriage. She also stated that though freedom of religion is a matter of faith, the said freedom cannot be used as a garb for evading other laws where the spouse becomes a convert to 'Islam' for the purpose of avoiding the first marriage. She pleaded in clear terms that IT MAY BE STATED THAT THE RESPONDENT NO. 3 HAS CONVERTED TO ISLAM SOLELY FOR THE PURPOSE OF RE-MARRYING AND HAS NO REAL FAITH IN ISLAM. HE DOES NOT PRACTICE THE MUSLIM RITES AS PRESCRIBED NOR HAS HE CHANGED HIS NAME OR RELIGION AND OTHER OFFICIAL DOCUMENTS. She further stated that the truth of the matter is that Respondent No. 3 has adopted the 'Muslim' religion and become a convert to that religion for the sole purpose of having a second wife, which is forbidden strictly under the Hindu Law. It need hardly be said that the said conversion was not a matter of Respondent No. 3 having faith in the Muslim religion. This statement of fact was supported by the further statement made by her in Para 15 of the Writ Petition in which she stated that her husband, Shri G.C. Ghosh, told her that he had taken to 'Islam' "so that he may remarry and in fact he had already fixed to marry one Miss Vanita Gupta resident of D-152 Preet Vihar, Delhi, a divorcee with two children in the second week of July, 1992." At the time of hearing of these petitions, counsel appearing for Smt. Sushmita Ghosh filed certain additional documents, namely, the birth certificate issued by the Govt. of the Union Territory of Delhi in respect of a son born to Shri G.C. Ghosh from the second

wife on 27th May, 1993. In the birth certificate, the name of the child's father is mentioned as "G.C. Ghosh" and his religion is indicated as "Hindu". The mother's name is described as "Vanita Ghosh" and her religion is also described as "Hindu". In 1994, Smt. Sushmita Ghosh obtained the copies of the relevant entries in the electoral list of polling station No. 71 of Assembly Constituency-44 (Shahdara), in which the name of Shri G.C. Ghosh appeared at S.No. 182 while the names of his father and mother appeared and S.Nos. 183 and 184 respectively and the name of his wife at S.No. 185. This entry is as under : "S.No. House Name Father's/ M/F Age in the No. Husband's list Name ----- ---- ------------ ----------------- --- --- 185. C-41 Vanita Ghosh Gyan Chand Ghosh F 30" In 1995, Shri G.C. Ghosh had also applied for Bangladesh visa. A photostat copy of that application has also been filed in this Court. It indicates that in the year 1995 Shri G.C. Ghosh described himself as "Gyan Chand Ghosh" and the religion which he professed to follow was described as "Hindu". The marriage of Shri G.C. Ghosh with Vanita Gupta had taken place on 3.9.1992. The certificate issued by Mufti Mohd. Tayyeb Qasmi described the husband as "Mohd. Carim Gazi", S/o Biswanath Ghosh, 7 Bank Enclave, Delhi. But, in spite of his having become "Mohd. Carim Gazi", he signed the certificate as "G.C. Ghosh". The bride is described as "Henna Begum" D-152 Preet Vihar, Delhi. Her brother, Kapil Gupta, is the witness mentioned in the certificate and Kapil Gupta has signed the certificate in English. From the additional documents referred to above, it would be seen that though the marriage took place on 3.9.1992, Shri G.C. Ghosh continued to profess 'Hindu' religion as described in the birth certificate of his child born out of the second wedlock and also in the application for Bangladesh visa. In the birth certificate as also in the application for Bangladesh visa, he described himself as "G.C. Ghosh" and his wife as "Vanita Ghosh" and both were said to profess "Hindu" religion. In the electoral roll also, he has been described as "Gyan Chand Ghosh" and the wife has been described as "Vanita Ghosh". It, therefore, appears that conversion to 'Islam' was not the result of exercise of the right to freedom of conscience, but was feigned, subject to what is ultimately held by the trial court where G.C. Ghosh is facing the criminal trial, to get rid of his first wife, Smt. Sushmita Ghosh and to marry a second wife. In order to avoid the clutches of Section 17 of the Act, if a person renounces his "Hindu" religion and converts to another religion and marries a second time, what would be the effect on his criminal liability is the question which may now be considered. It is in this background that the answer to the real question involved in the case has to be found. Section 5 of the Hindu Marriage Act prescribes the conditions for a valid Hindu marriage. A portion of this Section, relevant for our purposes, is quoted below:- "5. Conditions for a Hindu marriage.- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely :- (i) neither party has a spouse living at the time of marriage, (ii) ..... (iii) ..... (iv) ..... (v) ..... (vi) ....." Section 11 provides as under:- "11. Void Marriages.- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, 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." Thus, Section 5(i) read with Section 11 indicates that any marriage with a person whose previous marriage was subsisting on the date of marriage, would be void ab initio. The voidness of the marriage is further indicated in Section 17 of the Act in which the punishment for bigamy is also provided. This Section lays down as under:- "17. Punishment of bigamy.- Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code shall apply accordingly." The first part of this Section declares that a marriage between two Hindus which is solemnized after the commencement of this Act, would be void if on the date of such marriage either party had a husband or wife living. It has already been pointed out above that one of the essential requisites for a valid Hindu marriage, as set out in Section 5(i), is that either party should not have a spouse living on the date of marriage. Section 11 which has been quoted above indicates that such a marriage will be void. This is repeated in Section 17. The latter part of this Section makes Sections 494 and 495 of the Indian Penal Code applicable to such marriages by reference. Now, Section 494 provides as under:- "494. Marrying again during life-time of husband or wife.- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Exception.- This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction. Nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have beeen heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge." We are not in this case concerned with the exception of Section 494 and it is the main part of Section 494 which is involved in the present case. A perusal of Section 494 indicates that in order to constitute an offence under this Section, the following ingredients must be found to be existing:- (i) First marriage of the accused, (ii) Second marriage of the accused, (iii) The first wife or husband, as the case may be, should be alive at the time of the second marriage. (iv) Under law, such marriage should be void by reason of its taking place during the life-time of such husband or wife. We have already seen above that under the Hindu Marriage Act, one of the essential ingredients of the valid Hindu marriage is that neither party should have a spouse living at the time of marriage. If the marriage takes place in spite of the fact that a party to that marriage had a spouse living, such marriage would be void under Section 11 of the Hindu Marriage Act. Such a marriage is also described as void under Section 17 of the Hindu Marriage Act under which an offence of bigamy has been created. This offence has been created by reference. By providing in Section 17 that provisions of Section 494 and 495 would be applicable to such a marriage,

the Legislature has bodily lifted the provisions of Section 494 and 495 IPC and placed it in Section 17 of the Hindu Marriage Act. This is a well- known legislative device. The important words used in Section 494 are "MARRIAGE IN ANY CASE IN WHICH SUCH MARRIAGE IS VOID BY REASON OF ITS TAKING PLACE DURING THE LIFE-TIME OF SUCH HUSBAND OR WIFE". These words indicate that before an offence under Section 494 can be said to have been constituted, the second marriage should be shown to be void in a case where such a marriage would be void by reason of its taking place in the life-time of such husband or wife. The words "Husband or Wife" are also important in the sense that they indicate the personal law applicable to them which would continue to be applicable to them so long as the marriage subsists and they remain "Husband and Wife". Chapter XX of the Indian Penal Code deals with offences relating to marriage. Section 494 which deals with the offence of bigamy is a part of Chapter XX of the Code. Relevant portion of Section 198 of the Code of Criminal Procedure which deals with the prosecution for offences against marriage provides as under : "198. Prosecution for offences against marriage---(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence : Provided that --- (a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf; (b) where such person is the husband, and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make complaint in person, some other person authorised by the husband in accordance with the provisions of sub-(s) (4) may make a complaint on his behalf; (c) where the person aggrieved by an offence punishable under s 494 or s 495 of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father’s or mother’s brother or sister, or, with the leave of the court, by any other person related to her by blood, marraige or adoption. (2) For the purposes of sub-s(1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under s 497 or s 498 of the said Code : Provided that in the absence of the husband, some person who had care of the woman on his behalf at the time when such offence was committed may, with the leave of the Court, make a complaint on his behalf. (3) .. .. .. (4) .. .. .. (5) .. .. .. (6) .. .. .. (7) .. .. .." It would thus be seen that the Court would take cognizance of an offence punishable under Chapter XX of the Code only upon a complaint made by any of the persons specified in this Section. According to clause (c) of the Proviso to sub-section (1), a complaint for the offence under Section 494 or 495 can be made by the wife or on her behalf by her father, mother, brother, sister, son or daughter or by her father’s or mother’s brother or sister. Such complaint may also be filed, with the leave of the Court, by any other person related to the wife by blood, marriage or adoption. If a Hindu wife files a complaint for the offence under Section 494 on the ground that during the subsistence of the marriage, her husband had married a second wife under some other religion after converting to that religion, the

offence of bigamy pleaded by her would have to be investigated and tried in accordance with the provisions of the Hindu Marriage Act. It is under this Act that it has to be seen whether the husband, who has married a second wife, has committed the offence of bigamy or not. Since under the Hindu Marriage Act, a bigamous marriage is prohibited and has been constituted as an offence under Section 17 of the Act, any marriage solemnized by the husband during the subsistence of that marriage, in spite of his conversion to another religion, would be an offence triable under Section 17 of the Hindu Marriage Act read with Section 494 IPC. Since taking of cognizance of the offence under Section 494 is limited to the complaints made by the persons specified in Section 198 of the Code of Criminal Procedure, it is obvious that the person making the complaint would have to be decided in terms of the personal law applicable to the complainant and the respondent (accused) as mere conversion does not dissolve the marriage automatically and they continue to be "husband and wife". It may be pointed out that Section 17 of the Hindu Marriage Act corresponds to Sections 43 and 44 of the Special Marriages Act. It also corresponds to Sections 4 & 5 of the Parsi Marriage & Divorce Act, Section 61 of the Indian Divorce Act and Section 12 of the Matrimonial Causes Act which is an English Act. In Bhaurao Shankar Lokhande vs. State of Maharashtra (1965) 2 SCR 837 = AIR 1965 SC 1564, this Court held as under : "Section 17 provides that any marriage between two Hindus solemnized after the commencement of the Act is void if at the date of such marriage either party had a husband or wife living and that the provisions of Sections 494 and 495 I.P.C. shall apply accordingly. The marriage between two Hindus is void in view of Section 17 if two conditions are satisfied : (i) the marriage is solemnized after the commencement of the Act; (ii) at the date of such marriage, either party had a spouse living. If the marriage which took place between the appellant and Kamlabai in February 1962 cannot be said to be 'solemnized', that marriage will not be void by virtue of Section 17 of the Act and Section 494 I.P.C. will not apply to such parties to the marriage as had a spouse living." This decision was followed in Kanwal Ram vs. H.P. Administration (1966) 1 SCR 539 = AIR 1966 SC 614. The matter was again considered in Priya Bala Ghosh vs. Suresh Chandra Ghosh (1971) 3 SCR 961 = AIR 1971 SC 1153 = 1971(1) SCC 864. In Gopal Lal vs. State of Rajasthan AIR 1979 SC 713 = 1979(2) SCR 1171 = 1979 (2) SCC 170, Murtaza Fazal Ali, J., speaking for the Court, observed as under : "Where a spouse contracts a second marriage while the first marriage is still subsisting the spouse would be guilty of bigamy under Section 494 if it is proved that the second marriage was a valid one in the sense that the necessary ceremonies required by law or by custom have been actually performed. The voidness of the marriage under Section 17 of the Hindu Marriage Act is in fact one of the essential ingredients of Section 494 because the second marriage will become void only because of the provisions of Section 17 of the Hindu Marriage Act." In view of the above, if a person marries a second time during the lifetime of his wife, such marriage apart from being void under Section 11 & 17 of the Hindu Marriage Act, would also constitute an offence and that person would be liable to be prosecuted under Section 494 IPC. While Section 17 speaks of marriage between two "Hindus", Section 494 does not refer to any religious denomination. Now, conversion or apostacy does not automatically dissolve a marriage already solemnized under the Hindu Marriage Act. It only provides a ground for

divorce under Section 13. The relevant portion of Section 13 provides as under : "13. Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party- (i) ..... (ii) has ceased to be a Hindu by conversion to another religion; or (iii) ..... (iv) ..... (v) ..... (vi) ..... (vii) .... (viii)..... (ix) ....." Under Section 10 which provides for judicial separation, conversion to another religion is now a ground for a decree for judicial separation after the Act was amended by Marriage Laws (Amendment) Act, 1976. The first marriage, therefore, is not affected and it continues to subsist. If the 'marital' status is not affected on account of the marriage still subsisting, his second marriage qua the existing marriage would be void and in spite of conversion he would be liable to be prosecuted for the offence of bigamy under Section 494. Change of religion does not dissolve the marriage performed under the Hindu Marriage Act between two Hindus. Apostasy does not bring to an end the civil obligations or the matrimonial bond, but apostasy is a ground for divorce under Section 13 as also a ground for judicial separation under Section 10 of the Hindu Marriage Act. Hindu Law does not recognised bigamy. As we have seen above, the Hindu Marriage Act, 1955 provides for "Monogamy". A second marriage, during the life-time of the spouse, would be void under Sections 11 and 17, besides being an offence. In Govt. of Bombay vs. Ganga ILR (1880) 4 Bombay 330, which obviously is a case decided prior to the coming into force of the Hindu Marriage Act, it was held by the Bombay High Court that where a Hindu married woman having a Hindu husband living marries a Mahommedan after conversion to 'Islam', she commits the offence of polyandry as, by mere conversion, the previous marriage does not come to an end. The other decisions based on this principle are Budansa Rowther & Anr. vs. Fatima Bi & Ors. AIR 1914 Madras 192; Emperor vs. Mst. Ruri AIR 1919 Lahore 389; and Jamna Devi vs. Mul Raj 1907 (PR No.49) 198. In Rakeya Bibi vs. Anil Kumar Mukherji ILR (1948) 2 Cal. 119, it was held that under Hindu Law, the apostasy of one of the spouses does not dissolve the marriage. In Sayeda Khatoon @ A.M. Obadiah vs. M. Obadiah (1944-45) 49 CWN 745, it was held that a marriage solemnized in India according to one personal law cannot be dissolved according to another personal law simply because one of the parties has changed his or her religion. In Amar Nath vs. Mrs. Amar Nath (1947) 49 PLR 147 (FB), it was held that nature and incidence of a Vedic marriage bond, between the parties are not in any way affected by the conversion to Christianity of one of them and the bond will retain all the characteristics of a Hindu marriage notwithstanding such conversion unless there shall follow upon the conversion of one party, repudiation or desertion by the other, and unless consequential legal proceedings are taken and a decree is made as provided by the Native Converts Marriage Dissolution Act. In the case of Gul Mohammad vs. Emperor AIR 1947 Nagpur 121, the High Court held that the conversion of a Hindu wife to Mahomedanism does not, ipso facto, dissolve the marriage with her Hindu husband. It was further held that she cannot, during his

life-time, enter into a valid contract of marriage with another person. Such person having sexual relation with a Hindu wife converted to Islam, would be guilty of adultery under Section 497 IPC as the woman before her conversion was already married and her husband was alive. From the above, it would be seen that mere conversion does not bring to an end the marital ties unless a decree for divorce on that ground is obtained from the court. Till a decree is passed, the marriage subsists. Any other marriage, during the subsistence of first marriage would constitute an offence under Section 494 read with Section 17 of the Hindu Marriage Act, 1955 and the person, in spite of his conversion to some other religion, would be liable to be prosecuted for the offence of bigamy. It also follows that if the first marriage was solemnized under the Hindu Marriage Act, the 'husband' or the 'wife', by mere conversion to another religion, cannot bring to an end the marital ties already established on account of a valid marriage having been performed between them. So long as that marriage subsists, another marriage cannot be performed, not even under any other personal law, and on such marriage being performed, the person would be liable to be prosecuted for the offence under Section 494 IPC. The position under the Mahommedan Law would be different as, in spite of the first marriage, a second marriage can be contracted by the husband, subject to such religious restrictions as have been spelled out by Brother Sethi, J. in his separate judgment, with which I concur on this point also. This is the vital difference between Mahommedan Law and other personal laws. Prosecution under Section 494 in respect of a second marriage under Mahommedan Law can be avoided only if the first marriage was also under the Mahommedan Law and not if the first marriage was under any other personal law where there was a prohibition on contracting a second marriage in the life-time of the spouse. In any case, as pointed out earlier in the instant case, the conversion is only feigned, subject to what may be found out at the trial. Religion is a matter of faith stemming from the depth of the heart and mind. Religion is a belief which binds the spiritual nature of man to a super- natural being; it is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense is a consecration and denotes an act of worship. Faith in the strict sense constitutes firm reliance on the truth of religious doctrines in every system of religion. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry. Looked at from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marraige and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited. The institution of marriage under every personal law is a sacred institution. Under Hindu Law, Marriage is a sacrament. Both have to be preserved. I also respectfully agree with Brother Sethi, J. that in the present case, we are not concerned with the status of the second wife or the children born out of that wedlock as in the instant case we are considering the effect of the second marriage qua the first subsisting marriage in spite of the husband having converted to 'Islam'. I also agree with Brother Sethi, J. that any direction for the enforcement of Article 44 of the Constitution could not have been issued by only one of the Judges in Sarla Mudgal's case. In fact, Sarla Mudgal's case was considered by this Court in

Ahmedabad Women Action Group & Ors. vs. Union of India (1997) 3 SCC 573 and it was held that the question regarding the desirability of enacting a Uniform Civil Code did not directly arise in Sarla Mudgal's case. I have already reproduced the order of this Court passed in Sarla Mudgal's case on 23.4.1990 in which it was clearly set out that the learned counsel appearing in that case had, after taking instructions, stated that the prayers were limited to a single relief, namely, a declaration that where a non-Muslim male gets converted to the Muslim faith without any real change of belief and merely with a view to avoid any earlier marriage or to enter into a second marriage, any marraige entered into by him after conversion would be void. In another decision, namely, Pannalal Bansilal Pitti & Ors. vs. State of A.P. & Anr. (1996) 2 SCC 498, this Court had indicated that enactment of a uniform law, though desirable, may be counter-productive. It may also be pointed out that in the counter affidavit filed on 30th August, 1996 and in the supplementary affidavit filed on 5th December, 1996 on behalf of Govt. of India in the case of Sarla Mudgal, it has been stated that the Govt. would take steps to make a uniform code only if the communities which desire such a code approach the Govt. and take the initiative themselves in the matter. With these affidavits, the Govt. of India had also annexed a copy of the speech made by Dr. B.R. Ambedkar in the Constituent Assembly on 2nd December, 1948 at the time of making of the Constitution. While discussing the position of common civil code, Dr. Ambedkar, inter alia, had stated in his speech (as revealed in the Union of India's affidavit) that ".....I should also like to point out that all that the State is claiming in this matter is a power to legislate. There is no obligation upon the State to do away with personal laws. It is only giving a power. Therefore, no one need be apprehensive of the fact that if the State has the power, the State will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other community in India." He further stated in his speech as under : "We must all remember -- including Members of the Muslim community who have spoken on this subject, though one can appreciate their feelings very well -- that sovereignty is always limited, no matter even if you assert that it is unlimited, because sovereignty in the exercise of that power must reconcile itself to the sentiments of different communities." Moreover, as pointed out by Brother Sethi, J., learned ASG appearing for the respondent has stated before the Court that the Govt. of India did not intend to take any action in this regard on the basis of that judgment alone. These affidavits and the statement made on behalf of the Union of India should clearly dispel notions harboured by the Jamat-e-Ulema Hind and the Muslim Personal Law Board. I am also of the opinion, concurring with Brother Sethi, J., that this Court in Sarla Mudgal's case had not issued any DIRECTION for the enactment of a common civil code. The Review Petition and the Writ Petitions are disposed of finally with the clarifications set out above. .....J (S. Saghir Ahmad) New Delhi May 5, 2000. IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION WRIT PETITION (CIVIL) NO. 798 OF 1995 Lily Thomas, etc. etc. .. Petitioners vs. Union of India & Ors. .. Respondents WITH (W.P.(C) No. 1079/89, RP(C) No. 1310/95 IN WP(C) 509/92, WP(C) No.347/90, WP(C) No. 424/92, WP(C) No. 503/95, WP(C) No.509/92, WP(C) No. 588/95, WP(C) No.835/95) O R D E R In view of the concurring, but separate judgments the Review

Petition and the Writ Petitions are disposed of finally with the clarifications and interpretation set out therein. All interim orders passed in these petitions shall stand vacated.

JUDIS