



## **BIGAMY AND ITS APPLICABILITY UNDER THE 1956 HINDU MARRIAGE ACT**

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### **ABSTRACT**

India is renowned for its varied customs and rich cultural heritage. In India, marriage is viewed as a union of two people's lives through an unadulterated love tie. All marriages, though, have difficulties from time to time, and these difficulties might result in bigamy, divorce, extramarital affairs, etc. Among all of these, bigamy is regarded by Indian law as an offense. In our nation, local communities' personal laws regulate marriage in their own ways. In contrast to Muslim law, which views marriage as a contract, Hindu law defines marriage as a sacred sanskar (sacrament), as outlined in the Hindu Marriage Act (HMA) of 1955. From ancient times, it has been noted that Hindu men were free to practice polygamy, and there were no legal restrictions placed on these husbands. However, women did not seem to enjoy the same privileges. Furthermore, despite their numerous encroachments onto other private Hindu rules, the British rulers left this feature unaltered. The legislature did not discuss the matter until after independence, and when they did, they took the Vedas into account, which saw monogamy as the ideal form of matrimony, and passed anti-bigamy legislation. At last, the HMA succeeded in outlawing this practice completely. All marital laws in our nation forbid bigamy, with the exception of Muslim personal laws. However, this kind of behavior is common, and Hindu bigamists get away with it since, most of the time, the two wives are oblivious of one another's existence. Thus, the purpose of this essay is to examine the inadequacies in the application of the HMA's provisions and the ways in which a more liberal reading of the legislation is required to prevent the exploitation of women engaged.



**KEYWORD:** *Muslim Law, Bigamy, Legislation, Hindu, Legal*

## 1. INTRODUCTION

Bigamy is described as the practice of marrying someone else when one's spouse is still alive. Bigamy is illegal under IPC sections 494 and 495. It is categorized as a compoundable, bailable, and non-cognizable offense.

Section 494 makes it illegal to remarry a man or woman while the previous spouse is still alive. The explanation goes on to say that this section does not apply in cases where the first marriage was void or the previous spouse has vanished and is unknown for the past seven years. It stipulates a fine and seven years in prison.

In addition, section 495 punishes the offender who hides from the second spouse the existence of the first marriage by imposing a fine and a term of incarceration exceeding ten years.

The act of marrying someone when one is already lawfully married to another is known as bigamy. For instance, if A and B are lawfully wed but A marries C while their marriage is still in effect, A will be held accountable for bigamy. Nonetheless, these two people are free to wed anybody they want if the first marriage is ruled null and void for any reason. Until the divorce is deemed final by the law, neither of the couple going through the divorce process may get married. Nowadays, bigamy is illegal in many countries because of their pro-monogamy ideologies; nonetheless, bigamy is still permitted in other countries. Through this post, please enlighten us on bigamy and the laws that govern it.

### 1.1 ESSENTIAL INGREDIENTS OF BIGAMY

1. The presence of a prior marriage contract is the primary component of bigamy. It must be demonstrated that the individual was already married at the time of the second marriage.
2. For the terms of this section to apply, both the first and second marriages must be lawful unions.

3. The only reason the second marriage needs to be void is because it was consummated while the original husband or wife was still alive, and for no other reason.

## 1.2 BIGAMY IN INDIA AND ITS HISTORY

Bigamy has been practiced in India from the days of the warrior factions and wealthy merchants, who had multiple wives at the same time. Numerous factors led to this action, including the need to increase the region's exchequer, seal peace treaties, and expand the controlling territory. Except for polygamous unions, the law of marriage has, nevertheless, always been predicated on the idea of monogamy since the time of Manusmriti.

Manusmriti, one of the main sources of the Hindu Marriage Act, 1955, has texts that clearly state that a wife's husband may marry another woman; in other words, the second marriage will be deemed lawful if the wife has a disease, is incapable of bearing children, or is so vicious that she may be replaced. The firstborn son of the first wife will always take precedence over the other sons of that husband, though, and the first wife will always be superior to the second wife. But when British rule came to India, the law changed, allowing a Hindu man who had previously been married to get married again without his wife's permission or any explanation.

The personal laws of many religions became increasingly important over time, and many of them included rules that made bigamy a crime. The first of several laws that recognized and criminalized bigamy were the Parsi Marriage and Divorce Act (1936), the Bombay Prevention of Hindu Bigamous Marriage Act (1946), and the Madras Hindu Bigamy (Prevention and Divorce) Act (1949).

For all Hindus, Buddhists, Jains, and Sikhs, monogamy is required by the Hindu Marriage Act of 1955. A Hindu man is subject to punishment under Section 494 of the Indian Penal Code, 1860 if he marries another woman while his first wife is still alive. Comparably, any marriage that is formally consummated in accordance with the terms

and conditions of the Special Marriage Act, 1954, is forbidden from becoming bigamy.

Within the framework of Muslim personal law, or Sharia law, polygamy is lawful; however, polyandry is outright forbidden. All Muslims are governed by the Holy Quran, which also specifies that a Muslim man may marry up to four women concurrently as long as he can support and care for them. Thus, it makes sense that bigamy is not forbidden by Islam.

## **2. OBJECTIVES OF THE STUDY**

1. To study the Bigamy and Its Applicability Under the 1956 Hindu Marriage Act

## **3. RESEARCH METHODOLOGY**

Adopting doctrinal methodologies has been done to examine the issues related to the Juvenile Justice system and explore genuine possibilities for its change. A descriptive and analytical study design has been developed to draw the necessary inferences and conclusions, keeping the core problem in focus. The objective of this research is to perform a thorough and qualitative examination of the Statutes, Regulations, case laws, and other legal documents in order to identify and define the fundamental theme and the connection between different laws pertaining to the subject matter. Given the doctrinal character of this research, primary data has been utilized. For the purpose, relevant articles, books, journals, and other sources have been consulted.

## **4. RESULTS AND DISCUSSION**

### **4.1 BIGAMY AND THE PROVISIONS OF IPC**

#### **SECTION 494 OF THE INDIAN PENAL CODE, 1860**

Section 494 of the Indian Penal Code, 1860 provides an explanation of bigamy. According to the aforementioned clause, anyone who marries someone else while legally married to their current spouse and who already has a wife or husband will be punished with either type of imprisonment for a maximum term of seven years as well

as a fine. Furthermore, in any circumstance, such a marriage will be deemed null and void.

- The aforementioned clause has some exclusions, such as when a person marries someone else and is not held accountable for bigamy. The following are the exclusions:
- Any person whose marriage to their former spouse has been ruled void by a court of competent jurisdiction is not covered by the aforementioned regulation.

The aforementioned clause does not apply to anyone who marries within the lifespan of their ex-partner if that spouse was unknown to them for seven years prior to the second marriage or if there is no recorded evidence of their existence. Given the presumption outlined in Section 108 of the Indian Evidence Act, 1872, it can be concluded that an individual who has been missing for more than seven years is presumed dead. Additionally, when an individual marries again, it is understood that no spouse is alive at the time of the marriage, negating the commission of the bigamy offense. This exception is subject to the requirement that the person getting a second marriage disclose to the person they are getting married to, as accurately as possible, the details of their first marriage before the marriage is consummated.

#### 4.2 BIGAMY UNDER THE HINDU MARRIAGE ACT, 1956

The Hindu Marriage Act, which was passed in 1956, brought about changes to the Hindu marriage system. Before the Act, polygamy was accepted by Hindus. The Act outlawed the practice of polygamy. For a marriage to be considered lawful, neither party's spouse must be living at the time of the marriage, as stated in Section 5(i) of the Act. Moreover, if one of the participants had a living spouse on the day of the wedding, any marriage between two Hindus will be deemed invalid. The Act's Section 17 makes this clear.

In the case *Gopal Lal v. State of Rajasthan* (1979)<sup>1</sup>, the Telli community appellant got married a second time after divorcing his first spouse. By filing a complaint, the

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<sup>1</sup> AIR 1979 SUPREME COURT 713

appellant's conviction under Section 494 of the IPC was overturned. The Rajasthan High Court maintained the conviction. The Supreme Court was then involved in the matter. The Hindu Marriage Act's Section 17 declares that a second marriage is null and void, as determined by the Supreme Court.

A marriage is deemed final and lawful under Section 7 of the Hindu Marriage Act if it is carried out by both partners in compliance with the rites and ceremonies outlined in the Act. These consist of putting a ring on any finger, performing the Saptapadi ritual, and tying the thali. Therefore, the conditions outlined in Section 7 must be fulfilled for the second marriage to be recognized.

The court noted in the 1965 case of *Bhaurao Shankar Lokhande v. State of Maharashtra*<sup>2</sup> that whoever marries, implies whoever marries lawfully. The marriage will be void if the customary rites and ceremonies—particularly the Saptapadi ceremony—are not carried out. The court went on to say that the marriage will not meet the requirements under Section 17 of the Act if it is not solemnized. Therefore, under Section 494 of the Indian Penal Code, such a marriage would not be considered unlawful.

### 4.3 RELEVANT CASE LAWS

#### *Parameshwari v. Venilla* (1999)<sup>3</sup>

The appellants in this instance were penalized in accordance with Section 494 of the IPC. It was decided that bigamy is a compoundable offense that is not recognized by law and is subject to bail.

#### *M.Saravana Porselvi v. A.R. Chandrashekar* (2008)<sup>4</sup>

In this instance, the respondent and appellant were living apart despite being married. The appellant received lifelong alimony in addition to the parties' agreed-upon divorce. The respondent did, however, remarry and have two more children. The appellant was unaware of this fact. She so filed a petition against the respondent,

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<sup>2</sup> AIR 1965 SUPREME COURT 1564

<sup>3</sup> (2000) 10 SCC 348

<sup>4</sup> AIR 2008 SUPREME COURT 2462





claiming that she was aware of the second marriage during the course of the ongoing divorce process. The court ruled that any moment following the second marriage's registration can see the start of criminal proceedings against the bigamy offense. When bigamy is committed, there is no time restriction on when legal action can be initiated.

**Sarla Mudgal v. Union of India (1995)<sup>5</sup>**

There were two petitioners in this instance. According to the two petitioners, their husbands avoided Section 494 of the IPC by getting married a second time and converting to Islam for the same reason. The Hindu who had remarried after converting to Islam and not getting a divorce from his first wife was noted by the Supreme Court. Such a marriage is null and void, and the offender faces penalties under IPC Section 494.

**Trailokya Mohan v. State of Assam (1968)<sup>6</sup>**

The petitioner was penalized under Section 494 of the IPC for committing the bigamy offense. Although the accused, who was also the petitioner, acknowledged that he had committed bigamy, the witnesses testifying during the trial made no mention of the second marriage's invalidity. Therefore, the court noted that a lawful second marriage was consummated, and under such conditions, the accused's statement might be trusted.

**Banshidhar v. Chabhi Chatterjee (1966)<sup>7</sup>**

In this instance, a Hindu woman identified herself as the petitioner's spouse. The petitioner disclaimed to be her spouse. Upon examination, it was discovered that the woman is the petitioner's wife and is entitled to maintenance. However, the petitioner was lawfully married at the time of the marriage, according to the respondent. Therefore, it was decided that, in accordance with Section 11 of the Hindu Marriage Act, the petitioner's marriage to the respondent woman is null and void. Furthermore, as the woman was not the petitioner's lawfully wedded wife, she was not eligible to

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<sup>5</sup> AIR 1995 SUPREME COURT 1531

<sup>6</sup> AIR 1968 ASSAM AND NAGALAND 22

<sup>7</sup> AIR 1967 PATNA 277

receive maintenance. The court went on to say that such maintenance claims are irrelevant in light of individual maintenance legislation like the 1956 Hindu Adoption and Maintenance Act.

#### **4.4 STATUS OF A SECOND WIFE IN INDIA**

There are still a lot of unfavorable things to consider when considering the status of second spouses in our culture today. These could include the fact that her marriage is not acknowledged, the difficulty of enduring people's disdain and humiliation, the anguish of not being able to provide her children with a legal status that addresses the issue of property inheritance, etc.

The Indian Penal Code, 1860 forbids bigamy, therefore the second wife cannot obtain legal recognition. Nevertheless, depending on the specifics of her marriage, she might be granted certain rights and legal assistance. When the husband hides the existence of his first marriage, for example, the second wife may be able to obtain rights and legal assistance. Under Section 495 of the Indian Penal Code, 1860, the husband of the second wife will be held accountable in this case.

#### **4.5 MAINTENANCE TO THE SECOND WIFE**

When a second wife gets married, it may initially seem that her marriage is void and that she is not entitled to maintenance. However, the Hon. Supreme Court ruled in the seminal case of Pyla Mutyalamma @ Satyavathi v. Pyla Suri Demudu & Anr (2011) that the second wife is entitled to maintenance from her husband. It further decided that the legitimacy of the marriage could not be a reason for rejecting the maintenance claim.

Pyla Mutyalamma, also known as Satyavathi, was the appellant in the previously mentioned case and the respondent Pyla Suri Demudu's second wife. In 1974, the couple wed in a Hindu temple following prescribed ceremonies. After 25 years of marriage and three children, the respondent left her behind. Following hearing from both sides, the Andhra Pradesh Trial Court granted Rupees 500/-as maintenance.





However, the respondent later filed an appeal, and the Andhra Pradesh High Court overturned the decision, ruling that the appellant was not entitled to maintenance because she was the respondent's second wife. The appellant filed an appeal with the Supreme Court after being offended by the ruling of the Andhra Pradesh High Court. The Supreme Court ruled that, regardless of the legality of the marriage, the second wife would be entitled to support from her husband in the event that she was deserted by him under Section 125 of the Criminal Procedure Code, 1973. In contrast to marriage de jure, section 125 of the Criminal Procedure Code governs de facto marriages. Therefore, provided that all other conditions outlined in Section 125 Cr.P.C. are met, the legality of the marriage cannot be used as a justification for denying maintenance. In this instance, the Hon'ble Apex Court upheld the Trial Court's ruling awarding the second wife Rupees 500/-as maintenance and approved her appeal.

#### **4.6 RIGHTS OF CHILDREN BORN OUT OF SECOND WEDLOCK OVER FATHER'S PROPERTY**

The children born out of second wedlock will have the right to inherit their father's property. In the case of *Revanasiddappa v. Mallikarjun* (2011)<sup>8</sup>, it was held that children born out of second wedlock will have the right to their father's ancestral property. Further, the Hindu Marriage Act under Section 16(3) does not mention any restriction on the property right of an illegitimate child. However, such property rights only extend to the property of the parents of such illegitimate children. Thus, such children will have the right over the property of their parents whether self-acquired or ancestral.

In the case of *Vidyadhari & Ors v. Sukhrana Bai & Ors.* (2008)<sup>9</sup>, it was held by the Supreme Court that the children born of second wedlock are entitled to a share in the property of their father, though the second marriage itself is void. If an individual

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<sup>8</sup> 2011 AIR SCW 2447

<sup>9</sup> AIR 2008 SUPREME COURT 1420, 2008



marries a second time during the subsistence of his first marriage, the children born out of such wedlock will still be legitimate.

## **5. CONCLUSION**

The act of marrying someone when one is already lawfully married to another is known as bigamy. Section 494 of the Indian Penal Code, 1860 provides an explanation of bigamy. According to the aforementioned clause, anyone who marries someone else while legally married to their current spouse and who already has a wife or husband will be punished with either type of imprisonment for a maximum term of seven years as well as a fine. Furthermore, in any circumstance, such a marriage will be deemed null and void.

The Indian Penal Code, 1860, Section 495, adds the vice of concealment to the list of crimes related to bigamy. If a person commits the act of bigamy by not disclosing their previous marriage to the partner in their second marriage, they will be held accountable under Section 495. The Indian Penal Code, 1860 forbids persons from invoking religious conversion as a justification for committing the crime of bigamy because it is crucial to have strict rules to prevent and punish the offence.

Bigamy occurs in cultures where it is sanctioned by law. For instance, the Muslim Personal Law does not forbid bigamy, but the Hindu, Parsi, and Christian personal laws contain penalties for the offense. There are still certain gaps that need to be closed. The rights and obligations of those in a live-in relationship are not covered by the bigamy regulations. As a result, married men who live in together take advantage of the situation, and the partner's wife is powerless to stop them. Despite all of this, bigamy has become far less common in recent years, and things appear to be improving.

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