



Rights of Apostate under Muslim Inheritance Law in India: A Study

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Abstract

The conflict between personal laws and constitutional rights in India is not a novel issue and has long been a subject of legal and social debate, reflecting the broader struggle to balance religious autonomy with fundamental rights in a secular democracy. This tension becomes particularly pronounced when personal laws create exclusions that challenge constitutional principles of equality and freedom.

In this context, the legal challenges faced by apostates who renounce Islam highlight the inconsistencies within the existing framework. This writing analyzes the jurisprudence surrounding religious freedoms and inheritance rights, highlighting the judicial precedents that have shaped the discourse.

Through the case study of Safiya's petition before the Supreme Court, it underscores the real-world impact of these legal restrictions. Furthermore, it evaluates the feasibility of alternative legal frameworks, such as the Indian Succession Act of 1925, and the role of judicial interpretation in bridging the gap between religious doctrine and constitutional morality. The discussion extends to the broader debate on the Uniform Civil Code, assessing whether a uniform legal framework can resolve such conflicts without undermining religious autonomy.

Keywords: *Apostasy, Islamic Inheritance Law, Fundamental Rights, Uniform Civil Code, Personal Laws vs. Constitutional Rights, Judicial Interpretation*

1. Prefatory Remark

“It is the fundamental postulate of secularism which treats all religions on an even platform and allows to each individual the fullest liberty to believe or not to believe.”

These were the exact words pronounced in the landmark judgment of the *Indian Young Lawyers Association vs. State of Kerala*¹, popularly known as the *Shabrimala* case.

‘Freedom of religion’ is a basic human right, reflected in major international instruments like the *Universal Declaration of Human*

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¹ *Indian Young Lawyers Association vs. State of Kerala*, (2019) 11 SCC 1.

Rights and the *International Covenant on Civil and Political Rights*, among other human rights frameworks.

2. The Indian Context: Legal and Constitutional Framework

The Indian Constitution ensures religious freedom for both individuals and groups united by shared beliefs, practices, and discipline. It guarantees individuals not only the freedom to practice their religion but also the freedom from religion, as the latter is essential to make the former meaningful.² This emphasis on prioritizing the individual above religion, viewing religious freedom and denominational rights as secondary to their well-being and overall liberty, is a hallmark of Indian secularism. Combined with the principles of tolerance and equality, these values reflect the constitutional philosophy on religion.³

In order to have meaning for the *right to believe* or *not to believe*, the person who leaves their faith should not incur any disability or disqualification in matters of inheritance or other important civil Rights. To understand how these tensions play out, it is essential first to examine how apostasy itself has been defined and regulated within Islamic jurisprudence.

3 Apostasy in Islamic Jurisprudence

3.1 Concept of Apostasy in Islam

The term “apostasy” in Islamic jurisprudence is expressed through *ridda* or *irtidād*, literally meaning a turning back from faith. The person who abandons Islam is referred to as a *murtadd*. Classical jurists distinguished between two categories: the *murtadd fitri*, a person born into Islam who later renounces it, and the *murtadd milli*, a convert to Islam who subsequently leaves the faith. This differentiation, particularly emphasized in Hanafi texts, reflected a concern that those born into Islam were bound by deeper ties of faith and community, making their rejection more grievous.⁴

² Tripathi PK. *Secularism: Constitutional Provisions and Judicial Review*. in Sharma, G.S. (ed.), *Secularism: Its Implications for Law and Life in India*. N.M. Tripathi Private Ltd., Bombay, 1966, 170.

³ *Ibid.*

⁴ Burhan al-Din al-Marghinani, *Al-Hidayah: A Classical Manual of Hanafi Law*, trans Imran Ahsan Khan Nyazee (Centre for Islamic Legal Studies 2006) 573.

The Qur'an alludes to apostasy in several verses. It cautions believers against reverting after embracing faith, warning of both spiritual and temporal loss: *"And whosoever of you reverts from his religion and dies while he is a disbeliever — for such their deeds have become void in this world and the Hereafter"* (Qur'an 2:217). Another verse acknowledges those compelled under duress, excusing them from liability if their hearts remain steadfast in belief (Qur'an 16:106). Further condemnation is directed at those who knowingly abandon truth: *"Indeed, those who reverted after guidance had become clear to them — Satan enticed them and prolonged hope for them"* (Qur'an 47:25–27). These passages form the scriptural foundation of the doctrine, though their interpretation has varied across commentators.⁵

Prophetic traditions, however, established the decisive juristic framework. A widely cited hadith narrated in *Sahih al-Bukhari* states: *"Whoever changes his religion, kill him"*, while another in *Sahih Muslim* affirms that a Muslim's life is inviolable except in three cases: unlawful killing, adultery, and apostasy.⁶ For the jurists of all four Sunni schools, these reports gave apostasy a legal character: it was not merely a private matter of conscience, but a rupture with the Muslim community.

Based on these authorities, classical manuals such as al-Marghinani's *Al-Hidayah* and Ibn Abidin's *Radd al-Muhtar* developed detailed criteria for what constitutes apostasy. These included explicit denial of God or the Prophet, mockery of the Qur'an, or public rejection of essential doctrines. Importantly, jurists emphasized the need for clarity: ambiguous statements or private doubts were not enough; apostasy had to be deliberate, unequivocal, and voluntary. The definition of apostasy thus combined scriptural condemnation with a juristic effort to safeguard the boundaries of the faith community.⁷

3.2 Consequences of Apostasy

Once defined, the legal consequences of apostasy under classical Islamic law become stark. Jurists across the four Sunni schools

⁵ Qur'an 2:217; Qur'an 16:106; Qur'an 47:25–27.

⁶ *Sahih al-Bukhari*, Kitab al-Jihad, Hadith 3017; *Sahih Muslim*, Kitab al-Qasama, Hadith 1676.

⁷ Ibn Abidin, *Radd al-Muhtar 'ala al-Durr al-Mukhtar* (Dar al-Fikr 2000 reprint) vol 6, 421–423.

viewed apostasy as a rupture of the individual's bond with the Muslim community, carrying both penal and civil disabilities. The most severe was the prescribed capital sanction, derived directly from prophetic traditions. The *Sahih al-Bukhari* records the saying: "Whoever changes his religion, kill him", while *Sahih Muslim* adds that the blood of a Muslim may only be lawfully shed in cases of homicide, adultery, or apostasy.⁸ On this basis, the Maliki, Shafi'i, and Hanbali schools held that both men and women who persist in apostasy were liable to execution after a period of admonition.⁹ The Hanafi school diverged slightly, limiting capital punishment to male apostates and requiring female apostates to be confined until repentance.¹⁰

Beyond corporal penalties, apostasy carried enduring civil implications. All four schools agreed that a *murtadd* forfeited inheritance rights. Al-Marghinani's *Al-Hidayah* and the *Fatawa-i Alamgiri* explicitly state that an apostate cannot inherit from Muslim relatives, whether born into the faith (*fitri*) or converted (*milli*), unless repentance occurred before the estate was distributed.¹¹ This principle, consistently reiterated in later commentaries such as Ibn Abidin's *Radd al-Muhtar*, made inheritance loss the most pervasive civil disability attached to apostasy.

Apostasy also disrupted family relations. The jurists held that a Muslim marriage could not subsist where one spouse renounced Islam. If the husband apostatized, the marriage dissolved after the wife observed the waiting period (*'iddah*), treating him in effect as deceased. If the wife apostatized, most schools treated the union as annulled immediately, reflecting the asymmetry in marital obligations

⁸ *Sahih al-Bukhari*, Kitab al-Jihad, Hadith 3017; *Sahih Muslim*, Kitab al-Qasama, Hadith 1676.

⁹ Ibn Qudamah, *Al-Mughni*, vol 9 (Dar al-Fikr 1984) 5–7; Ahmad ibn Naqib al-Misri, *Reliance of the Traveller: A Classic Manual of Islamic Sacred Law*, trans Nuh Ha Mim Keller (Amana Publications 1997) 595–597.

¹⁰ Burhan al-Din al-Marghinani, *Al-Hidayah: A Classical Manual of Hanafi Law*, trans Imran Ahsan Khan Nyazee (Centre for Islamic Legal Studies 2006) 574–576.

¹¹ *Fatawa-i Alamgiri* (Hindustan Offset 2008 reprint) vol 6, 312; Marghinani, *Al-Hidayah* (n 3); Ibn Abidin, *Radd al-Muhtar 'ala al-Durr al-Mukhtar* (Dar al-Fikr 2000 reprint) vol 6, 423.

recognised under Islamic law.¹² Manuals such as the *Reliance of the Traveller* codify this rule as settled doctrine.

While these classical consequences were embedded in a religious-legal order, their civil dimensions continue to reverberate in modern contexts. In India, apostasy is not a criminal offence under secular law, yet Muslim personal law still operates to exclude apostates from succession. The repeal of the Caste Disabilities Removal Act, 1850 — which once secured the inheritance rights of converts and apostates — has created a statutory vacuum, allowing traditional exclusions to resurface.¹³ Thus, even within a constitutional framework that guarantees freedom of religion, the consequences of apostasy under personal law persist in the denial of civil rights, most notably in matters of inheritance and marriage.

3.3 Practice of Apostasy in Different Circumstances

Apostasy in Islamic jurisprudence was not conceived as a uniform act but rather as one whose treatment varied with the circumstances of its occurrence. Classical jurists distinguished between apostasy committed voluntarily and that which arose under coercion. The Qur'an explicitly exempts those who are compelled to utter words of disbelief while their hearts remain firm in faith: "*Whoever disbelieves in Allah after his belief, except for one who is forced while his heart is secure in faith—but those who willingly open their breasts to disbelief, upon them is wrath from Allah*" (Qur'an 16:106).¹⁴ Jurists thus maintained that genuine compulsion negated liability, while deliberate renunciation attracted full consequences.¹⁵

Another differentiation lay between public and private apostasy. Apostasy declared openly was treated as a threat to the integrity of the Muslim community (*ummah*) and thus subject to strict sanctions. In contrast, private doubt or internal wavering was often regarded as a matter between the individual and God, provided it did not manifest in

¹² Ibn Abidin, *Radd al-Muhtar* (n 4) vol 6, 425; al-Misri, *Reliance of the Traveller* (n 2) 601.

¹³ Repealing and Amending Act 2018 (No 4 of 2018), which repealed the Caste Disabilities Removal Act 1850.

¹⁴ Qur'an 16:106.

¹⁵ Wael B Hallaq, *Shari'ah: Theory, Practice, Transformations* (Cambridge University Press 2009) 332.

outward acts of rejection.¹⁶ Al-Marghinani in *Al-Hidayah* and Ibn Qudamah in *Al-Mughni* emphasised that apostasy must be established by clear words or conduct, not by inference from ambiguous statements.¹⁷

Jurists also distinguished between temporary apostasy followed by repentance and persistent apostasy without return. Manuals such as the *Fatawa-i Alamgiri* record procedures by which the apostate was to be admonished and given opportunity to repent before punitive measures were applied.¹⁸ Persistent refusal, however, attracted full legal consequences, including dissolution of marriage and loss of inheritance rights.

The Hanafi school further distinguished between male and female apostates: while men were liable to capital punishment if unrepentant, women were to be imprisoned until they recanted, reflecting a view that their apostasy was socially destabilising but not politically threatening.¹⁹ This distinction demonstrates how gender shaped the practical application of doctrinal rules.

These differentiated treatments reveal that Islamic jurisprudence approached apostasy not merely as an abstract sin but as a situational act whose legal consequences depended on context. While developed in a classical religious-legal setting, such distinctions continue to resonate in India, where courts and communities confront cases of apostasy shaped by coercion, inducement, or pragmatic considerations.

4. Challenges Faced by Apostates in India

4.1 Is Apostasy Conversion?

A threshold question in the Indian context is whether apostasy can be equated with conversion. In Islamic jurisprudence, apostasy (*ridda*) denotes a renunciation of Islam, whereas conversion (*tahawwul*) generally signifies entry into a new religious tradition. The two are

¹⁶ Anver M Emon, *Religious Pluralism and Islamic Law: Dhimmis and Others in the Shari'a* (Oxford University Press 2012) 145–147.

¹⁷ Burhan al-Din al-Marghinani, *Al-Hidayah: A Classical Manual of Hanafi Law*, trans Imran Ahsan Khan Nyazee (Centre for Islamic Legal Studies 2006) 574; Ibn Qudamah, *Al-Mughni*, vol 9 (Dar al-Fikr 1984) 8–9.

¹⁸ *Fatawa-i Alamgiri* (Hindustan Offset 2008 reprint) vol 6, 318.

¹⁹ Ibn Abidin, *Radd al-Muhtar 'ala al-Durr al-Mukhtar* (Dar al-Fikr 2000 reprint) vol 6, 427.

conceptually distinct: one marks an exit, the other an entry. However, in practice apostasy often entails simultaneous conversion, since an individual leaving Islam may adopt another faith. This overlap has caused Indian courts and legislators to conflate the two terms, despite their different meanings in religious law.²⁰

Indian statutory language rarely distinguishes between apostasy and conversion. The repealed Caste Disabilities Removal Act, 1850 had explicitly protected the civil rights of those who “ceased to be Hindu” or who were excluded from caste, recognising that mere renunciation—whether for conversion or not—ought not to entail legal disabilities. Its absence, today has allowed Muslim personal law rules to continue disqualifying apostates from inheritance or marital rights, even when no new religion is adopted.²¹

Judicial interpretation has also blurred the line. In *Sarla Mudgal v Union of India*, the Supreme Court considered the practice of Hindu men converting to Islam to contract a second marriage. Here, “conversion” was treated as synonymous with apostasy from Hinduism, though the Court’s concern was primarily with abuse of personal law to evade monogamy restrictions.²² Similarly, in *Lily Thomas v Union of India*, the Court confirmed that mere change of religion does not dissolve a subsisting marriage, unless recognised by the personal law of the parties. In such cases, the Court implicitly treated apostasy and conversion interchangeably, though the consequences were shaped by the religious system involved.²³

Thus, while Islamic law draws a clear conceptual boundary between apostasy and conversion, Indian legal discourse tends to collapse the two. This conflation complicates the position of individuals who abandon Islam but do not embrace another faith, leaving them in a grey zone where personal law disabilities persist but statutory protections are uncertain.

4.2 Will Conversion Laws of India Apply to Apostasy?

A related question is whether India’s state-level anti-conversion laws extend to cases of apostasy. These statutes, commonly referred to as

²⁰ Tahir Mahmood, *Muslim Law in India and Abroad* (2nd edn, Universal Law Publishing 2012) 124–126.

²¹ Repealing and Amending Act 2018 (No 4 of 2018), which repealed the Caste Disabilities Removal Act 1850.

²² *Sarla Mudgal v Union of India* (1995) 3 SCC 635.

²³ *Lily Thomas v Union of India* (2000) 6 SCC 224.

“Freedom of Religion Acts” in states such as Madhya Pradesh, Uttar Pradesh, Gujarat, and Odisha—typically prohibit conversion from one religion to another through force, fraud, or inducement.²⁴ Their language focuses on “conversion,” defined as adopting one religion in place of another, usually requiring prior declaration to district authorities. Apostasy, however, may involve only the abandonment of Islam without the adoption of another faith.

The statutory definitions suggest that mere apostasy, without embracing a new religion, falls outside the scope of these laws. For instance, Section 2(c) of the Madhya Pradesh Freedom of Religion Act, 2021 defines conversion as the “renunciation of one religion and adoption of another,” clearly presupposing both exit and entry.²⁵ Likewise, the Gujarat Freedom of Religion (Amendment) Act, 2021 criminalises conversion by misrepresentation or allurements but does not address the situation of an individual who becomes non-religious or who simply withdraws from Islam.²⁶

Yet in practice, apostasy often overlaps with conversion, since leaving Islam is frequently followed by formal entry into another faith. Indian courts have tended to treat such cases as falling under conversion statutes. In *Stainislaus v State of Madhya Pradesh*, the Supreme Court upheld the validity of anti-conversion laws, emphasising that the “right to propagate” under Article 25 did not include the right to convert another person.²⁷ Although the judgment did not directly address apostasy, its broad reasoning has been used to justify state regulation even where individuals claim to have acted voluntarily.

This statutory ambiguity creates a troubling gap. A person who renounces Islam without adopting another religion technically remains outside the purview of conversion laws, yet still suffers personal law disabilities. Conversely, if apostasy coincides with conversion, the act becomes subject to restrictive state regulation. The result is a fragmented legal landscape where apostates face uncertainty both under secular statutes and within religious personal law.

²⁴ Madhya Pradesh Freedom of Religion Act 2021; Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act 2021; Gujarat Freedom of Religion (Amendment) Act 2021; Odisha Freedom of Religion Act 1967.

²⁵ Madhya Pradesh Freedom of Religion Act 2021, s 2(c).

²⁶ Gujarat Freedom of Religion (Amendment) Act 2021, s 3.

²⁷ *Rev Stainislaus v State of Madhya Pradesh* (1977) 1 SCC 677.

4.3 What is Proselytized Apostasy?

Beyond voluntary or individual renunciation, Islamic jurisprudence has long grappled with situations where apostasy arises through external influence. Classical jurists referred to cases in which Muslims were induced, persuaded, or lured into abandoning Islam, sometimes by missionary efforts of other faith communities. This may be termed “proselytized apostasy.”²⁸ The Qur’an itself warned of groups who sought to destabilise early Muslim society by pretending to embrace Islam and then renouncing it, in order to cast doubt among believers (Qur’an 3:72).²⁹ Juristic texts such as *Al-Hidayah* and the *Fatawa-i Alamgiri* acknowledged the possibility of such orchestrated apostasies, emphasising that they carried not only theological but also socio-political implications for the *ummah*.³⁰

In contemporary India, this notion finds a parallel in statutory concerns about conversion by “allurement,” “force,” or “fraud.” State anti-conversion laws criminalise religious change where induced by promises of material benefit or misrepresentation, reflecting anxieties that resonate with the classical fear of insincere or manipulative apostasy.³¹ However, while classical fiqh treated proselytized apostasy primarily as a communal threat, Indian statutes frame it as a violation of individual free choice. The doctrinal and statutory categories thus converge on the problem of inducement, even though they emerge from different normative traditions.

Understanding proselytized apostasy is therefore essential, as it reveals how both Islamic law and Indian legislation perceive apostasy not only as a matter of conscience but also as an act with broader communal and social consequences.

4.4 Consequences of Proselytized Apostasy

When apostasy is understood as proselytized—that is, induced through external persuasion or material incentives—the consequences are both doctrinal and legal. Classical jurists

²⁸ Wael B Hallaq, *Shari‘a: Theory, Practice, Transformations* (Cambridge University Press 2009) 335–336.

²⁹ Qur’an 3:72.

³⁰ Burhan al-Din al-Marghinani, *Al-Hidayah: A Classical Manual of Hanafi Law*, trans Imran Ahsan Khan Nyazee (Centre for Islamic Legal Studies 2006) 582; *Fatawa-i Alamgiri* (Hindustan Offset 2008 reprint) vol 6, 320.

³¹ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act 2021, s 3; Madhya Pradesh Freedom of Religion Act 2021, s 3.

emphasised that apostasy committed under inducement was no less apostasy than that committed voluntarily, though its moral gravity was sometimes heightened because of its perceived threat to the stability of the *ummah*.³² The *Fatawa-i Alamgiri* prescribed that even induced apostates were to be treated as full apostates, subject to the same civil and penal disabilities, with no distinction drawn on grounds of motive.³³

In the Indian context, however, consequences of proselytized apostasy take a different form. Under Muslim personal law, an apostate—whether induced or voluntary—continues to suffer civil disabilities, such as the dissolution of marriage to a Muslim spouse and disqualification from inheriting property from Muslim relatives.³⁴ The motive or inducement behind the apostasy is irrelevant for these consequences, as personal law focuses solely on the fact of renunciation.

At the same time, state anti-conversion statutes introduce an additional layer of regulation. Where apostasy is alleged to be the product of inducement, it may invite criminal prosecution of those who facilitated the act, particularly under provisions penalising conversion by “allurement,” “force,” or “fraud.”³⁵ Thus, the apostate may not only lose personal law entitlements but may also become a witness in criminal proceedings against those who encouraged their religious change.

This dual exposure—to civil disabilities under personal law and to the regulatory framework of state statutes—creates a uniquely precarious position for proselytized apostates in India. Unlike voluntary apostates, who at least retain some agency in their renunciation, proselytized apostates are constructed both as victims of unlawful inducement and as transgressors of religious norms.

4.5 Apostasy for Material Benefit

A recurring issue in India is apostasy motivated by material gain, whether in relation to property, inheritance, or access to affirmative action benefits. Under classical Islamic jurisprudence, the motive

³² supra note 28.

³³ supra note 18.

³⁴ Tahir Mahmood, *Principles of Hindu and Muslim Family Law* (Universal Law Publishing 2008) 212–214.

³⁵ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act 2021, s 3; Madhya Pradesh Freedom of Religion Act 2021, s 3.

behind apostasy was irrelevant; once established, the apostate faced the same legal consequences regardless of intention.³⁶ The *Fatawa-i Alamgiri*, for instance, treated apostasy for wealth or worldly advantage as carrying no lesser sanction than apostasy arising from doubt or conviction.³⁷

In the Indian context, however, questions of motive acquire greater significance. Apostasy has at times been used strategically to secure material entitlements. One example lies in inheritance disputes, where individuals have renounced Islam to avoid exclusionary rules of Muslim personal law and to claim rights under secular law. Courts have been cautious in such cases, often scrutinising whether the apostasy was genuine or contrived for benefit.³⁸

Affirmative action also raises complex questions. In *Soosai v Union of India*, the Supreme Court declined to extend Scheduled Caste reservations to Dalit Christians, holding that conversion to Christianity severed the link with Hindu caste disabilities.³⁹ While not an apostasy case per se, the reasoning demonstrates how religious renunciation is scrutinised for its material consequences. Apostasy from Islam in pursuit of such benefits could thus attract judicial scepticism, as courts distinguish between sincere conscience-based change and opportunistic manoeuvre.

The effect is a legal environment in which apostasy for material benefit is doubly fraught: personal law continues to impose disabilities on the apostate, while secular courts may view the apostasy itself with suspicion, potentially denying access to the very benefits sought.

4.6 Apostasy for Marital Relationship

Apostasy has also frequently arisen in the context of marital relationships. Under classical Islamic jurisprudence, apostasy by either spouse has direct consequences for the marriage contract. The consensus among jurists was that if the husband apostasised, the marriage stood dissolved immediately, since a Muslim woman could not remain married to a non-Muslim husband. If the wife apostasised, opinions varied: some schools held that the marriage was suspended until her possible return to Islam, while others treated the marriage as

³⁶ Supra note 28.

³⁷ Supra note 18.

³⁸ Supra note 34.

³⁹ *Soosai v Union of India* (1986) 3 SCC 567.

dissolved forthwith.⁴⁰ These rules underscored the view that marital bonds were contingent upon religious identity, and that apostasy severed the legal foundation of the relationship.⁴¹

In India, these doctrinal rules have interacted uneasily with constitutional principles and judicial interpretation. The Supreme Court in *Sarla Mudgal v Union of India* addressed the issue of Hindu men converting to Islam in order to contract a second marriage. The Court condemned such “conversions” as motivated by circumvention of Hindu personal law and held that the earlier marriage remained valid, rendering the second marriage void.⁴² In *Lily Thomas v Union of India*, the Court reaffirmed this approach, making clear that mere change of religion could not be used as a device to escape monogamy obligations under the Hindu Marriage Act.⁴³

These rulings illustrate that Indian courts distinguish between sincere apostasy and apostasy employed as a strategic manoeuvre to alter marital status. Where apostasy is undertaken for genuine religious conviction, it may dissolve a marriage under Muslim personal law. Where it is contrived to secure a polygamous advantage, however, the courts have refused to recognise its validity.

Thus, apostasy in the marital context exemplifies the tension between personal law doctrines, which tie marital validity to religious identity, and constitutional principles that guard against the misuse of religious change to evade statutory obligations. The result is a fragmented jurisprudence, where the consequences of apostasy for marital relationships vary depending on the sincerity and context of the renunciation.

While doctrinal and statutory perspectives clarify the legal consequences of apostasy, they cannot by themselves capture its contemporary impact on Indian society. To understand the lived reality of apostates, it is essential to turn to demographic evidence and socio-political practices that shape their daily experiences.

⁴⁰ Wael B Hallaq, *Shari‘a: Theory, Practice, Transformations* (Cambridge University Press 2009) 338.

⁴¹ *Fatawa-i Alamgiri* (Hindustan Offset 2008 reprint) vol 6, 325.

⁴² *Sarla Mudgal v Union of India* (1995) 3 SCC 635.

⁴³ *Lily Thomas v Union of India* (2000) 6 SCC 224.

4.7 Contemporary Realities of Apostasy in India

There were over 172 million Muslims in India as per the 2011 census, making up approximately 14.2% of the country's total population⁴⁴. A 2021 Pew Research report indicates that 12% of Indian Muslims exhibit diminished assurance in their belief in God, while 6% are unlikely to believe in God.⁴⁵

In numerous Islamic nations, apostates often encounter punitive measures, including the death penalty;⁴⁶ however, in India, a secular democracy, apostasy is not criminalized. Nonetheless, individuals who abandon Islam frequently experience socio-economic ostracism and potential violence from extremist factions within the Muslim community.

Some extreme Islamic clerics in India create various forms of intimidation against those who leave the religion or against those who openly speak out against its beliefs. These intimidation tactics almost always violate a person's fundamental human rights. Generally, these threats include eviction, pressuring families to disown the apostatising member, forcing the apostate's spouse to divorce, preventing them from contacting their own children, obstructing marriages and whatnot.⁴⁷

Among the various forms of exclusion, inheritance occupies a central place because it is not merely a matter of communal practice but one that carries explicit recognition in Islamic jurisprudence and tangible effects under Muslim personal law. The problem is compounded by

⁴⁴ FP Archives, 'India Has 79.8 Percent Hindus, 14.2 Percent Muslims: 2011 Census Data on Religion' (*Firstpost*, 26 August 2015) available at: <https://www.firstpost.com/india/india-has-79-8-percent-hindus-14-2-percent-muslims-2011-census-data-on-religion-2407708.html> accessed 2 January 2025.

⁴⁵ Jonathan Evans and Neha Sahgal, 'Key Findings About Religion in India' (*Pew Research Center*, 29 June 2021) available at: <https://www.pewresearch.org/short-reads/2021/06/29/key-findings-about-religion-in-india/> accessed 5 January 2025.

⁴⁶ Man Baker, 'Capital Punishment for Apostasy in Islam' (2018) 32(4) *Arab Law Quarterly* 439 available at: <https://www.jstor.org/stable/27073516> accessed 13 January 2025.

⁴⁷ P Sandeep, 'Why Muslims in Kerala Are Leaving Islam' (*News18*, 10 February 2022) available at: <https://www.news18.com/news/opinion/why-muslims-in-kerala-are-leaving-islam-4694180.html> accessed 16 January 2025.

the repeal of statutory protections that once mitigated such disabilities. It is, therefore, necessary to examine more closely the doctrinal and legal gap surrounding inheritance and succession in cases of apostasy.

5. The Gap in Islamic Inheritance Laws

Beyond the socio-economic ostracism faced by apostates, a deeper legal disability arises in the domain of inheritance. Under the Muslim Personal Law (Shariat) Application Act, 1937, succession to the estate of every Muslim is governed compulsorily by Sharia, leaving no scope for individuals who renounce their faith to opt out of its ambit.⁴⁸ The statute does not provide for a “no religion, no caste” certification or any equivalent mechanism through which a non-believer might seek recourse to the secular framework of the Indian Succession Act, 1925.⁴⁹ This automatic application of personal law, regardless of an individual’s professed belief, creates a significant statutory vacuum for apostates.

The consequence is that a ‘non-believer’—even one who has consciously disavowed Islam—continues to be bound by Shariat-based succession rules while being excluded from the protections of secular inheritance regimes. This absence of an opt-out clause undermines the constitutional right to freedom of religion under Article 25, which has been judicially interpreted to include not only the right to profess and practise a faith but also the right to abstain from or abandon it.⁵⁰ The very automatic application of Sharia under the 1937 Act to all persons born to Muslim parents, without any statutory exit route, thus erodes the fundamental right to be non-religious and renders the constitutional promise of religious liberty effectively meaningless in matters of succession.

Historically, some protection was afforded by the Caste Disabilities Removal Act, 1850, which abolished the civil disabilities imposed on converts and ensured that an apostate could still inherit the property

⁴⁸ *The Muslim Personal Law (Shariat) Application Act 1937*, s 2.

⁴⁹ *The Indian Succession Act 1925*, ss 29, 58.

⁵⁰ Tahir Mahmood, *Muslim Personal Law in India: The Role of the State in the Subcontinent* (Vikas Publishing 1977) 113; *Bijoe Emmanuel v State of Kerala* (1986) 3 SCC 615 (SC).

of a deceased Muslim.⁵¹ However, this safeguard was repealed by the Repealing and Amending Act, 2018, on the rationale that its core principles were already embedded in the Constitution. In practice, though, its repeal has created a doctrinal vacuum: apostates and their descendants often find themselves excluded from inheritance rights within their communities, without the residual statutory protection that once existed.

Thus, the statutory framework governing inheritance for Muslims not only disregards the rights of apostates but also reveals a wider structural lacuna. By binding individuals by birth into a religious succession system with no statutory exit, the law creates a conflict between personal laws and the constitutional guarantee of freedom of religion, leaving apostates in a uniquely vulnerable position.

6. The Interplay Between Personal Laws and Fundamental Rights

Fundamental rights, enshrined in the Indian Constitution, are the cornerstone of a just and equitable society, guaranteeing every citizen basic human rights irrespective of caste, creed, religion, or gender. Among these, the right to equality (Article 14) and the right to freedom of religion (Article 25) share an intrinsic relationship, as they collectively safeguard individual dignity and autonomy.

The right to equality ensures that all individuals are treated without discrimination, while the right to freedom of religion allows them to practice, profess, or abstain from practising any faith. However, this interrelation also highlights a critical tension: when personal laws rooted in religion infringe upon the principles of equality, they create a conflict between collective religious rights and individual freedoms. The Indian judiciary has often grappled with conflicts arising between religious personal laws and constitutional rights. A notable example is the landmark case of *Shayara Bano*⁵², where the Supreme Court invalidated the practice of triple talaq, deeming it unconstitutional. This decision reinforced the primacy of individual rights over religious customs, affirming that practices violating fundamental rights cannot claim immunity under the guise of personal laws.

⁵¹ *Caste Disabilities Removal Act 1850* (repealed by *The Repealing and Amending Act 2018*).

⁵² *Shayara Bano vs Union of India*, AIR 2017 SC 4609

A similar legal challenge arose in *Khuran Sunnath Society case*⁵³, where a Writ Petition was filed by multiple petitioners seeking to declare Shariat Law, as it pertains to the inheritance rights of Muslim women, unconstitutional. The petitioners contended that the application of Shariat law in inheritance matters was discriminatory and violative of Articles 14, 15, 19, 21, and 25 of the Constitution. Specifically, the petitioners argued that Shariat law inherently discriminates based on sex, as a Muslim daughter does not receive an inheritance share equivalent to a son. Instead, she is compelled to share property with distant male relatives of the deceased, while a male heir primarily shares only with the spouse and parents of the deceased.

However, the Kerala High Court dismissed the petition on the grounds that challenges to personal laws cannot be adjudicated under Article 226 of the Constitution and must instead be addressed through legislative intervention. The Court referred to *Maharshi Avadhesh v. Union of India*⁵⁴ wherein it was held that courts cannot mandate legislative action to enact or amend personal laws. The ruling reaffirmed the judiciary's longstanding approach of deferring matters of personal law to the wisdom of the legislature. An SLP has been filed challenging the judgment of the High Court, and the matter is currently pending before the Supreme Court.⁵⁵

7. Case Study: Safiya's Legal Battle

A case has been filed before the Supreme Court by a Muslim woman named Safiya, born to a Muslim father, who has not officially left the religion, facing a peculiar problem in protecting her precious civil rights of succession.⁵⁶

Safiya does not believe in the central tenets of Islam or the Quran. She contends that Sharia succession rules, which accord sons double the share of daughters, amount to systemic injustice.⁵⁷

⁵³ *Khuran Sunnath Society v. Union of India*, 2015 SCC OnLine Ker 13643

⁵⁴ 1994 Supp (1) SCC 713

⁵⁵ Diary No. 36038/2015, *Khuran Sunnath Society Vs. Union of India Ministry of Law*

⁵⁶ *Safiya PM vs Union of India*, Writ Petition (Civil) 135/2024

⁵⁷ Theres Sudeep, 'Kerala Muslim Woman Is on a Mission Against Shariat Law — It's a Do-or-Die Inheritance Battle' (*The Print*, 14 January 2025) available at: <https://theprint.in/feature/kerala-muslim-woman-is-on-a-mission->

“It’s why she has taken the fight to the country’s top court. According to her, multiple aspects of personal law are discriminatory—marriage, divorce, and adoption to name a few. She chose to focus on inheritance because it’s something that affects 100 per cent of Muslim women.”⁵⁸

Despite the Indian Constitution’s *Article 25* granting the freedom to practise any religion, the reality for some, like Safiya, is that their life choices remain subject to *Muslim Personal Law* based on their religious origin, effectively punishing them for exercising that very right.

The Court in the case of *Shayara Bano*⁵⁹ held that personal laws, even if rooted in religion, must adhere to constitutional morality. This principle resonates with the challenges faced by individuals like Safiya, whose fundamental right to freedom of religion is compromised by the automatic application of Muslim Personal Law. “Safiya’s petition underscores the challenges faced by individuals who seek to distance themselves from religious personal laws while advocating for governance under secular statutes. The Supreme Court’s notice to the Union of India marks the first step in a legal battle that raises important questions about personal liberty, freedom of religion, and the application of secular laws in India. The government’s forthcoming counter-affidavit is expected to address these constitutional questions, particularly in light of the ongoing debate on the Uniform Civil Code (‘UCC’).”⁶⁰

8. The Other Side of the Coin: Alternative Perspectives on Religious Freedom

The Court, in the Sabarimala case, has framed seven key questions which are yet to be answered and adjudicated by a nine-judge

against-shariat-law-its-a-do-or-die-inheritance-battle/2065026/
accessed 22 January 2025.

⁵⁸ *Ibid.*

⁵⁹ *Supra* note 18

⁶⁰ Sayum, ‘Supreme Court Seeks Centre’s Response on Petition by Ex-Muslim Woman Seeking Governance by Secular Laws Over Sharia Law’ (*Lawyer E-News*, 14 January 2025) available at: https://lawyerenews.com/legal_detail/supreme-court-seeks-centres-response-on-petition-by-ex-muslim-woman-seeking-governance-by-secular-laws-over-sharia-law accessed 21 January 2025.

bench.⁶¹ These questions address the interplay between constitutional rights and religious practices, including:

- a) The scope of the right to freedom of religion under Article 25 of the Constitution.
- b) The relationship between individual rights under Article 25 and collective rights of religious denominations under Article 26.
- c) Whether the rights of religious denominations under Article 26 are subject to other provisions of Part III, beyond public order, morality, and health.
- d) The meaning of “morality” under Articles 25 and 26 and whether it includes constitutional morality.
- e) The scope of judicial review regarding religious practices under Article 25.
- f) The interpretation of the term “Sections of Hindus” under Article 25(2)(b).
- g) Whether individuals outside a religious denomination can challenge its practices through a Public Interest Litigation (PIL).

These questions are vital for shaping a definitive and conclusive understanding of religious freedom and constitutional equality. Moreover, in cases like Safiya’s, the conflict arises not merely between personal and secular laws but also within the core principle of uniformity in law.

In inheritance matters, it is legally untenable for two different sets of laws—personal and secular—to govern the rights of children within the same family. For instance, under Islamic succession laws, Safiya’s brother may claim a larger share of the inheritance, while Safiya, asking for a secular law, demands an equal share. Such contradictions undermine the fundamental legal principle that inheritance laws must apply uniformly within a single familial context and, hence, legally impossible.

Moreover, allowing individuals to benefit from either personal or secular laws selectively undermines the coherence of the legal system and erodes societal trust in the rule of law. Uniform application of inheritance laws is not only a necessity for legal clarity but also for ensuring fairness and consistency within families, irrespective of individual beliefs or preferences.

⁶¹ R.P.(C) No. 003358 / 2018.

9. Assessing the Secular Character of the Indian Succession Act

As Salmond aptly remarked, “*The essence of law lies in the spirit, not its letter, for the letter is significant only as being the external manifestation of the intention that underlies it.*” This prompts the critical question: Was the Indian Succession Act (‘ISA’) ever intended to be a secular law? Despite its traditional interpretation as a secular statute, there is no explicit mention or inference within the Act regarding its legislative intent to function as a secular law.

The act was originally and for the first time was introduced as Indian Civil Code by British India with the name “Indian Succession Act, 1865”. Hindus and Muslims were exclusively excluded from the purview of the Act. The reason was the period up to 1865, where Hindus and Muslims were governed by their personal law, but persons belonging to other groups were, in general, left to be governed by English law.⁶²

With time, after the Courts, in differing cases, expressed divergent views that created Chaos and confusion since it contained so many exceptions which would result in it not being applicable to the natives of India, the British Parliament thought it appropriate to start the consolidation of the Law of Succession. Thus, the Indian Succession Act, 1925, was enacted, making it applicable to the Indian Christians, Parsis, Jews and intestate and testamentary succession of other communities.

This Act has undergone several amendments over the years; however, the core purpose has remained the same, i.e., codifying succession laws for non-Hindus or Muslims. It is imperative to note that a person who is Buddhist, Jain, or Sikh by religion is also deemed to be a Hindu and shall be governed by the Hindu Personal laws only.⁶³

This afore-mentioned purpose can be inferred from provisions like Subsection (2) of Section 20 of the Act itself, which provides exceptions to the rule that marriage does not affect property rights

⁶² J.S. Jebb v. Lefebre and Carellne, English decisions (old series). Vol. 1, p. 92.

⁶³ Amala Dasarathi, Madhusruthi Neelakantan and Vandita Khanna, 'What Does It Mean to Be a Hindu?' (*Citizens for Justice and Peace*, 13 January 2025) available at: <https://cjp.org.in/what-does-it-mean-to-be-a-hindu/#:~:text=The%20term%20%E2%80%9CHindu%E2%80%9D%20has%20been,and%20the%20various%20codified%20Hindu> accessed 22 January 2025.

and excludes marriages where one or both parties professed the Hindu, Muslim, Buddhist, Sikh, or Jaina religions at the time of marriage, as their property rights are governed by their respective personal laws. Similarly, as per Section 29 of the Act regarding intestate succession, this part does not apply to the property of Hindus, Muslims, Buddhists, Sikhs, or Jains. These exceptions acknowledge historical contexts and respect the diversity of religious and customary laws in India.

However, in matters of testamentary succession, Section 58 of the 1925 Act, which is generally applicable to all other citizens regardless of their religious affiliations, currently explicitly excludes Muslims from its ambit, and any potential inclusion of Muslims under this law would require legislative action by Parliament.

10. Alternate Avenues for Equitable Property Distribution Under Islam

Nonetheless, there are other alternate ways available to Muslims like Safia, who want to be governed by the Indian Succession Act instead of Muslim Personal Law. Cases are there like of advocate C Shukkur and Sheena Shukkur⁶⁴, who opted for the Special Marriage Act to circumvent the provisions of the Muslim inheritance laws to ensure that their three daughters get their entire property. Similarly, Neju and Ismail⁶⁵ climbed the steps of the sub-registrar office 36 years after their marriage to remarry under the Special Marriage Act in their fight for gender equality. However, remarriage under the Special Marriage Act requires both spouses to be alive, and its applicability depends on the specific circumstances of each case.

⁶⁴ 'Kerala Muslim Couple Remarry Under Special Marriage Act for Daughters, Get Full Property Share' (*The New Indian Express*, 9 March 2023) available at:

<https://www.newindianexpress.com/states/kerala/2023/Mar/09/kerala-muslim-couple-remarryunderspecial-marriage-act-for-daughters-get-full-property-share-2554378.html> accessed 22 January 2025.

⁶⁵ 'Muslim Couple Remarry Under SMA in a Fight for Gender Equality' (*The Hindu*, 9 March 2023) available at:

<https://www.thehindu.com/news/national/kerala/muslim-couple-remarry-under-sma-in-a-fight-for-gender-equality/article68972805.ece> accessed 22 January 2025.

Another possible way under Islamic law is the concept of Hiba⁶⁶ (a gift) or a disposition *inter vivos*, which is defined as the donation of a thing from which the donee may derive benefit. Muslims have various modes of transferring their property, and it is one of them which allows an individual to donate their entire property during their lifetime.

11. Reconciling Religious Identity and Legal Uniformity: The UCC Solution

The ongoing debate on the UCC has gained renewed significance in light of cases like Safiya's, where personal laws infringe upon individual freedoms. The UCC aims to replace religion-specific personal laws with a unified legal framework that upholds equality and secular principles, ensuring no individual faces discrimination based on religious identity or belief. "Although the Uniform Civil Code has many positive effects on society, including easier administration, reduced discrimination, gender equality, and the protection of women's rights, it also has the potential to undermine people's religious beliefs."⁶⁷

The Uniform Civil Code, at least in its current form, may not provide a comprehensive solution. A significant concern surrounding the UCC is the apprehension that it may disproportionately target minority communities. For it to be genuinely effective and equitable, it must go beyond mere facial neutrality and address the deeper systemic inequalities embedded within society — irrespective of gender, religion, or identity — including men, women, transgender individuals, Hindus, Christians, Muslims and all the other segments of the diverse Indian society. As recognized by the Supreme Court in the case of *Navtej Singh Johar*⁶⁸, indirect discrimination occurs when ostensibly neutral actions by the State have a disproportionate impact on certain groups. For instance, the restitution of conjugal rights provisions

⁶⁶ Ashish Srivastava, Hiba Under Muslim Law (*International Journal of Integrated Research in Law*, March 2022) available at: <https://ijirl.com/wp-content/uploads/2022/03/HIBA-UNDER-MUSLIM-LAW.pdf> accessed 22 January 2025.

⁶⁷ Puneet Agarwal & Dr. Anna Nath Ganguly, *Uniform Civil Code Implementation: Challenges and Implications in Indian Diversity*, Int'l J. Multidisciplinary Rsch., Vol. 6, Issue 2 (Mar.–Apr. 2024), available at: <https://www.ijfmr.com/papers/2024/2/14939.pdf>

⁶⁸ *Navtej Singh Johar vs Union of India*, (2018) 10 SCC 1.

appears neutral, permitting both spouses to seek enforcement. However, as observed by the Andhra Pradesh High Court in the case of *T Sareetha*⁶⁹, the practical application of such remedies often reinforces existing power imbalances, particularly disadvantaging women.

The Court emphasized that “*bare equality of treatment regardless of the inequality of realities is neither justice nor homage to constitutional principles.*” In practice, such remedies frequently serve as tools of oppression, disproportionately altering the lives of women while leaving the position of men largely unchanged. These examples underscore the importance of crafting a UCC that not only guarantees formal equality but also addresses substantive inequalities to ensure its alignment with constitutional morality and justice.

12. Conclusion: The Path Forward

The tension between religious personal laws and individual autonomy is neither new nor something alien to us; however, it has been presenting a critical challenge to India’s constitutional democracy from time to time. While the right to freedom of religion inherently includes the freedom to abandon one’s faith, the current legal framework seems fail to protect this fundamental choice from civil consequences, particularly in light of Islam. The path forward lies not merely in legislative reform or judicial interpretation but in reimagining a legal system that upholds both individual dignity and religious freedom without forcing a false choice between the two. As India evolves as a secular democracy, it must ensure that the constitutional promise of religious liberty extends equally to those who choose to believe and those who choose not to.

This necessitates the creation of a comprehensive and balanced draft, which should be subject to parliamentary and public scrutiny. Furthermore, the Law Commission should actively solicit feedback and recommendations from diverse sections of society. Only through such a transparent and inclusive process can a UCC address existing concerns and align with the principles of equality and justice.

⁶⁹ *T. Sareetha vs T. Venkata Subbaiah*, AIR 1983 AP 356.