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## Analysis of Bigamy Laws in India

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*In monogamous societies, the practise of bigamy, which is a kind of polygamous marriage in which one person purposefully and consciously marries two persons concurrently and without their knowledge, is considered a criminal offence. Bigamy is a sort of polygamous marriage. The practise of having more than one spouse extends back to the beginning of marriage and may be found in the scriptures of a number of different faiths. Bigamy came about as a consequence of problems in regulations regarding divorce, and people leaving their marriages. At the beginning of the twenty-first century, bigamy is still illegal in the majority of nations throughout the globe and in all 50 states of the United States; yet, it is practised freely due to religious convictions. People who are under the impression that they have been legally divorced may also inadvertently commit the act of bigamy. In spite of the fact that, at first glance, it could seem that bigamy is a crime that is punishable across the board for every single person in the nation, it does not appear that this is the reality.*

**Keywords:** *bigamy, polygamy, divorce, society, punishable offence.*

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### INTRODUCTION

In our Indian culture, marriages are seen as a pure sacrament since it is a link that connects two identities together till the end of both of their lives, in contrast to other nations in which getting into a marriage is treated more like entering into an agreement. However, there are some cases in which one individual in a marital relationship cheats with another individual

and enters into a new marriage relationship during the lifetime of the other partner. This action, which is also known as committing the crime of bigamy, is one of the things that is considered a violation of the law. Bigamy refers to the act of marrying a second person while one's first legal marriage to another person who is still living is still in effect. If a person already has a spouse who is alive and is still legally married to them, they are not allowed to marry another person legally, and if they do, their second marriage will be ruled void ab initio, which means it will be considered null or invalid from the very beginning. The Indian society encourages monogamy for many apparent reasons; hence a second marriage is frowned upon while an existing spouse is still alive and present.

Since in a society in which a man is permitted to have two spouses at the same time or a woman is permitted to have multiple spouses at about the same period, it will cause conflict when it comes to issues concerning inheritance, privileges, or economic stability, and it can result in family issues emerging enmity or hatred, and such a family can very seldom flourish pleasantly in the societal structure. Laws against bigamy have been there since the time of the Vedic scriptures, as does the practise of bigamy itself. However, there has always been an exception to the norm of monogamy, and that exception is polygamy.

## **BACKGROUND**

There are many views regarding the development of Bigamy in India. Some of them are:

- According to the holy literature known as the "Rig-Veda," which also serves as the foundation for the Hindu legal system in India says, "a man's life is incomplete without his wife," since it is with his wife that he completes all religious rites and, as a result, achieves moksha. In view of this, the Hindu faith does not specifically sanction the practise of being married more than once; yet, there is evidence from the past to imply that ancient emperors, wealthy merchants, and monarchs sometimes had more than one spouse. Regardless of the fact that the culture of getting married twice or more was popular among Hindu rulers, wealthy landlords, and common people during that time period. The practise of bigamy was so pervasive that it must have led the British

colonial Empire of India to facilitate the Islamic provinces to let the married men have multiple spouses.

- The Manusmriti, which was one of the primary sources used in the creation of the Hindu Marriage Act in 1955, has scriptures that make it very apparent that a second marriage was permissible in the event that a woman was barren, sick, or vindictive and that she may be replaced. However, only the first lady who was married in a marital ceremony would be regarded as a wife; the second woman would not be included in this classification. In a clearer sense, the first wife had precedence over the other, as well as her first-born son's position relative to the other boys who were born to the husband. The other spouses were not even seen as wives; rather, they were seen as a higher level of concubines. But as time went on, the courts under British control decided that a Hindu man might marry another woman while he was still married to his first wife. This was to be done without the permission of his first wife or any other rationale, and it was deemed legal by the courts.

Although it is largely unclear how the practise of bigamy began as well as what made it ubiquitous among the general public.

## **PRESENT SCENARIO**

There are ample personal laws governing bigamy in our countries:

### ➤ *HINDU MARRIAGE ACT*

It has been thought, whether correctly or not, that Hindu religious law permitted an unfettered kind of bigamy and did not place any particular requirements on the bigamist-husband. This belief has been around from the beginning of time. The Muslim rulers of India didn't enforce on any non-Muslim the principles of Islamic law, which tolerated limited bigamy within the framework of a well-established discipline of justice and fairness to co-wives. Instead, they allowed the Hindu law against bigamy, whatever it was, to remain unchanged. In spite of the fact that they modernised many other facets of Hindu law, the British authorities did not do away with the restrictions on polygamy that were stipulated in old Hindu law and custom. One and only the Brahmosamaj were successful in obtaining legal permission to practise

monogamy thanks to a unique statute that was passed in 1872 specifically for their community in what was then the province of Bengal in India.

Following the country's attainment of its independence, anti-bigamy legislation was adopted by the province legislatures of Bombay, Madras, Saurashtra, and the Central Provinces for the Hindu population. Finally, in 1955, the Hindu Marriage Act was passed by Parliament, making it illegal for Hindus to have more than one spouse at a time. Buddhists, Jains, and Sikhs have all declared that any future bigamous weddings on their part would be invalid and subject to punishment.

According to the Hindu Marriage Act, one of the requirements for a lawful marriage is that "neither party had a spouse alive at the time of the marriage." This requirement may be found in Section 5(i)<sup>1</sup>. In the event that this requirement is breached, the marriage will be considered null and invalid, and it will become subject to the possibility of having a decree of nullity issued on the basis of a petition submitted by either party against the other party (Section 11)<sup>2</sup>.

If a person who is considered to be a Hindu under the Hindu Marriage Act, 1955, marries another person while there is still the existence of his or her first marriage, i.e., while the first husband or wife is still alive, then that person shall be punished under the Indian Penal Code, as stated in Section 17<sup>3</sup> of the Hindu Marriage Act, 1955.<sup>4</sup>

If the second marriage is invalid according to the Hindu Marriage Act, then the kid from the second wife would acquire the very same rights as the child from the previous marriage. Section 16<sup>5</sup> of the Hindu Marriage Act specifies that the rights may be inherited by the second child.

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<sup>1</sup> Hindu Marriage Act, 1955, s 5(i)

<sup>2</sup> Hindu Marriage Act, 1955, s 11

<sup>3</sup> Hindu Marriage Act, 1955, s 17

<sup>4</sup> Law Commission of India, *Preventing Bigamy via Conversion to Islam - A Proposal for giving Statutory Effect to Supreme Court Rulings* (Law Com. No. 227)

<<https://indiakanoon.org/doc/114973964/#:~:text=As%20regards%20the%20Muslims%2C%20the,free%20to%20contract%20plural%20marriages>> accessed 25 June 2022

<sup>5</sup> Hindu Marriage Act, 1955, s 16

➤ *MUSLIM LAW*

After the Battle of Uhud, it was determined, in accordance with Muslim Law that many Muslims had lost their lives fighting for the Prophet in addition to Islam. There were a great number of widows and children who were raised alone since their parents had been abandoned. Since Allah was worried about the pain that people were going through, he decided to institute polygamy. In accordance with the Muslim Marriage Law, a man is only permitted to have a maximum of four wives. The practise of polygamy among Muslims is not illegal in India. It is permissible for a Muslim man who has been married before to remarry even if his first marriage is still recognised as legally binding under Islamic personal law. The practise of polygamy is supported by the Quran, specifically Chapter 4. The majority of Muslim countries continue to practise polygamy even when their wives do not approve of the practise. Therefore, in 1961 Pakistan approved the Muslim Family Laws Ordinance, which states that a husband must ask for permission from the Chairman of the Union Council, which is an elected position of local government. Because of this custom, the male is not allowed to marry his fiancée in private. A man is allowed to have many wives under Islamic law; but, he is not permitted to compel his previous wife to remain with him.

➤ *CHRISTIAN LAWS*

It is well known that the Christian church forbids having more than one spouse. In India, Christian weddings are regulated by a law that dates back to the time of the British colonial administration and is known as the Christian Marriage Act of 1872. Marriages between Christians in India are required to be solemnised in accordance with the provisions of this act not only in cases where both parties are Christian but also in cases where one of them is a Christian and the other is a non-Christian, as specified in section 4<sup>6</sup> of the act. This provision applies to all types of marriages that take place among Christians in India. In accordance with this Act, marriage may either be solemnised by a "Minister of Religion" of a Church or by a Marriage Registrar either directly or in the presence of the Minister.

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<sup>6</sup> Christian Marriage Act, 1872, s 4

One of the parties must submit a statement of their marital status at the time of marriage together with the notice they are providing to be married, and the form for this purpose only includes two possibilities: bachelor/spinster or widower/widower. In order to be married, the couple has to have a certificate from the court stating that "they think that there is no obstacle of kindred or affinity or other legal hindrance, to the said marriage," and that certificate may only be granted after the couple has received it. Rather than filling out a written statement, the party notifying the Marriage Registrar of their intent to marry must swear an oath to the same effect.

Given that bigamy is expressly forbidden by Christian law and implicitly outlawed by the Act, it might be argued that the aforementioned articles of the IPC also apply to Christians who are already married. However, it may be argued that the Act could be more precise in this regard. The Christian Marriage Act 1872 and its divorce supplement, the Indian Divorce Act 1869, both apply to circumstances where only one spouse is a Christian, hence a post-marriage change of faith by either spouse may have no impact on the ban of bigamy under the Christian law.

➤ *PARSI LAW*

Bigamy is expressly forbidden under the Parsi Marriage and Divorce Act of 1936, which further stipulates that any instance of bigamy in a marriage that is covered by that Act shall result in the application of Sections 494 and 495<sup>7</sup> of the Indian Penal Code.

➤ *INDIAN PENAL CODE*

Section 494 of the Indian Penal Code 1860<sup>8</sup> is applicable in cases of Bigamy in India which says that any individual who is already having a spouse or partner and gets married to another person in presence of a previous spouse, then the person shall be punished with imprisonment that shall extend to seven years and would be liable to fine. In addition, the person shall be subject to prosecution for a criminal offence.

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<sup>7</sup> Indian Penal Code, 1860, ss 494 and 495

<sup>8</sup> Indian Penal Code, 1860, s 494

However, if the court has previously ruled that the marriage was invalid, the individual in question cannot be found guilty under this provision of the law. When one of the partners has been gone for a period of seven years and there is no knowledge regarding the presence of the other partner, then the other partner is allowed to get into another marriage. However, the partner must disclose all of the information to the individual to whom they are getting married first.

## LANDMARK CASES

### ➤ *Sarla Mudgal v Union of India*<sup>9</sup>

In a landmark decision, the Supreme Court of India ruled that "where any man (not Muslim initially) gets converted his religion into Islam for the primary intention of procuring a second marriage without lawfully divorcing his first wife), the relationship shall be recognized as void and illegal and he shall be sentenced in the manner similar as he would have been prosecuted if he hadn't converted religion." This means that the man will be punished in the same manner as he would have been punished had he not converted to the religion. This individual will be subject to the penalty of imprisonment as well as a fine, and the sentence imposed according to section 494<sup>10</sup> will not be eligible for compounding with the sentence imposed pursuant to section 495<sup>11</sup>. She is not entitled to any kind of right or part of the husband's property, but she is eligible to receive interim support from her husband. The first wife is not subject to any kind of right or part of the husband's property.<sup>12</sup>

### ➤ *Priya Bala Ghosh v Suresh Chandra Ghosh*<sup>13</sup>

In this particular instance, the woman who was married to the defendant filed a charge of bigamy against her husband on the grounds that he had solemnised another marriage while they were still married to each other. It was discovered, with reference to the second marriage, that there were no marriage ceremonies necessary by Hindu law to contract a marriage

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<sup>9</sup> *Smt. Sarla Mudgal, President v Union of India & Ors.*, (1995), AIR 1531

<sup>10</sup> Indian Penal Code, 1860, s 494

<sup>11</sup> Indian Penal Code, 1860, s 495

<sup>12</sup> Manish Kumar, 'Is Bigamy a Punishable Offence in India?' (*Tax Guru*, 4 April 2020)

<<https://taxguru.in/corporate-law/bigamy-punishable-offence-india.html>> accessed 25 June 2022

<sup>13</sup> *Priya Bala Ghosh v Suresh Chandra Ghosh* (1971), AIR 1153

conducted in order to term it a solemnization of marriage as defined by the law. This was the case since the first marriage had been annulled. As a result, it was decided that the plaintiff is responsible for providing evidence that the second marriage is a legitimate marriage that was carried out in accordance with the rites and rituals of the personal law.<sup>14</sup>

## CONCLUSION

Changing one's religion to Islam, which allows men to have four wives at a time, is a common practise in a country with many different cultures, languages, and religions; one such example is the man who changed his religion to ensure that he could fraudulently marry and keep two wives at the same time. In recent years, the practise of "Bigamy" has slowed significantly, and a reduction in such offences against women could only lead to the establishment of an ideal society. All religions stress the importance of loving, respecting, and supporting women and not using them as "an instrument of manipulation and exploitation." Bigamy is illegal in many countries both to deter people from engaging in the practise and to guarantee that the first wife would never be shunned. However, it has been argued in the courts that if the husband is sentenced to prison, the chances of the pair in the first marriage ever living together are diminished, and this is something that should be taken into consideration.

It is necessary, however, to take into consideration the fact that the spouse is guilty of a crime and that if he is not punished for it, the offence would be rendered entirely meaningless; this is necessary in order to validate the penalty for the offence. Regarding the issue of bigamy, it has also been proposed in the instances of Sarla Mudgal that there needs to be one civil law that applies across the board to people of all faiths and castes. If there was consistency in the laws, there would be no room for ambiguity in the way they are applied. The finding that even if a non-Muslim who has already married converts to Islam, he cannot contract another marriage without first having his former marriage dissolved is unquestionably in conformity with the language and spirit of Islamic law against bigamy. The practise of marrying outside of

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<sup>14</sup> Prabisha Pradeep, 'The Position of Bigamy In Hindu Law' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-5521-the-position-of-bigamy-in-hindu-law.html>> accessed 25 June 2022



weddings is one that does not discriminate based on gender. Nevertheless, given that bigamy is the transgression in issue, it is absolutely necessary to establish a civil law that is unified.<sup>15</sup>

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<sup>15</sup> Sushmitharam kumar, 'Bigamy as a Offence in India' (*Legal Service India*)  
<<https://www.legalserviceindia.com/legal/article-2438-bigamy-as-an-offense-in-india.html>> accessed 25 June 2022