Supreme Court of India
Lily Thomas, Etc. Etc. vs Union Of India & Ors. on 5 April, 2000
Equivalent citations: 2000 (2) ALD Cri 686, 2000 (1) ALT Cri 363, 2001 (1) BLJR 499, 2000 CriLJ 2433, II (2000) DMC 1 SC, JT 2000 (5) SC 617, 2000 (4) SCALE 176, (2000) 6 SCC 224, 2000 (2) UJ 1113 SC
Author: S S Ahmad
Bench: S Ahmed, R Sethi
ORDER S. Saghir Ahmad, J.

1. 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.

2. 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 Annexure-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 issue of the Muslim Personal Law (Shariat) Act, 1937. It is submitted that such action is contrary to Article 13(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 marriage 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 children 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)

3. 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.

4. 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 ultimately held that respondent did not have the legal capacity for the second marriage, the purported marriage would be void.

5. 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.

6. On 30th November, 1992, this Writ Petition was directed to be tagged with Writ Petition (C) No. 1079/89 (Smt. SarlaMudgal, President, "Kalyani" and Ors. v. Union of India and Ors. and W.P. (Civil) No. 347/90 Sunita @ Fatima v. Union of India and Ors..

7. It may be stated that on 23rd April,1990 when the Writ Petition (C) No. 10797 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 marriage entered into by him after conversion would be void.

8. 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?

9. 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 PRESCRIBE NOR HAS HE CHANGED HIS NAME OR RELIGION AND OTHER OFFICIAL DOCUMENTS.

10. 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.

11. 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."

12. 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 _____ _____ _____ _____ _____ _____ 185 C-41 Vanita Gyan Chand Ghosh Ghosh F 30

13. 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 bribe 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.

14. 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".

15. 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 not be considered.

16. It is in this background that the answer to the real question involved in the case has to be found.

17. 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)...

(Hi)...

(iv)...

(v)...

(vi)...

18. 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.

19. 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.

20. 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.

21. 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. In his 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.

22. Now, Section 494 provides as under:

494. Marrying again during life-time of husband or wife.- Whoever, having a husband or wife living, marriages 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 0 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 been 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.

23. 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.

24. 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 offences 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".

25. 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 CrPC 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 nay, 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 authorized by the husband in accordance with the provisions of Sub-section (4) may make a complaint on his behalf;
(c) where the person aggrieved by an offence punishable under Section 494 or Section 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,marriage or adoption.

(2) For the purposes of Sub-section (1), no person other than the husband of the woman shall be deemed to be aggrieved by any offence punishable under Section 497 or Section 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)...

26. 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 was 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 CrPC, 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".

27. 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.

28. In Bhaurao Shankar Lokhande v. State of Maharashtra , 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.

29. This decision was followed in Kanwal Ram v. H.P. Administration . The matter was again considered in Priya Bala Ghosh v. Suresh Chandra Ghosh . In Gopal Lal v. State of Rajas than , 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 or the Hindu Marriage Act.

30. 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 could be liable to be prosecuted under Section 494 IPC. While Section 17 speaks of marriage between two "Hindus", Section 494 does not refer tc any religious denomination.

31. Now, conversion or apostasy does not automatically dissolve a marriage already solemnized under the Hindu Marriage Act. It only provides a ground for divorce under Section 18. 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)...

32. 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.

33. 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.

34. In Govt. of Bombay v. 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 Mohammedan 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 and Anr. v. Fatima Bi and Ors. AIR 1914 Madras 192; Emperor v. Mst. Ruri AIR 1919 Lahore 389; and Jamna Devi v. Mul Raj 1907 (PR No. 49) 198. In Rakeya Bibi v. 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 fiayeda Khatoon @ A.M. Obadiah v. M. Obadiah (1944-45) 49 CWW 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. InAmarNathvs. Mrs. Amar Nath (1047) 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 Theban 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.

35. In the case of Gul Mohammad v. 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 or 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.

36. 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.

37. 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.

38. 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.

39. 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 marriage 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.

40. 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'.

41.1 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 of the Judges in Sarla Mudgal's case. In fact, Sarla Mudgal's case was considered by this Court in Ahmedabad Women Action Group and Ors. v. Union

of India 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 marriage entered into by him after conversion would be void.

42. In another decision, namely, Pannalal Bansilal Pitti and Ors. v. State of A.P. and Anr. , this Court had indicated that enactment of a uniform law, though desirable, may be counter-productive.

43. It may also the 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.

44. 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.

45. 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.

46. The Review Petition and the Writ Petition are disposed of finally with the clarifications set out above.

Sethi, J.

47. IA No. 2 of 1995 in Writ Petition (c) No. 588 of 1995 is allowed.

48. Interpreting the scope and extent of Section 494 of the Indian Penal Code this Court in Sarla Mudgal (Smt.). President. Kalyani and Ors. v. Union of India and Ors. held:

...that the second marriage of a Hindu husband after conversion to islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provisions of Section 494 IPC and the apostate-husband would be guilty of the offence under Section 494 IPC.

The findings were returned answering the questions formulated by the Court in para 2 of its judgment.

49. The judgment in Sarla Mudgal's case is sought to be reviewed set aside, modified and quashed by way of the present Review and Writ Petitions filed by various persons and Jamiat-Ulema Hind and Anr. It is contended that the aforesaid judgment is contrary to the fundamental rights as enshrined in Articles 20, 21, 25, and 26 of the Constitution of India.

50. In Review Petition No. 1310 of 1995 this Court had issued notice limited to the question of Article 20(1) of the Constitution of India and in the writ petitions directions were issued for their listing after the disposal of the Review Petition. However, at the request of the learned Counsel for the parties this Court vide order dated 31 st August, 1999 directed the hearing of all the writ petitions along with the review petition.

51. Learned Additional Solicitor General appearing for the respondent submitted that the prayer in the review and writ petitions were contrary to law inasmuch as the judgment of the Court given on merits cannot be reviewed for the reasons urged on behalf of the petitioners. It is contended that review being the creation of statute, the powers have to be exercised only within the limits prescribed by law. It is further contended that notice in review being limited to Article 20(1) of the Constitution would not warrant the consideration of the other pleas raised. Learned Counsel appearing for the petitioners have, however, submitted that in view of the judgment in A.R. Antulay v. R.S. Nayak and Ors. this Court has the power to review. The Court can exercise the power of review in a petition under Article 136 or Article 32 or under any other provision of the Constitution of India if the Court is satisfied that its directions have resulted in the deprivation of fundamental rights of a citizen or any legal right of the petitioner because no-one can be forced to suffer because of the mistake of the Court. Rules of procedures are the hand-maids of justica and not mistress of justice.

52. We have heard the lengthy arguments addressed at the Bar from both sides and perused the relevant record in the present petitions and the petitions which were earlier disposed of along with Sarla Mudgal's case.

53. The dictionary meaning of the word "review" is "the act of looking; offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute.

This Court in Patel Narshi Thakersh and Ors. v. Pradyunman singh ji Arjun singh ji held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. If cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of Justice. Law has to bend before Justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S. Nagaraj and Ors etc. v. State of Karnataka and Anr. etc. 1993 Supp.(4) SCC 595 held:

Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Law Choudhury v. Sukhraj Rai the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajunder Narain Rae v. Bijai Govind Singh (1836) 1 Moo PC 117 that an order made by the Court was final and could not be altered:

...neverthless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in....The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. Basis for exercise of the power was stated in the same decision as under:

It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And Clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of

this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XL VII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

54. This Court in MJs Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi considered the powers of this Court under Article 137 of the Constitution read with Order 47 Rule 1 CPC and Order 40 Rule 1 of the Supreme Court Rules and held:

It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. Sajjan Singh v. State of Rajasthan . For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing. G.L Gupta v. D.N. Mehta . The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice ON Mohindroo v. Dist. Judge, Delhi . Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in O. XLVII, Rule 1 of the CPC and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL, R.1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility'. Chandra Kanta v. Sheikh Habib .

Article 137 empowers this Court to review its judgments subject to the provisions of any law made by Parliament or any rules made under Article 145 of the Constitution. The Supreme Court. Rules made in exercise of the powers under Article 145 of the Constitution prescribe that in civil cases, review lies on any of the ground specified in Order 47 Rule 1 of the CPC which provides:

Application for review of judgment-

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which, no appeal has been preferred.

(b) by a decree of order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed of order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

Under Order 40 Rule 1 of the Supreme Court Rules no review lies except on the ground of error apparent on the face of the record in criminal cases. Order 40 Rule 5 of the Supreme Court Rules provides that after an application for review has been disposed of no further application shall be entertained in the same matter.

55. In A.R. Antulay's case (supra) this Court held that the principle of English Law that the size of the Bench did not matter has not been accepted in this country. In this country there is a hierarchy within the Court itself where larger Benches overrule smaller Benches. This practice followed by the Court was declared to have been crystalised as a rule of law. Reference in that behalf was made to the judgments in Javed Ahmed Abdttl Hamid Pawala v. State of Maharashtra , State of Orissa v. Titaghur Paper Mills , Union of India v. Godfrey Philips India Ltd. 1985 Supp. (3) SCR 123. In that case the Bench comprising seven judges was called upon to decide as to whether the directions given by the Bench of this Court comprising five judges in the case of R.S. Nayak v. A.R. Antulay were legally proper or not and whether the action and the trial proceedings pursuant to those directions were legal and valid. In that behalf reference was made to the hierarchy of Benches and practice prevalent in the country. It was observed that Court was not debarred from reopening the question of giving proper directions and correcting the error in appeal if the direction issued in the earlier case on 16th February, 1984 were found to be violative of limits of jurisdiction and that those directions had resulted in deprivation of fundamental rights of a citizen granted by Articles 14 and 21 of the Constitution of India. The Court referred to its earlier judgment in Prem Chand Garg v. Excise Commissioner U.P. Allahabad , Naresh Shridhar Mirajkar v. State of Maharashtra . Smt. Ujjam Bai v. State of U.P. and concluded that the citizens should not suffer on account of directions of the Court based upon error leading to conferment of jurisdiction. The directions issued by the Court were found on facts to be violative of the limits of jurisdiction resulting in the deprivation of the fundamental rights guaranteed to the appellant therein. It was further found that the impugned directions had been issued without observing the principle of audi alteram partem.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature

of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.

57. In the light of the legal position as enumerated hereinabove, let us examine the grievances of the petitioners in the instant case. In review petition the notice issued was limited to the question of Article 20(1) of the Constitution. It was contended that the judgment of the Court entailed a convert to Islam the liability of prosecution for the offence of bigamy under Section 494 of the Indian Penal Code which would, otherwise not be an offence under the law applicable to him. Section 494 forms part of a substantive law and is applicable to all unless specifically excluded. As no notice has been issued for review of the main judgment which interpreted Section 494 IPC in the manner as narrated hereinabove, if cannot be said that any person was likely to be convicted for an offence except for violation of law in force at the time of commission of the act charged as offence.

58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order XLVII of the CPC has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in Sarla Mudgal 's case. It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in Sarla Mudgal's case. We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned Counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words "any-other sufficient reason appearing in Order XLVII Rule 1 CPC" must mean "a reason sufficient on grounds at least analogous to those specified in the rule" as was held in Chajju Ram v. Neki Ram AIR 1922 PC 112 and approved by this Court in Moron Mar Baseless Catholics and Anr. v. Most Rev. Mar Poulose Athanasius and Ors. AIR 1954 SC 526. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. in T.C. Basappa v. Nagappa and Anr. this Court held that such error is an error which is a patent error and not a mere wrong decision. In Hari Vishnu Kamath v. Ahmad is Hague and Ors. it was held:

...it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error and become art error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated. Mr. Pathak for the first respondent

contended on the strength of certain observations of Chagla, CJ in - "Batuk K Vyas v. Surat Borough Municipality' , that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be ..defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.

Therefore, it can safely be held that the petitioners have hot made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order XLVII Rule 1 of the CPC for reviewing the judgment in Sarla Mudgal 's case. The petition is misconceived and bereft of any substance.

59. We are not impressed by the arguments to accept the contention that the law declared in Sarla Mudgal's case cannot be applied to persons who have solemnised marriages in violation of the mandate of law prior to the date of judgment. This Court had not laid down any new law but only interpreted the existing law which was in force.. It is settled principle that the interpretation of a provision of law relates back to the date of the law itself and cannot be prospective from the date of the judgment because concededly the Court does not legislate but only give an interpretation to an existing law. We do not agree with the arguments that the second marriage by a convert male muslim has been made offence only by judicial pronouncement. The judgment has only interpreted the existing law after taking into consideration various aspects argued at length before the Bench which pronounced the judgment. The review petition alleging violation of Article 20(1) of the Constitution is without any substance and is liable to be dismissed on this ground alone.

60. Even otherwise we do not find any substance in the submissions made on behalf of the petitioners regarding the judgment being violative of any of the fundamental rights guaranteed to the citizens of this country. The mere possibility of taking a different view has not persuaded us to accept any of the petitions as we do not find the violation of any of the fundamental rights to be real or prima facie substantiated.

61. The alleged violation of Article 21 is misconceived. What is guaranteed under Article 21 is that no person shall be deprived of his life and personal liberty except according to the procedure established by law. It is conceded before us that actually and factually none of the petitioners has been deprived of any right of his life and personal liberty so far. The aggrieved persons are apprehended to be prosecuted for the commission of offence punishable under Section 494 IPC. It is premature at this stage, to canvass that they would be deprived of their life and liberty without following the procedure established by law. The procedure established by law, as mentioned in Article 21 of the Constitution, means the law prescribed by the Legislature. The judgment in Sarla Mudgal's case has neither changed the procedure nor created any law for the prosecution of the persons sought to be proceeded with for the alleged commission of the offence under Section 494 of the IPC.

62. The grievance that the judgment of the Court amounts to violation of the freedom of conscience and free profession, practice and propagation of religion also far fetched and apparently artificially carved out by such persons who are alleged to have violated the law by attempting to cloak themselves under the protective fundamental right guaranteed under Article 25 of the Constitution. No person, by the judgment impugned, has been denied the freedom of conscience and propagation of religion. The rule of monogamous marriage amongst Hindus was introduced with the proclamation of Hindu Marriage Act. Section 17 of the said Act provided that any marriage between two Hindus solemnised after the commencement of the Act shall be 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 (45 of 1860), shall apply accordingly. The second marriage solemnised by a Hindu during the subsistence of first marriage is an offence punishable under the Penal law. Freedom guaranteed under Article 25 of the Constitution is such freedom which does not encroach upon a similar freedom of the other persons. Under the constitutional scheme every person has a.fundamental right not merely to entertain the religious belief of his choice but also to exhibit his belief and ideas in a manner which does not infringe the religious right and personal freedom of others. It was contended in Sarla Mudgal 's case that making a convert Hindu liable for prosecution under the Penal Code would be against Islam, the religion adopted by such person upon conversion. Such a plea raised demonstrates the ignorance of the petitioners about the tenets of Islam and its teachings.The word "Islam" means "peace and submission". In its religious connotation it is understood as "submission to the Will of god". According to Fyzee (Outlines of Mohammadan Law, II Edition) in its secular sense the establishment of peace. The word 'Muslim' in Arabic is the active principle of Islama, which means acceptance of faith, the noun of which is Islam. Muslim Law is admittedly to be based upon a well recognised system of jurisprudence providing many rational and revolutionary concepts, which could not be conceived by the other systems of Law in force at the time of its inception. Sir Ameer Ali in his book Mohammedan Law, Tagore Law Lectures IV Edition, Volume I has observed that the Islamic system, from a historical point of view was the most interesting phenomenon of growth. The small beginnings from which it grew up and the comparatively short space of time within which it attained its wonderful development marked its position as one of the most important judicial system of the civilised world. The concept of Muslim Law is based upon the edifice of Shariat. Muslim law as traditionally interpreted and applied in India permits more than one marriage during the subsistence of one and another though capacity to do justice between co-wives in law is condition precedent. Even under the Muslim Law plurality of marriages is not unconditionally conferred upon the husband. It would, therefore, be doing injustice to Islamic Law to urge that the convert is entitled to practice bigamy notwithstanding the continuance of his marriage under the law to which he belonged before conversion. The violators of law who have contracted the second marriage cannot be permitted to urge that such marriage should not be made subject matter of prosecution under the general Penal Law prevalent in the country. The progressive outlook and wider approach of Islamic Law cannot be permitted to be squeezed and narrowed by unscrupulous litigants, apparently indulging in sensual lust sought to be quenched by illegal means, who apparently are found to be guilty of the commission of the offence under the law to which they belonged before their alleged conversion. It is nobody's case that any such converted has been deprived of practising any other religious right for the attainment of spiritual goals. The Islam which is pious, progressive and respected religion with rational outlook cannot be given a narrow concept as has been tried to be done by the alleged violators of law.

63. Learned Counsel appearing lor the petitioners have alleged that in view of the judgment in Sarla Mudgal 's case their clients are liable to be convicted without any further proof. Such an apprehension without any substance inasmuch as the person seeking conviction of the accused for a commission of offence under Section 494 is under a legal obligation to prove all the ingredients of the offence charged and conviction cannot be based upon mere admission made outside the Court. To attract the provisions of Section 494 of the IPC the second marriage has to be proved besides proving the previous marriage. Such marriage is further required to be proved to. have been performed or celebrated with proper ceremonies. This Court in Kanwal Ram and Ors. v. The Himachal Pradesh Administration held that in a bigamy case the second marriage as a fact, that is to say the essential ceremonies constituting it, must be proved. Admission of marriage by the accused by itself was not sufficient for the purpose of holding him guilty even for adultery or for bigamy. In Bhaurao Shankar Lokhande v. State of Maharashtra this Court held that a marriage is not proved unless the essential ceremonies required for its solemnisation are proved to have been performed.

64. Learned Counsel for the Jamata-e-Ulema Hind and Mr. Y.H. Muchhala, Senior Counsel appearing for Muslim Personal Law Board drew our attention to the following observations of this Court in Sarla Mudgal's case (supra):

We also agree with the law laid down by Chagla, J. in Robasa Khanum V. Khodadad Irani case wherein the learned Judge has held that the conduct of a spouse who converts to islam has to be judged on the basis of the rule of justice and right or equity and good conscience. A matrimonial dispute between a convert to Islam and his or her non-Muslim spouse is obviously not a dispute "where the parties are Muslims" and, therefore, the rule of decision in such a case was or is not required to be the Muslims Personal Law". In such cases the court shall act and the Judge shall decide according to justice, equity and good conscience. The second marriage of a Hindu husband after embracing Islam being violative of justice, equity and good conscience would be void on that ground also and attract the provisions of Section 494 IPC.

Looked from another angle, the second marriage of an apostate-husband would be in violation of the rules of natural justice. Assuming that a Hindu husband has a right to embrace Islam as his religion, he has no right under the Act to marry again without getting his earlier marriage under the Act dissolved. The second marriage after conversion to Islam would, thus, be a in violation of the rules of natural justice and as such would be void and argued that such finding would render the status of the second wife as that of a concubine and children born of that wedlock as illegitimate. This issue is riot involved in the present case. What we are considering is the effect of second marriage qua the first marriage which subsists in spite of conversion of the husband to Islam, for the limited purpose of ascertaining his criminal liability under Section 17 of the Hindu Marriage Act read with Section 494 IPC. As and when this question is raised, it would be open to the parties to agitate the legitimacy of such wife and children and their rights in appropriate proceedings or forum.

65. Besides deciding the question of law regarding the interpretation of Section 494 IPC, one of the Hon'ble Judges (Kuldeep Singh, J) after referring to the observations made by this Court in Mohd. Ahmed Khan v. Shah Bano Begum and Ors. requested the Government of India through the Prime

Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavor to secure for the citizens a uniform civil code throughout the territory of India". In that behalf direction was issued to the Government of India, Secretary, Ministry of Law & Justice to file affidavit of a responsible officer indicating therein the steps taken and efforts made towards securing a uniform Civil Code for the citizens of India. On the question of uniform Civil Code R.M. Sahai, J. the other Hon'ble Judge constituting the Bench suggested some measures which could be undertaken by the Government to check the abuse of religion by unscrupulous persons, who under the cloak of conversion were found to be otherwise guilty of polygamy. It was observed that:

Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre.

It was further remarked that:

The Government would be well advised to entrust the responsibility to the Law Commission which may in consultation with Minorities Commission examine the matter and bring about a comprehensive legislation in keeping with modern day concept of human rights for women.

In Maharshi Avadhesh v. Union of India 1994 Supp. (1) SCC 713 this Court had specifically declined to issue a writ directing the respondents to consider the question of enacting a common Civil Code for all citizens of India holding that the issue raised being a matter of policy, it was for the Legislature to take effective steps as the Court cannot legislate.

66. In Ahmedabad Women Action Group (AWAG) and Ors. v. Union of India this Court had referred to the judgment in Sarla Mudgal's case and held:

We may further point out that the question regarding the desirability of enacting a Uniform Civil Code did not directly arise in that case. The questions which were formulated for decision by Kuldip Singh, J. in his judgment were these: (SCC p. 639, para 2) Whether a Hindu husband, married under Hindu Law, by embracing Islam, can solemnise a second marriage? Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continues to be a Hindu? Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?

Sahai, J. in his separate but concurring judgment referred to the necessity for a Uniform Civil Code and said. (SCC p. 652, para 44) ...The desirability of uniform code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change.' Sahai, J. was of the opinion that while it was desirable to have a Uniform Civil Code, the time was yet not ripe and the issue should entrusted to the Law Commission which may examine the same in consultation with the Minorities Commission. That is why when the Court drew up the final order Sigrid by both the learned judges it said "the writ petitions are allowed in terms of the answer to the questions posed/in the opinion of Kuldip Singh, J". These questions we have extracted earlier and the decision was confined to conclusions reached thereon whereas the observations on the desirability of enacting the Uniform Civil Code were incidentally made.

Similarly in Pannalal Bansilal Pitti and Ors. v. State of AP. and Anr. this Court pointed out:

The first question is whether it is necessary that the legislature should make law uniformly applicable to all religious or charitable or public institutions and endowments established or maintained by people professing all religions. In a pluralist society like India in which people have faith in their respective religions, beliefs or tenets propounded by different religious or their offshoots, the founding fathers, while making the Constitution, were confronted with problems to unify and integrate people of India professing different religious faiths, born in different castes, sex or Sub-section s in the society speaking different languages and dialects in different religions and provided a secular Constitution to integrate all sections of the society as a united Bharat. The directive principles of the Constitution themselves visualize diversity and attempted to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter-productive to unity and integrity of the nation. In a democracy governed by rule of law, gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would, therefore, be inexpedient and incorrect to think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages.

Learned Counsel appearing on behalf of the Jamiat-Ulema Hind and learned, counsel appearing on behalf of Muslim Personal Law Board have rightly argued that this Court has no power to give directions for the enforcement of the Directive Principles of the State Policy as detailed in Chapter IV of the Constitution which includes Article 44. This Court has time and again reiterated the position that Directives, as detailed in Part IV of the Constitution are not enforceable in Courts as they do not create any justiciable rights in favour of any person. Reference in this behalf can be made to the judgment of this Court in P.M. Ashwathanarayana Setty and Ors. v. State of Karnataka and Ors. , His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. . In this case also no directions appeared to have been issued by this Court for the purpose of having uniform Civil Code within the meaning of Article 44 of the Constitution. Kuldeep Singh, J. in his judgment only requested the Government to have a fresh look at Article 44 of the Constitution in the light of words used in that Article . In that context the direction was issued to the Government for filing an affidavit to indicate the steps taken and efforts made in that behalf. Sahai, J. in his concurrent but separate judgment only suggested the ways and means, if deemed proper, for implementation of the aforesaid Directives. The judges comprising the Bench were not the only judges to express their anguish. Such an observation had earlier also been made in Shah Bano 's case (supra) and Ms. Jorden Diengdeh v. S.S. Chopra . The apprehension expressed on behalf of Jamiat-Ulema Hind and Muslim Personal Law Board is unfounded but in order to ally all apprehensions we deem it proper to reiterate that this Court had not issued any directions for the codification of the common Civil Code and the judges constituting the different Benches had only expressed their views in the facts and circumstances of those cases.

67. Learned Additional Solicitor General appearing for the respondents has submitted that the Government of India did not intend to take any action in this regard on the basis of the judgment alone.

68. In the circumstances the review petition as also the writ petitions having no substance are hereby disposed of finally with a clarification regarding the applicability of Article 44 of the Constitution. All interim orders passed in these proceedings including the stay of Criminal Cases in subordinate courts, shall stand vacated. No costs.

order

69. In view of the concurring, but separate judgments the Review lenition 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.