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Case Comment: Sarla Mudgal v Union of India: Bigamous Marriages through religious conversion and the need for UCC in India

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INTRODUCTION

The existence of diverse religion-based personal laws has perpetuated discrimination against women in marital relationships. The inviolable fundamental right to ‘freedom of religion’¹ effectuating apostasy has affected the validity of marriages solemnized under personal laws for different communities. Remarkably, owing to the absence of a Uniform Civil Code, the quest for diminishing the disparities in personal laws related to marriage persists. The case *SarlaMudgal v Union of India*²decided on May 10, 1995, by a two-judge bench of the Supreme Court comprising Justices Kuldeep Singh and R.M. Sahaexplores the validity of a monogamous Hindu marriage affected by the second marriage of the husband who underwent apostasy. The case acted as an impetus necessitating securing a Uniform Civil

¹ Constitution of India, 1950, art.25

² *Smt. Sarla Mudgal, President, Kalyani and Others v Union of India and Others*, (1995) 3 SCC 635

Code for stabilizing“the institution of marriage and family, which, in turn, [will] promote social homogeneity and thereby national integration”³.

FACTUAL BACKGROUND

The facts of the case are mentioned as follows⁴:

A set of four writ petitions were filed before the Supreme Court under Article 32⁵ of the Constitution. The first petition had two petitioners: **(a)**SarlaMudgal, President of the organization named Kalyani which worked towards the welfare of women, and **(b)** a Hindu wife Meena Mathur whose Hindu husband Jitender Mathur became a Muslim for marrying a Hindu woman who converted to Islam, named Sunita Narula *alias* Fathima. In the second petition, Sunita *alias* Fathima seeks maintenance from her husband who is alleged to be reconverted to Hinduism. The third petition involves a Hindu wife Geeta Rani whose husband Pradeep Kumar converted to Islam for solemnizing his second marriage with Deepa. In the fourth petition, the Hindu wife Sushmita Ghosh states that her husband G.C. Ghosh intended to marry another woman named Vinita Gupta by embracing Islam. The four petitions were clubbed together containing the common contention that the Hindu husband underwent apostasy to embrace the Muslim faith for entering bigamous marriages.

ISSUES INVOLVED

The following questions⁶ were presented before the Supreme Court for its adjudication:

- Whether a Hindu husband married under Hindu law can solemnize a second marriage by converting to Islam.
- Whether the second marriage in the subsistence of the first marriage is valid qua the first wife who continues to be a Hindu.

³ Virendra Kumar, ‘Towards a Uniform Civil Code: Judicial Vicissitudes [from SarlaMudgal (1995) to Lily Thomas (2000)]’ (2000) 42 (2) Journal of the Indian Law Institute, 315 <<https://www.jstor.org/stable/43953817>> accessed 03 June 2022

⁴ Smt. Sarla Mudgal, President, Kalyani and Others (n 2)

⁵ Constitution of India, 1950, art.32

⁶ Smt. Sarla Mudgal, President, Kalyani and Others (n 2), 639

- Whether the apostate husband contracting a second marriage is guilty of committing bigamy under Section 494 of IPC⁷.

KEY ARGUMENTS ADVANCED BY THE PARTIES

APPELLANTS

Meena Mathur, the first petitioner, in this case, alleges that her husband for the purposes of both marrying Sunita *alias* Fathima and escaping bigamy had converted to Islam. Sunita *alias* Fathima contended that while her husband under the influence of his Hindu wife Meena reconverted to Hinduism and agreed to maintain Meena and her three children, Sunita *alias* Fathima, who continued to profess Muslim religion, ceased to be maintained in either Hindu or Muslim personal laws.⁸

Geeta Rani, the third petitioner, alleges that her husband converted to Islam which permits polygamy for solemnizing the second marriage. Lastly, the fourth petitioner Sushmita Ghosh, alleges that her husband, who was unwilling to live with her, coerced her to agree to divorce by mutual consent. Subsequently, her husband embraced Islam for facilitating her second marriage to Vinita Gupta. She requests the Court for restraining her husband from marrying her.⁹

RESPONDENT

The respondent, in this case, includes the Hindu husbands (represented by the *Union of India*) who argue that their conversion to Islam would entail their right to practice polygamy in accordance with the Muslim personal law. Further, they allege that Muslim personal law is inapplicable for validating the Hindu marriage existing prior to conversion, and hence, they being Muslims had the right to have four wives irrespective of the fact that their first wife continues to remain a Hindu which does not amount to committing the offence of bigamy.¹⁰

⁷ Indian Penal Code, 1860, s 494

⁸ Smt. Sarla Mudgal, President, Kalyani and Others (n 2), 639-640.

⁹ *Ibid*, 640

¹⁰ *Ibid*

VERDICT

The judgement delivered by the Bench had the concurring opinion of Justice Sahai.

Firstly, it was held that the first marriage governed by Hindu law is not automatically dissolved despite the conversion of the Hindu husband to Islam, and thereby, a second marriage cannot be solemnized in the subsistence of the first marriage under the Hindu law.¹¹

Secondly, the second marriage by the apostate husband violating the provisions of HMA¹² is an illegal marriage to his wife who continues to remain a Hindu and governed under the Act.¹³

Thirdly, the second marriage contracted by the Hindu husband by embracing Islam is violative of the rules of natural justice, and thus, being void under Section 494 of IPC, the apostate husband is liable for committing the offence of bigamy.¹⁴

REASONING BY THE COURT

The Court examined catena of case-law involving application of inter-personal laws and various provisions of HMA for determining the dissolution of a Hindu marriage affected by apostasy. **Section 11**¹⁵ states that a marriage will be void if it contravenes any of the conditions specified in clauses (i), (iv), and (v) of **Section 5**¹⁶; **Section 13**¹⁷ provides grounds for divorce; **Section 15** allows divorce Hindus to remarry. Applying the provisions along with the doctrine of the indissolubility of Hindu marriages, the Court reasoned that unless the Hindu marriage is dissolved by a decree of divorce, none of the spouses can marry again, and therefore, conversion to Islam and subsequent remarriage do not *ipso facto* dissolve the Hindu marriage irrespective of the fact that Muslim law permits polygamy. The Court recognized that Hindu marriages being monogamous in nature, made the second marriages contracted by apostate

¹¹ *Ibid*, 645

¹² Hindu Marriage Act, 1955

¹³ Smt. Sarla Mudgal, President, Kalyani and Others (n 2), 646

¹⁴ *Ibid*, 646-647

¹⁵ Hindu Marriage Act, 1955, s 11

¹⁶ Hindu Marriage Act, 1955, s 5(i), (iv), and (v)

¹⁷ Hindu Marriage Act, 1955, s 13

husbands void. The punishment for bigamy is provided by **Section 17**¹⁸ of HMA which is read with **section 494 of IPC** which contains the following elements: **(a)** a living husband or wife; **(b)** marries in any case; **(c)** void marriage; **(d)** marriage undertaken during the lifetime of such husband or wife. In the present case, the Hindu husband has a wife living, marries for the second time by converting to Islam and such marriage is void as it took place in the subsistence of the first marriage thereby, fulfilling all the elements of Section 494. The Court relied on *Robasa Khanum v Khodadad Irani*¹⁹ and held that the second marriage of the Hindu husband converting to Islam “merely for the purpose of evading their own personal laws”²⁰ is “violative of justice, equity and good conscience”²¹ and hence, the apostate husband would be punished for bigamy under Section 17 of HMA read with Section 494 of IPC. Finally, Justice Singh in light of the judgements in *Shah Bano*²² and *Jordan Diengdeh*²³ reminded the Government that a Uniform Civil Code should be enacted as envisaged under Article 44²⁴ of the Constitution. Justice Saha opined that “. . . No religion permits deliberate distortions. . . The government should consider the feasibility of appointing a committee to enact a conversion of Religion Act, immediately, to check the abuse of religion by any person.”²⁵

ANALYSIS

The Supreme Court in the *Sarla Mudgal* case deliberated on the issue pertaining to bigamous marriages by Hindu men who resorted to conversion to the Muslim faith for solemnizing such marriage validated under Muslim personal law. Consequently, the case advocated the need of enacting a Uniform Civil Code for fulfilling the constitutional mandate of the State under Article 44 of the Constitution. Although the Hindu husbands solemnizing second marriage by converting to Islam were charged with the offence of bigamy, a catena of judicial precedents²⁶,

¹⁸ Hindu Marriage Act, 1955, s 17

¹⁹ *Robasa Khanum v Khodadad Irani* (1946) 48 Bom LR 864

²⁰ *Smt. Sarla Mudgal, President, Kalyani and Others* (n 2), 647

²¹ *Ibid*

²² *Mohd. Ahmed Khan v Shah Bano Begum* (1985) 2 SCC 556

²³ *Jordan Diengdeh v S.S. Chopra* (1985) 3 SCC 62

²⁴ Constitution of India, 1950, art.44

²⁵ *Smt. Sarla Mudgal, President, Kalyani and Others* (n 2), 651-652

²⁶ *In re Ram Kumari*, ILR (1891) 18 Cal 264; *Budansa v Fatima* (1914) 22 IC 697; *Gul Mohammed v Emperor* AIR 1947 Nag 121; *Nandi v Crown* ILR (1920) Lah 440; *Emperor v Ruri* AIR 1919 Lah 389; *Sayeda Khatoon v M. Obadiah* 9 CWN

implications of “plurality of personal laws”²⁷ and “lack of a Uniform Civil Code”²⁸ creating a “circuitous course”²⁹ was travelled by the Court for creating a path to social justice for women trapped in marital relationships affected by the apostasy of their Hindu husbands. In this section of the commentary, I analyse the judgement in a *two-fold manner*:

- *Marriage ensuing Conversion to Islam: Unravelling Bigamy*

In the present case, the four women petitioners married under the Hindu law sued their husbands for solemnizing bigamous marriages by converting to Islam. The first marriage performed in accordance with Hindu law was monogamous in nature and continued to subsist despite the conversion of the Hindu husband to Islam for subsequent remarriage. The Court reaffirmed the judicial precedents held that “a marriage celebrated under a particular personal law cannot be dissolved by the application of another personal law to which one of the spouses converts and the other refuses to do so.”³⁰ On this basis, the voidness of second marriage is supported by the proposition that the first marriage being subsisting prior to conversion of Hindu husband is “a civil disability which renders marriage with any person whose prior marriage is subsisting void.”³¹

However, the HMA is silent on the status of the second marriage solemnized by the Hindu man who converts in the subsistence of the first marriage governed by HMA. Section 17 states that the marriage solemnized between two Hindus is void when the party had a wife living and therefore, HMA is inapplicable to the apostate man who ceases to be a Hindu. HMA has thereby “provided ample scope for a Hindu man to escape both from the criminal consequences of a bigamous marriage and from the economic responsibility towards the second wife.”³² Further, Justice Singh’s ambiguous remark that “*The marriage solemnised by a*

745; *Andal Vaidyanathan v Abdul Vaidya* AIR 1946 Mad 446; *Waghela Rajsanji v Shekh Masludin*, (1887) LR 14 IA 89; *Muhammad Raza v Abbas Bandi Bibi* (1932) LR 59 IA 236.

²⁷ Jhuma Sen, ‘Righting Sarla Mudgal v Union of India and Others’ (2016) 7 (1) *Jindal Global Law Review*, 97

²⁸ *Ibid*

²⁹ Virendra Kumar (n 3), 316

³⁰ Smt. Sarla Mudgal, President, Kalyani and Others (n 2), 645

³¹ Kusum, *Cases And Materials on Family Law* (3rd edn., Universal Law Publishing 2013)

³² Flavia Agnes, ‘Hindu Men, Monogamy and Uniform Civil Code’ (1995) 30 (50) *Economic and Political Weekly*, 3238 <https://www.jstor.org/stable/4403569>> accessed 03 June 2022

*Hindu husband after embracing Islam may not strictly be void under the Hindu Marriage Act because he is no longer a Hindu*³³ indicates that in spite of the bigamous tendencies of the men, in this case, the bigamy cannot also be “ascribed as a product of Muslim personal laws”³⁴ which permits limited polygamy.

Eventually, the Court uses the principle of natural justice to hold that conversion to Islam is allowed to a Hindu husband but marrying again without dissolving the earlier marriage is a violation of the rules of natural justice which makes the second marriage void. Therefore, a lacuna is created by the differences in inter-personal laws which necessitates the adoption of a Uniform Civil Code “both for protection of the oppressed and promotion of national unity and solidarity”³⁵.

- ***Inspiring Hope for Enactment of a Uniform Civil Code***

The *Sarla Mudgal* case revived the hope for an ideal pursuit of the State in enacting a Uniform Civil Code. Article 44 of the Constitution which recognizes that “*there is no necessary connection between a religion and personal law in a civilized society*”³⁶ requires the implementation of a Uniform Civil Code in the country for removing discrepancies in religion-based personal laws.

Justice Singh expressed that in absence of a Uniform Civil Code, “there is an open inducement to a Hindu husband, who wants to enter into a second marriage while the first marriage is subsisting, to become a Muslim”³⁷ for availing the right to have four wives as entitled under Muslim Personal law, thereby showing how differences between Hindu and Muslim Personal laws were misused for discriminating women in marital ties. A uniform Civil Code which serves as the “very foundation of the civilized society”³⁸ will be useful in “controlling liberty of misusing the freedom of religion through sham conversions”³⁹. However, as cautioned by Justice Sahai the Uniform Civil Code should be enforceable “*only when the social climate is*

³³ Smt. Sarla Mudgal, President, Kalyani and Others (n 2), 646

³⁴ Jhuma Sen (n 27) 105

³⁵ Smt. Sarla Mudgal, President, Kalyani and Others (n 2), 651

³⁶ *Ibid*, 649

³⁷ *Ibid*, 640

³⁸ *Ibid*, 7

³⁹ Virendra Kumar (n 3) 318

properly built"⁴⁰ arousing sentiments of the citizens towards "develop[ing] religious and cultural amity"⁴¹ as "even the slightest deviation shakes the social fiber"⁴² of the Indian community. Therefore, the case demonstrates how in a multi-religious country, anomalies created due to relinquishing of one's faith which incited polygamous tendencies in men resulting in bigamous marriages can be redressed through the enactment of a Uniform Civil Code.

CONCLUDING REMARKS

The Court in the *SarlaMudgal* case has rendered social justice to women in marital relationships by curbing bigamous marriages entered by Hindu men through apostasy. It has "put an end to the popular notion that a Hindu man can circumvent the punishment for bigamy if he remarries after conversion to the Muslim faith as he professes that he ceases to be a Hindu". The decision substantiated by reasoning based on provisions of the HMA and judicial pronouncements creates a positive impact on Indian society. Further, the case was significant for identifying the conflict between the differences in various religion-based personal laws and the right to freedom of religion which encompasses conversion to another religious faith. The case acted as an impetus for the Court to reinforce the need of enacting a Uniform Civil Code by the State. It was recognized that there is "an unequivocal mandate under Article 44 of the Constitution of India which seeks to introduce a uniform personal law - a decisive step towards national consolidation."⁴³ Justice Singh categorically held that "There is no justification whatsoever in *delaying indefinitely* the introduction of a uniform personal law in the country."⁴⁴ This case is looked at as a precedent providing unerring and relentless support for the codification of uniform personal laws under the Uniform Civil Code. However, it has been more than twenty-five years since the judgement was passed and still, a Uniform Civil Code awaits to be enacted in the country.

⁴⁰ Smt. Sarla Mudgal, President, Kalyani and Others (n 2), 651

⁴¹ *Ibid*, 43

⁴² *Ibid*

⁴³ *Ibid*, 639

⁴⁴ *Ibid*