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MUSLIM LAW

MISCELLANEOUS TOPICS

Ch. 12.1 Hedaya (= Guide) (Survni law)

It is the authoritative legal text of Muslim law in India. In Hanafi law "Hedaya" and "Fatava Alamgin" are two paramount "authorities and are followed.

The author of Hedaya is Shaik Burhan a! din Marghinani who lived in the 12th century. He hailed from Marghinan a small town in Turkey. The author had written a book "Bidaya." The commentary on this is Hedaya. This is in Arabic. This was translated into Persian by four Maulvis. This was translated into English by Charles Hamilton, and, this is often referred to by the courts and the Bar in India. This is a world famous text or authority on Muslim law.

Hedaya deals with almost all topics of Muslim law: Wills (Vasiyyat) Pre-emption (Shufaa), Gifts (Hiba) Marriage (Nikah), Dower (Mehtar), Divorce (Talak) etc.

Ch. 12.2 "Mohammedan" defined:

Any person who professes Mohammedan religion (Islam) is a "Mohammedan"

(Mulla). Islam means "**surrender to Allah.**" Acquisition : (i) By birth (ii) By conversion.

Tests : it is not necessary, according to the courts, that the person should follow any particular rites or ceremonies. Enough if he acknowledged that (i) there is but one God (ii) that Mohammed is His Prophet.

The trading communities: Khojas (means respectable person), Bohoras (means merchant) and Memons (believer), in Maharashtra and Gujarat are Muslims. The leading case is Naranikai Vs. Farakkal,

Ch. 12.3 Apostacy and Conversion :

Definition : Renunciation by Muslim of his religion is called "Apostacy" (Ridda). When a person embraces Islam, it is called "conversion.

Apostacy was, at one time, a treason ; the punishment was life imprisonment and in extreme cases, death penalty. Of course, this was subject to a number of exceptions. Apostacy-is no longer a treason or a punishable offence.

Apostacy and Martial Status:

(i) **Apostacy by the Husband:** His marriage with his Muslim wife is dissolved. Apostacy may be made expressly or by implicit conduct •

Apostacy by 'the wife; Mere Apostacy by the wife, will not dissolve the marriage with her Muslim husband, But, according to bid law, apostacy by the wife operated as dissolution of marriage. In fact, this was the way open to her to get rid of her husband ! With the passing of the Dissolution of Muslim Marriage Act 1939, apostacy does not dissolve the marriage. In *Khambatta Vs Khambatta* a Muslim married in Christian form. The wife became a convert to Mohammedanism. The husband divorced her by Talaq. The Bombay High Court held that the divorce was valid, as the *Lex domici* was the religion of the parties : Muslim law.

Conversion of non- Muslim husband to Islam ;,This will not dissolve his marriage, A Christian husband, cannot dissolve his marriage by embracing Islam.

(vi) Conversion of non-Muslim wife to Islam; This will not *ipso facto* dissolve the marriage. Hence a Hindu, Christian, Jew or Zoroastrian wife cannot dissolve the marriage by conversion. In *Robaba Khanum Vs Irani* (Bombay case)W a Zoroastrian wife married H in Persia according to Zoroastrian rites. Two sons were born to them. She, then embraced Islam and offered Islam to her husband. H refused. W filed a suit for dissolution of the marriage.