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FAITH, FRAUD AND FAMILY LAW: A CASE COMMENT ON LILY THOMAS V. UNION OF INDIA

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INTRODUCTION

India's rich mélange of religions and cultures, alongside its secularism enshrined in its constitution, has brought forth multiple intersections and nuances that lawmakers had to very intricately navigate through. In the 20th century, these intersections had shone light onto religion-specific personal and marriage laws, where governance and legal procedures varied based on the religions of the individuals involved. The laws, procedures, and governance, varied substantially from statute to statute, as they were rooted in the beliefs of their respective religions. One such specific instance where these differences are highlighted can be seen in the Hindu Marriage Act, 1955 (hereinafter referred to as the "HMA"), which applied to Hindus, Buddhists, Jains and Sikhs, prohibits the act of bigamy—which is marrying more than one individual.¹⁶⁹⁴ In another religion, namely Islam, however, the act of bigamy is not prohibited, albeit is regulated by other stipulations and conditions.¹⁶⁹⁵ This brought forth a loophole, that was going to be heavily exploited and bring to light a new problem altogether: faithless, fake conversions from Hinduism to Islam, that were solely done to be able to marry more than one woman.

The case of *Sarla Mudgal v. Union of India* (hereinafter referred to as *Sarla Mudgal*) brought this very problem to the Indian legal system and inscribed into the jurisprudence of Indian Family Law. It was the first case where the Supreme Court of India dealt with conversion for bigamy and ruled that conversion to Islam does not dissolve the previous marriage and that the husband will be held liable under the section of Bigamy, Section 494 of the Indian Penal Code (hereinafter referred to as "IPC").¹⁶⁹⁶ It also urged the adoption of a Uniform Civil Code (hereinafter referred to as "UCC") under Art. 44 of the Constitution, stating that such issues will continue to arise if it is not adopted, straining secular integrity.¹⁶⁹⁷ But with this judgement arose new constitutional, legal, and procedural issues and questions. Some activists claimed

that the judgement contravened Art. 25 of the constitution, which guaranteed the freedom of religion.¹⁶⁹⁸ People questioned if the judgement should be applied retrospectively or prospectively and if remarriages before the judgement would now be criminalized. There was also the question of judicial overreach with regards to the vehement recommendation of following UCC and regarding what constituted as a "conversion in good faith".

All these questions and confusions were ultimately answered and cleared with the case of *Lily Thomas v. Union of India* (hereinafter referred to as *Lily Thomas*). The petitioners, which included Advocate Lily Thomas, filed a writ petition under Art. 32 of the constitution, challenging the conversions of Hindu husbands, into Islam merely to have a second marriage

¹⁶⁹⁴ Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

¹⁶⁹⁵ The Muslim Personal Law (Shariat) Application Act, 1937, No. 26, Acts of Parliament, 1937 (India).

¹⁶⁹⁶ *Sarla Mudgal v Union of India*, (1995) 3 SCC 635.

¹⁶⁹⁷ *Sarla Mudgal v Union of India*, (1995) 3 SCC 635.

¹⁶⁹⁸ INDIA CONST. art. 25.

without absolving the first one.¹⁶⁹⁹ This was because the wives of these men, who are still legally married under the HMA, would be left vulnerable and devoid of any legal recourse or remedy if the husband simply claimed that he had now ceased to be a Hindu. The petitioners further argued that this was not in genuine faith and it was manipulative in nature in order to evade matrimonial obligations and penal consequences.¹⁷⁰⁰ They had also filed multiple review petitions during the course of proceedings, stating the *Sarla Mudgal* judgement violated Art. 21. In this case the Supreme Court put special emphasis on all the questions posed and confusions caused previously in *Sarla Mudgal*, ultimately creating a very strong and foundational precedent that helped save lives of multiple innocent women before they fall victims, gain justice for the fallen, and create a remarkable movement in the jurisprudence of Family Law as a whole.

ISSUES

The Petitioners primarily approached with three main issues. The first being whether a Hindu husband, married under the HMA, can lawfully marry once again after his conversion to Islam without absolving his first marriage. The second was if the second marriage would be valid under Muslim personal law or void under the HMA and third was if such a husband can be prosecuted for bigamy under Section 494 of the IPC. Additionally, the Supreme Court also took up from *Sarla Mudgal*'s constitutional validity due the number of review petitions filed by the Petitioners and delved into questions as such: if such a judgement infringes Art. 25 and if the court's interpretation advances or undermines the goal of a UCC under Art. 44 of the Constitution. Implicitly, the court also looked at the issues of judicial overreach, debate of

Prospective vs. Retrospective Applications, and the overall validity.¹⁷⁰¹

JUDICIAL REASONING AND HOLDING

The court in *Lily Thomas* first reaffirmed the judgement passed in *Sarla Mudgal* and upheld that conversion does not dissolve a marriage¹⁷⁰² solemnized under the HMA's section 17¹⁷⁰³ and said conversion must be as a genuine act of faith.¹⁷⁰⁴ If it is utilized as an instrument to escape legal obligations, it is not valid, the second marriage would be void, and he can be held liable under Section 494 of the IPC.¹⁷⁰⁵ The court also went onto state that Art. 25 of the Constitution is not violated as it protects genuine religious practices and not fraudulent or mala fide conversions done solely for personal gain or any ulterior motives.¹⁷⁰⁶ Therefore, *Lily Thomas* harmonized religious freedom and its intersection with criminal and family obligations, highlighting how the legal obligations under HMA continue to persist until and unless the marriage has been dissolved under a competent court and statute.¹⁷⁰⁷ It further went onto even clarify the Prospective vs. Retrospective application, stating that *Sarla Mudgal*'s principle does not operate retrospectively and will punish those who convert with ill-intent and remarry after the 1995 ruling.¹⁷⁰⁸ The petitioners' request to review or overrule *Sarla Mudgal* (which was done in the form of review petitions) upon the belief that it violated Art. 21 were also struck down, holding that such a view was misconceived, and that *Sarla Mudgal* was legally sound, binding precedent that is constitutional in nature.¹⁷⁰⁹

The role of UCC and the question of judicial overreach were further delved into by the court, where they had explained that as UCC was under Art.44, the decision of *Sarla Mudgal* was not a binding direction, but a mere reiterated directive aspiration enshrined in the constitution

¹⁶⁹⁹ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷⁰⁰ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷⁰¹ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷⁰² *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷⁰³ Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

¹⁷⁰⁴ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷⁰⁵ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷⁰⁶ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷⁰⁷ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷⁰⁸ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷⁰⁹ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

itself and reaffirmed that the judiciary could encourage but not enforce the adoption of a UCC.¹⁷¹⁰ By stating and providing more clarification regarding these points, the court shifted from a policy advocacy stance to a doctrinal precision stance by pointing out constitutional limits within its articles and how they were not violated, and the continuity of HMA obligations.

The court in *Lily Thomas* reaffirmed *Sarla Mudgal's* commitment towards gender justice and secularism,¹⁷¹¹ while delving deeper and solving the constitutional ambiguities surrounding religious freedom, timeframe when liability arises, and judicial overreach.¹⁷¹²

CRITICAL ANALYSIS

Lily Thomas acted as a final blow to the growing issue of Hindu men who exploited conversion to Islam for bigamy, protecting the rights of the wives under the HMA and upholding the idea of monogamy as a legal and moral norm under the HMA. It also puts special emphasis on bona fide conversion – protecting genuine faith while curbing rampant patriarchal misuse. It also aligns with constitutional equality, enshrined within Art. 14 and 15, and dignity under Art. 21. This case shares a multitude of parallels with the landmark judgement of *Shayara Bano v. Union of India* with regards to the service that both cases have done to protect women from patriarchal practices disguised and justified in the name of religion. The Supreme Court has utilized both cases (*Lily Thomas* for constitutionalizing monogamy¹⁷¹³ and *Shayara Bano* for constitutionalizing marital equality¹⁷¹⁴) to assert a very strong and valid point: that personal laws must conform to the Constitution's guarantee of equality and justice, not the other way around. Both these cases center gender justice as a core principle: they address male privilege when it comes to using personal law to

discard women as if objects, with *Lily Thomas* addressing the issue of abandonment of women due to the exploitation of conversion loopholes,¹⁷¹⁵ and *Shayara Bano* addressing the same issue but a different problem: the unilateral, instantaneous divorce method of Talaq-e-biddat.¹⁷¹⁶ Both judgements foreground constitutional morality (principles such as secularism, equality, and dignity) over religious morality: with *Lily Thomas* rejecting the claim of violating freedom of religion by stating that religion cannot be used to defeat criminal law and that fraudulent conversions are not constitutionally protected or guaranteed¹⁷¹⁷ and *Shayara Bano* holding that triple talaq is arbitrary and violative of Art. 14, stating no religious practice can contravene the Constitution.¹⁷¹⁸ *Lily Thomas* ultimately helped form a unique amalgamation of Family Law with Constitutionality, helping pave way for more judgements such as *Shayara Bano* and bring more arbitrary personal laws under constitutional scrutiny, making a very progressive reform.

But there are also disadvantages, or rather gaps, that can be drawn in from the case. There is an unequal application of the principle: the judgement is primarily impactful for Hindus converting to Islam and their wives. But it does not look at Muslims practicing polygamy within their own faith. This creates an asymmetry in legal treatment across religions. The ruling undermines the ideal of equality enshrined in Art. 14 of the Constitution. It does not pass the two-fold test, established in the landmark judgement of *Budhan Choudhry v. State of Bihar* where there must be (i) – an intelligible differentia (a valid differentiation) and (ii) – a rational nexus (a valid aim for the greater good).¹⁷¹⁹ This reflects a broader tension that has been a constant: religious autonomy and personal law pluralism vs. Constitutional Equality. This also means that gender justice becomes contingent

¹⁷¹⁰ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷¹¹ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷¹² *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷¹³ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷¹⁴ *Shayara Bano v Union of India*, (2017) 9 SCC 1.

¹⁷¹⁵ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷¹⁶ *Shayara Bano v Union of India*, (2017) 9 SCC 1.

¹⁷¹⁷ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷¹⁸ *Shayara Bano v Union of India*, (2017) 9 SCC 1.

¹⁷¹⁹ *Budhan Choudhry v State of Bihar*, (1955) 1 SCR 1045.

on religion, rather than a uniform guarantee, strengthening feminist commentator Flavia Agnes' claim stating that courts sometimes 'protect women' in a manner that reinforces patriarchal control but not religious freedom.¹⁷²⁰

Another point to discuss is whether it was a necessity or a factor at all in solving the particular legal matter that was presented to the Court. The main issue in *Lily Thomas* was about the second marriage after conversion's validity and the application of Section 494 IPC,¹⁷²¹ and not about the need for uniform personal laws. The Court's mention of Art. 44 was mainly because it was worried about equal rights and gender justice, however, the critics maintain that the UCC discussion pushed the judiciary's power further than it could go and that the matter was changed from adjudication to policy advocacy. The ruling might have been solely based on the constitutional morality and the equality of Art. 14 and 25 with no need for legislative change at all. Furthermore, the UCC is a very contentious political and multi-religious issue that is deeply intertwined with the different religious identities of India. The Court, by reintroducing the UCC into a case concerning bigamy and conversion, ran the danger of transforming the legal issue into a communal one. Court's intention might have been to reform, but the argument has likely made the doctrinal clarity of the ruling less discernible, blending the enforcement of the existing secular laws with the goal of uniformity. To summarize, the mention of the UCC was, though symbolically powerful, a non-necessary jurisprudentially aspect for the resolution of the dispute.

THE EFFECT OF THE LILY THOMAS JUDGEMENT

The judgment of *Lily Thomas* has changed deeply the entire family laws in India. It expressly declared personally religious laws to be of no avail if lost in the sea of fundamental rights,

which are but the reflection of the constitution's moral aspect. A constitutional brake was set by the judgment on the personal laws automatically coming into application, which led to the doctrine of intent and good faith being the core concepts of religious conversion. The court declared that the "instrument" of law cannot be used to defeat an existing obligation; hence, the court would identify the sanctity of the very first Hindu marriage under the Hindu Marriage Act.¹⁷²² This brought forth a major change from the earlier system of law applying only on the basis of religion to a rights-based system where gender justice and the rights of vulnerable women were the predominant issues. The judgment started off a critical line of cases that included later landmark verdicts such as *Shayara Bano*, which similarly struck personal laws down as arbitrary by applying constitutional standards.¹⁷²³ By setting the personal laws in direct contrast with the Constitution, mainly with Art. 14 (equality) and 21 (dignity), *Lily Thomas* empowered the judiciary in its role of reforming family law from within. It was a clear demonstration that even without a UCC, courts could gradually wipe out the differences resulting from the multiplicity of laws by providing the necessary constitutional guarantees, thus, creating a powerful model for the future judicial activists to ensure that personal laws do not deviate from the principles of justice, equity, and dignity.

CONCLUSION

In summary, *Lily Thomas v. Union of India* represents a turning point in the development of Indian family law, reaffirming that marriage is a social and legal institution subject to statutory protections rather than individual religious preferences. By rejecting conversion as a valid way to get married again, the Court upheld the Hindu Marriage Act's monogamous foundation while preserving the sanctity of marriage and the

¹⁷²⁰ Flavia Agnes, Religion, Law and Gender Equality: The Problem of Personal Laws, 30 ECON. & POL. WKLY. 829 (1997).

¹⁷²¹ *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷²² *Lily Thomas v Union of India*, (2000) 6 SCC 224.

¹⁷²³ *Shayara Bano v Union of India*, (2017) 9 SCC 1.

rights of the first spouse. Family law's dedication to equality, gender justice, and constitutional coherence within India's plural legal framework is strengthened by the ruling, even though its allusion to the Uniform Civil Code rekindled discussions about uniformity.





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